



# Wisconsin TAX BULLETIN



## Tax Season Gear-Up



See articles on pages 1 to 6.

## New Tax Laws to Be Described in Special Issue

What Wisconsin tax laws will be enacted in 1997? Because of delays in passing the 1997-99 Budget Bill, this was unknown at the time this Bulletin went to press. New tax laws enacted in 1997 will be described in a special issue of the *Wisconsin Tax Bulletin* later this year.

The *Sales and Use Tax Report* will also explain the major changes to the sales and use tax laws. The Report is sent to all active sales and use tax registrants. In addition, a copy of the Report will likely be included in the January 1998 issue of the *Wisconsin Tax Bulletin*. ☐

## TeleFile to Start for WI-Z Filers

Wisconsin will offer "TeleFile" for filing state individual income tax returns, beginning January 1998. Participation will be limit-



ed to invited taxpayers. The department will "invite" single taxpayers who filed Form WI-Z for 1996 by sending them a new 1997 TeleFile booklet. The booklet contains instructions on how to use a touch-tone phone to file their 1997 Wisconsin income tax returns.

Using TeleFile, taxpayers complete a worksheet and file their returns by dialing a designated phone number. A personal identification number (PIN) is provided for security. Using the telephone keypad, the taxpayers enter income, withholding, and other return information as prompted by a voice response system. The TeleFile system does all the calculations.

In the 1997 filing season (1996 returns), over 3 million federal returns were filed using this TeleFile technology, including 125,000 federal returns from Wisconsin taxpayers. Twelve states already have TeleFile programs, and those states collected over 1 million TeleFile returns in 1997. The Wisconsin Department of Revenue expects that TeleFile will simplify the filing process for many taxpayers and result in faster refunds for a large majority of these filers. ☐

## Do You Owe Use Tax on Mail-Order Purchases?

If you buy items from mail-order companies who do not charge Wisconsin sales or use tax, you may owe Wisconsin use tax.

Office supplies, computer equipment, paper, and furniture are common examples of mail-order purchases which result in the buyer owing use tax.

**Seller's permit, use tax registration certificate, and consumers use tax registration certificate holders:** Report use tax owed on your sales and use tax return, Form ST-12.

**Others:** Report use tax on a consumer use tax return, Form UT-5. Individuals may report use tax on their individual income tax return instead of Form UT-5. ☐

## Form Changes for 1997

Following are brief descriptions of the major changes to the Wisconsin individual income tax forms for 1997.

- Mailing address for a Form WI-Z which has a tax balance due is changed to P.O. Box 268, Madison, WI 53790-0001.
- Changes are made to the entry area on Form 1A, and a bar code for scanning is added. This will allow the form to be electronically scanned by the department.
- W-2 forms (wage and tax statements) must be stapled to the back of Form 1A, instead of the front.
- Unemployment compensation worksheet previously located on

## In This Issue

	Page		Page		Page
<b>Articles —</b>		Tax Form Order Blanks . . . . .	5	Endangered Resources . . . . .	10
New Tax Laws in Special Issue . . . . .	1	Magnetic Media Filing . . . . .	5	Election Campaign Fund . . . . .	10
TeleFile to Start . . . . .	1	IRS Mileage Rates . . . . .	6	1.8 Million Refunds . . . . .	10
Use Tax on Mail-Order . . . . .	1	Wisconsin/Minnesota Seminar . . . . .	6	Administrative Rules . . . . .	10
Form Changes . . . . .	1	Focus on Publications:		Recently Adopted Rule . . . . .	11
Business Tax Registration . . . . .	2	Compromises . . . . .	6	<b>Report on Litigation</b> . . . . .	12
Vehicle Dealers' Use Tax . . . . .	3	Question and Answer . . . . .	6	<b>Tax Releases</b> . . . . .	22
Electronic Funds Transfer . . . . .	3	Homestead Credit Fraud . . . . .	7	<b>Private Letter Rulings</b> . . . . .	46
Faxed Permit Applications . . . . .	3	Wanted: Your Comments . . . . .	7	<b>Attachments —</b>	
Substitute Tax Forms . . . . .	4	Make Research Easier . . . . .	8	Proof Copies of Forms . . . . .	51
Information or Inquiries? . . . . .	4	Need a Speaker? . . . . .	8	Guidelines/Substitute Forms . . . . .	65
Forms Available by Fax . . . . .	4	Bulletin Index Available . . . . .	8	Order Blank . . . . .	67
Package WI-X Available . . . . .	5	Publications Available . . . . .	8		

back of Form 1A has been moved to instructions.

- Lines on Form 1NPR for taxpayer's and spouse's IRA deductions are combined on one line to conform with changes made on federal Form 1040.
- Line added to Form 1NPR to correspond with new line on federal Form 1040 for medical savings account deduction.

- Entry line is provided on Forms 1 and 1NPR for penalties on medical savings accounts.

- Separate mailing address is no longer used for Forms 1 and 1NPR returns which include a Schedule FC.

Preliminary copies of the 1997 Forms 1, 1A, WI-Z, and 1NPR and the homestead credit and farmland preservation credit claim forms, Schedule H and Schedule FC, are reproduced on pages 51 to 64 of this Bulletin. The copies are subject to further revision. ☐

### Business Tax Registration Changes Being Made

The Department of Revenue is in the process of combining business name, address, and registration information into a centralized file. A new computer system is being developed to register new business tax customers, and to maintain their account infor-

mation. One of the benefits to the customer will be a single location to notify the department of any changes to business account information.

The development of the single registration system is a large undertaking that will occur over several years. The first visible step in the process is the issuance of a renewal Business Tax Registration (BTR) Certificate. Wisconsin law requires the renewal of the BTR Certificate every two years, beginning in 1998.

A renewal BTR Certificate will list all permits, licenses, and certificates currently in effect, and the expiration date for the renewal certificate will apply to all of the items listed. Customers will be asked to review the BTR Certificate closely to ensure the accuracy of the information provided, and to identify any additional permits, licenses, or certificates they hold with the department. The BTR Certificate should be retained as proof of registration with the department and should be easily accessible.

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During the development period, customers may identify discrepancies in the name and address information provided on the BTR Certificate and the information printed on various reporting forms or adjustment notices. The new system will be developed to allow for a longer name and address field but must be shortened when used by existing tax systems. These discrepancies will need correction only if the name or address information is incorrect or causes difficulty in delivery. □

## Motor Vehicle Dealers' Measure of Use Tax Increased to \$102



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, 1998, the amount subject to use tax is increased from \$99 to \$102 per plate per month.** (Note: The use tax per plate per month is not \$102. Rather, \$102 is multiplied by the use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.)

The reason for the increase to \$102 per plate is that sec. 77.53(1m)(a), Wis. Stats. (1995-96), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage 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 for the 12 month period ending June 30. The percentage change for the period July 1996 to June 1997 was 2.9% ( $\$99 \times 1.029 = \$102$  rounded to the nearest whole dollar). □

## Paying Taxes by Electronic Funds Transfer

The Department of Revenue requires electronic funds transfers (EFTs) for payments of motor vehicle fuel tax and petroleum inspection fees. Although not required, EFT is also available for payments 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 fuels 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 received via your fax machine by using the department's Fax-A-Form system. Call (608) 261-6229 from a fax telephone and enter retrieval code 10118. □

## Some Permit Applications Can Be Faxed

The Department of Revenue now accepts certain registration applications by fax. These registrations include sales, use, and withholding permits/certificates that can be applied for by using the Application for Permit/Certificate (Form A-101).

**The fax number to use when faxing a completed Application for Permit/Certificate (Form A-101) to the department is (608) 267-1030.**

When faxing a Form A-101, provide a cover sheet with the contact person's name and fax or phone number. Also, when preparing the Form A-101, be sure to:

- Use blue or black ink.
- Type or print clearly.
- Fill in the estimates at question 11 and/or 12.
- Complete both pages of the application.

An applicant may choose from two options when faxing the Form A-101 to the department:

**OPTION 1 — Regular Processing:** Applicants who are not in immediate need for the permits(s) and/or certificates(s), but would like to save one to three days' processing time (the number of days it would take the department to receive a mailed application), may fax the application to the department. Faxed applications will be processed with the applications received in the mail that day. Applications are ordinarily processed within 10 business days of receipt. The department will send a letter informing the registrant if the \$20 BTR fee is due.

**OPTION 2 — Expedited Processing:** Applicants who prefer to have *next day service* for the issuance of the permit(s) and/or certificate(s) may fax the Form A-101 to the department and must write "Expedited" in the upper left-hand corner of the application. The contact person listed on the cover sheet will be notified the next business day, by phone or fax, of the permit/certificate number(s) issued.

An additional \$10 fee is charged for expedited processing. The department will send a letter informing the registrant of the correct fee(s) due (the "Expedited" fee and the BTR fee), if applicable.

If an applicant has previously mailed a Form A-101 and now wishes to fax one for expedited processing, the applicant should write both "Expedited" and "Second Request" in the upper left-hand corner of the application. The applicant should contact the department at (608) 266-2776 if duplicate registrations are issued because of processing both applications. ☐

## Guidelines for Substitute Tax Forms

Tax returns may generally be filed on forms that have been reproduced or on substitute forms that have been approved by the department. However, certain guidelines must be followed to ensure that the reproduced or substitute forms are compatible with the department's processing system and present information in a uniform manner.

A copy of the "Guidelines for Reproduced and Substitute Tax Forms" appears on pages 65 and 66 of this Bulletin. ☐

## 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. A comprehensive listing of telephone numbers and addresses appears in *Wisconsin Tax Bulletin* 101 (April 1997), pages 35 to 38.

### Madison — Main Office

Area Code (608)

Appeals . . . . .	266-0185
Audit of Returns: Corporation, Individual, Homestead . . . . .	266-2772
Beverage . . . . .	266-6702
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
TTY . . . . .	267-1049

### District Offices

Appleton . . . . .	(920) 832-2727
Eau Claire . . . . .	(715) 836-2811
Milwaukee:	
General . . . . .	(414) 227-4000
Refunds . . . . .	(414) 227-4907
TTY . . . . .	(414) 227-4147

and tax practitioners to obtain tax forms and publications via their facsimile machine or fax modem.

### What is Available Via Fax-A-Form?

Wisconsin individual income, homestead credit, partnership, corporation, estate, fiduciary income, withholding tax, and sales and use tax forms are available, along with the instructions for the forms. In January 1998, 1995, 1996, and 1997 forms and instructions will be available.

Publications published by the department are also available. See the article titled "Tax Publications Available" on page 8 of this Bulletin for a list of the publications.

The catalog of retrieval codes for the forms and publications is updated throughout the year as forms and publications are added and revised. For updated information, order the current catalog using Fax-A-Form.

### How Does it Work?

- From the handset on your fax machine or the touch-tone keypad of your fax modem call the Fax-A-Form telephone number (608)261-6229 (at this point do not enter "start" on your fax machine).
- If you have a newer model fax machine without a handset, you may use the keypad if tones are transmitted; if tones are not transmitted you must connect a touch-tone telephone to your fax machine to retrieve a document.

- Follow the voice prompts, then use the touch-tone keypad on your fax machine or telephone to enter the proper retrieval codes for the items desired.

## Forms Available by Fax

The Wisconsin Department of Revenue offers a Fax-A-Form document retrieval system. This retrieval system enables taxpayers

- Receive the items you select, via your fax machine, by pushing the start, send, or copy button of your fax machine (**on most fax machines use the start button**). Fax modem users will need to click on manual receive. The handset of your system must stay **off** the hook the entire time the forms are being faxed to you.

#### *When Can Fax-A-Form Be Used?*

The Fax-A-Form retrieval system is available 24 hours a day, 7 days a week.

#### *How Much Does it Cost?*

The Department of Revenue does not charge a fee for using the Fax-A-Form service. Your only costs are the normal telephone charges, plus fax machine operating costs, if applicable.

#### *Questions?*

If you have questions about Fax-A-Form, you may call Mary Diaz, the department's Fax-A-Form coordinator, at (608)267-2025. □

### **1997 Package WI-X Available in January**

Wisconsin's Package WI-X will be available by January 31, 1998. Package WI-X will contain actual size copies of most 1997 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, estate tax, motor vehicle fuel tax, sales and use tax, and withholding tax forms.

The cost of the 1997 Package WI-X is \$7.00 plus sales tax. It may be ordered on the bulk order blank (Form P-744). The bulk order blank is being mailed in October. See the following article titled "Tax Form Order Blanks Mailed," for more information on bulk orders.

If you do not receive an order blank and want to purchase copies of 1997 Package WI-X, mail your request indicating the number of copies, along with the amount due, to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903. □

### **Tax Form Order Blanks Mailed**

During October, the department is mailing order blanks (Form P-744) to 9,000 tax preparers. Use these original order blanks (not copies) to request bulk orders of 1997 Wisconsin tax forms that require payment. Forms that do not require payment are not listed on the order blank.

Some of the forms you order will be accompanied by additional information. For example, your order will include instructions for the forms you request; Schedules 2K-1 and WD for Form 2 will be included with fiduciary Form 2 orders; and Schedules 3K-1 will be included with partnership Form 3 orders.

The department is also mailing order blanks (Forms P-744b and P-744L) to banks, post offices, and libraries for their use in requesting bulk orders of 1997 Wisconsin income tax forms. No charge is made for forms used for distribution to the general public (for example, in a bank, library, or post office).

If you do not receive an order blank by October 31, 1997, you may request one by: contacting any department office; writing to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903; or calling (608) 267-2025.

Place your order as early as possible after receiving the order blank. Orders are expected to be filled in late December and early January.

Package WI-X will be mailed separately in late January. Most forms in Package WI-X may be reproduced (see the "Guidelines for Reproduced and Substitute Tax Forms" on page 65 of this Bulletin for a listing of forms that may **not** be reproduced). □

### **Magnetic Media Filing Required for Some Forms**

Employers and payors may be required to file wage statements and information returns on magnetic media with the Wisconsin Department of Revenue. Wisconsin magnetic media filing is required if all of the following apply:

- Comparable wage statements or information returns are required to be filed on magnetic media with the Internal Revenue Service or Social Security Administration.
- The income on the form is required to be reported to Wisconsin.
- The number of any one type of form required to be filed with Wisconsin is 250 or more.
- The Combined Federal/State Filing Program is not being used.
- No waiver has been granted by the department.

Wisconsin Publication 509, "Filing Wage Statements and Information Returns on Magnetic Media," provides more information about magnetic media filing. You can order Publication 509 by: writing to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903; calling (608) 266-1961; using the department's "Fax-A-Form" system by calling (608) 261-6229 from a fax telephone and entering retrieval

code 10509; or accessing the department's World Wide Web Internet site at <http://www.dor.state.wi.us>. ☐

## IRS 1997 Mileage Rates Apply for Wisconsin

The 1997 optional standard mileage rates specified by the Internal Revenue Service (IRS) for computing automobile expenses for business, charitable, medical, and moving expense purposes also apply for Wisconsin.

For 1997 the IRS increased the business standard mileage rate from 31¢ per mile to 31.5¢ per mile for all business miles driven. The 31.5¢ per mile rate is allowed without regard to whether the automobile was previously considered fully depreciated.

If the standard mileage rate of 31.5¢ per mile is used, depreciation is considered to be allowed at 12¢ per mile for 1997, the same rate as for 1996. However, no portion of the

31.5¢ per mile rate is considered to be depreciation after the adjusted basis of the automobile reaches zero.

For 1997 the mileage rate allowed for calculating automobile expenses for charitable deduction purposes remains at 12¢ per mile, and the rate for medical expense and moving expense deductions remains at 10¢ per mile. ☐

## Wisconsin/Minnesota Tax Seminar

The Wisconsin and Minnesota Departments of Revenue are presenting a joint sales and use tax seminar for contractors, which includes information on differences between the two state's laws. The seminar, which is open to the public without charge, is being held on November 25, 1997, in St. Paul, Minnesota.

To register or for more information, call the Minnesota Department of Revenue at 1-800-888-6231. ☐

## Focus on Publications: Tax Compromises

What can taxpayers do if they owe more delinquent taxes than they can ever pay?

The Wisconsin Department of Revenue's Publication 124, *Petition For Compromise Of Delinquent Taxes*, explains how taxpayers in this situation may file a petition for compromise, to settle the delinquency for a lesser amount. It explains who may qualify, how to file a petition for compromise, and how the department reviews the petition.

To obtain a copy of Publication 124 by mail, you may call (608) 266-1961, fax a request to (608) 261-6239, or write to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903. To receive a copy via your fax machine, call the department's Fax-A-Form number, (608) 261-6229, from a fax telephone and enter retrieval code 10124. ☐

## Question and Answer

**Q** I am retired and receiving a federal civil service retirement benefit. May I have Wisconsin income tax withheld from my federal retirement benefit?

**A** Yes, you may have Wisconsin income tax withheld from your federal retirement benefit. Wisconsin is participating in a new program which allows federal retirees to have Wisconsin income tax withheld from their federal retirement benefits.

**Q** Who do I contact to arrange to have Wisconsin income tax withheld from my federal retirement benefits?

**A** Arrangements to have Wisconsin income tax withheld from your federal retirement benefits must be made through the United States Office of Personnel Management. A toll-free automated system is available for use with a touch-tone telephone. Just dial 1-800-409-6528 and follow the directions given. Before calling, be

sure you have available your CSA or CSF retirement claim number, your social security number, and the two letter abbreviation and dial pad equivalent for your state (for example, the two letter abbreviation for Wisconsin is WI which has a dial pad equivalent of 94).

If you do not have a touch-tone telephone, call (202) 606-0500 Monday through Friday from 7:30 a.m. to 5:30 p.m., Eastern Standard Time.

## Three Charged With Homestead Credit Fraud

Three persons were charged in August 1997, in Milwaukee County Circuit Court, with criminal violations of Wisconsin tax laws that include filing fraudulent income tax returns and homestead credit claims, and fraudulently claiming earned income credit.

Leander L. Burks, 52, 5172 N. Lovers Lane Road, Milwaukee, pled guilty to one felony count of filing a fraudulent homestead credit claim. In a plea bargain, Circuit Court Judge Jeffrey A. Wagner imposed and stayed a 32 month jail sentence on Burks, placed him on probation for three years, and ordered him to perform 45 hours of community service and make restitution to the Wisconsin Department of Revenue of \$3,088.

According to the criminal complaint, Burks filed four fraudulent homestead credit claims, two in 1996 and two in 1997. He filed one claim each year in his name and one claim using the name of his disabled son. Burks prepared fraudulent rent certificates for each claim, when in fact no rent was paid. He either forged the name of a deceased person as the alleged landlord or used a fictitious name and social security number.

Shirley L. Ware, 47, 2816 N. 36th Street, Milwaukee, was charged with filing fraudulent homestead credit claims for 1991 through 1996, on which she received homestead credits totalling \$2,436.

According to the complaint, Mrs. Ware claimed she was separated from her husband and did not know his income. During that period, Mr. and Mrs. Ware lived together, applied for numerous loans together,

filed joint Wisconsin income tax returns, purchased two automobiles, maintained a joint checking account, and opened three credit card accounts.

Linda Williamson, 28, 5721 N. 94th Street, Milwaukee, was charged with filing false income tax returns and false earned income credit claims for the years 1992, 1993, 1994, and 1995. According to the criminal complaint, Mrs. Williamson also filed false homestead credit claims for the years 1993 and 1994.

On her Wisconsin income tax returns for the above years, Mrs. Williamson claimed that she lived separately from her husband, when in fact they lived together approximately half of each year. She also stated that she paid the full amount of the rent and that her husband provided no support for her and their children, whereas Mr. and Mrs. Williamson had a joint checking account where all their payroll checks were deposited. Mrs. Williamson also admitted making up false dependents.

Mr. and Mrs. Williamson's joint income was \$27,988 for 1992, \$39,111 for 1993, \$40,850 for 1994, and \$44,303 for 1995. Based on their income, they did not qualify for the earned income credit or homestead credit. They owe the State of Wisconsin \$6,810 related to the false credit claims.

In addition to the homestead credit and earned income credit charges, Louis S. Beauchamp, 55, 301 West Coventry Court, Milwaukee, was charged in September 1997, by the Milwaukee County District Attorney's Office, with three counts of failure to file Wisconsin income tax returns for 1993, 1994, and 1995.

According to the criminal complaint, he received commissions of \$126,735 in 1993, \$109,888 in 1994, and \$28,610 in 1995. If convicted on all counts, he faces up to 27 months in jail and up to \$30,000 in fines.

Filing fraudulent income tax returns and false claims for homestead credit or earned income credit are felonies punishable by up to five years in prison and fines of up to \$10,000, or both, for each count. Failure to file a Wisconsin income tax return when due is a crime punishable by up to nine months' imprisonment and \$10,000 in fines for each count. In addition to criminal sanctions the Wisconsin Department of Revenue also imposes interest and civil penalties. □



## Wanted: Your Comments About the Wisconsin Tax Bulletin

The *Wisconsin Tax Bulletin* (WTB) is published to provide tax information to **YOU**, the readers. To make the WTB more useful, the department is seeking suggestions for items that may be of interest to you, and ways to make the WTB more valuable to you.

How could the department improve on the information it publishes? What topics do you want covered or expanded? Do you have particular likes or dislikes about the WTB? Do you have ideas, comments, or suggestions you'd like to share?

Please take a few moments to give us your comments or ideas, and be a part of improving *your* WTB. Send your comments or ideas to Mark Wipperfurth, Wisconsin Department of Revenue, Administration

Technical Services, P.O. Box 8933, Madison, WI 53708-8933. If you prefer, you may fax your comments to him at (608) 261-6240, or you may call him at (608) 266-8253. We'd like to hear from you! ☐

## Make Your Research Easier

Are you looking for an easy way to locate reference material to research a Wisconsin tax question? The *Wisconsin Topical and Court Case Index* may be just what you need.

This two-part index will help you find reference material relating to income, franchise, withholding, sales/use, estate, and excise taxes.

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

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

The *Wisconsin Topical and Court Case Index* is available by subscription for \$18 per year, plus sales tax. This includes a volume published in January and an addendum published in June. To order your copy, complete the order blank on page 67 of this Bulletin. ☐



## 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 variety of topics that can be targeted toward your group's particular areas of interest, including:

- New sales/use, income, and corporate tax laws.
- How sales tax affects contractors, manufacturers, nonprofit organizations, or businesses in general.
- What to expect in an audit.
- Common errors discovered in audits.
- Manufacturing property assessment.

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. ☐

## 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* 101 (April 1997), pages 39 to 66, and includes information for issues 1 (October 1976) to 99 (October 1996). ☐



## Tax Publications Available

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

Publications can also be received via your fax machine; use the department's Fax-A-Form system by calling (608) 261-6229 from a fax telephone and entering the retrieval code "10" plus the publication number. Some publications are also available via the Internet, 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 Electrical Contractors — How Do Wisconsin Sales and Use Taxes Affect Your Business? (2/97)
- 201 Wisconsin Sales and Use Tax Information (1/97)
- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (2/97)
- 203 Sales and Use Tax Information for Manufacturers (12/94)
- 205 Use Tax Information For Individuals (2/97)
- 206 Sales Tax Exemption for Nonprofit Organizations (9/90)
- 207 Sales and Use Tax Information for Contractors (2/96)

- 210 Sales and Use Tax Treatment of Landscaping (5/94)
- 211 Cemetery Monument Dealers — How Do Wisconsin Sales and Use Taxes Affect You? (3/97)
- 212 Businesses: Do You Owe Use Tax on Imported Goods? (2/97)
- 213 Travelers: Don't Forget About Use Tax (2/97)
- 214 Businesses: Do You Owe Use Tax? (2/97)
- 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)
- 221 Farm Suppliers and Farmers — How Do Wisconsin Sales and Use Taxes Affect Sales to Farmers? (4/97)

#### 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 (5/97)
- 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 (1/97)
- 117 Guide to Wisconsin Information Returns (10/96)
- 118 Electronic Funds Transfer Guide (4/96)
- 124 Petition For Compromise Of Delinquent Taxes (4/97)
- 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 (1/97)
- 502 Do You Have Wisconsin Tax Questions? (2/97)
- 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) ☐

## Endangered Resources Contributions

### Total \$566,000



The 1996 Wisconsin income tax returns included a line for taxpayers to designate a contribution to the Wisconsin Endangered Resources Fund. These contributions help protect and care for Wisconsin's endangered species, nongame wildlife, and rare plant and animal habitats.

Donations to the Endangered Resources Fund can be made on both paper filed tax returns and electronically filed returns.

During July 1996 through June 1997 (primarily 1996 returns), 44,269 taxpayers contributed \$565,760 to the Endangered Resources Fund. This compares with 1995 income tax returns, where 49,669 taxpayers contributed \$621,270. □

## Taxpayers Designate \$295,232 to State Election Campaign Fund

Wisconsin income tax returns include a box for taxpayers to designate \$1 to the State Election Campaign Fund.

During July 1996 to June 1997 (primarily 1996 tax returns), taxpayers designated \$295,232 to the election campaign fund on their Wisconsin tax returns. This compares to \$306,955 for the prior year. □



## Nearly 1.8 Million Refunds Issued

Taxpayers were issued about 1.8 million income tax refunds during January through July 1997 (primarily 1996 returns), for an average

refund of \$313. The average refund for 1995 returns was \$342.

There were 2,612,900 Wisconsin individual income tax returns filed during the twelve months ending June 30, 1997. This compares to 2,692,000 returns for the prior year. The 2,612,900 returns, which included joint tax returns, were filed by 3,818,000 individuals.

An itemized deduction credit was claimed by 27% of the taxpayers on their 1996 returns. The average credit was \$411, compared to \$377 on 1995 returns.

There were 201,000 homestead credit claims filed during the year, and the average credit was \$448. This compares to 213,000 homestead credit claims averaging \$452 for the prior year. About 48% of the claimants were age 65 or older, 52% were renters, and 48% were homeowners.

About 23,200 farmland preservation credit claims, averaging \$1,208 per claim, were filed during the year ending June 30, 1997. During the prior year, the same number of farmland preservation credit claims were filed, and the average payment was \$1,226. □

## 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 October 1, 1997, or at the stage in which action occurred during the period from July 2, 1997 to October 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).

### Scope Statement Published

- 1.13 Power of attorney-R&R
- 11.03 Elementary and secondary schools and related organizations-A
- 11.11 Industrial or governmental waste treatment facilities-A

### Rules Sent to Legislative Council Rules Clearinghouse

- 11.03 Elementary and secondary schools and related organizations-A
- 11.11 Industrial or governmental waste treatment facilities-A

### Rules Sent to Revisor for Publication of Notice

- 11.15 Containers and other packaging and shipping materials-A

### Rules Being Reviewed Following Publication of Notice

- 11.12 Farming, agriculture, horticulture and floriculture-A

### Rules Sent for Legislative Committee Review

- 11.001 Forward and definitions-A
- 11.002 Permits, application, department determination-A
- 11.01 Sales and use tax return forms-A

11.05	Governmental units-A	11.32	"Gross receipts" and "sales price"-A
11.14	Exemption certificates, including resale certificates-A	11.35	Occasional sales by non-profit organizations on or after January 1, 1989-A
11.15	Containers and other packaging and shipping materials-A	11.39	Manufacturing-A
11.32	"Gross receipts" and "sales price"-A	11.41	Exemption of property consumed or destroyed in manufacturing-A
11.35	Occasional sales by non-profit organizations on or after January 1, 1989-A	11.68	Construction contractors-A
11.39	Manufacturing-A	11.86	Utility transmission and distribution lines-A
11.41	Exemption of property consumed or destroyed in manufacturing-A	11.97	"Engaged in business" in Wisconsin-A
11.68	Construction contractors-A	<b>Rules Adopted and in Effect (October 1, 1997)</b>	
11.86	Utility transmission and distribution lines-A	11.66	Telecommunications and CATV services-A <input type="checkbox"/>
11.97	"Engaged in business" in Wisconsin-A	<b>Rules Adopted but Not Yet Effective</b>	
11.001	Forward and definitions-A	<b>Recently Adopted Rule Summarized</b>	
11.002	Permits, application, department determination-A	Summarized below is information regarding sec. Tax 11.66, relating to telecommunications services, revised effective October 1, 1997.	
11.01	Sales and use tax return forms-A	In addition to the summary of the changes, the text of the revised rule is reproduced. In the amendments, material lined through ( <del>lined through</del> ) represents deleted text, and underscored ( <u>underscored</u> ) material represents new text.	
11.05	Governmental units-A	To order up-to-date administrative rules of the Department of Revenue, you can use the order blank on page	
11.14	Exemption certificates, including resale certificates-A		

67 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

**Tax 11.66(2)(intro.)** is revised to reflect the amendment to sec. 77.52(2)(a)5, Wis. Stats., effective August 1, 1996. As a result of this amendment, telecommunications services paid for by the insertion of coins in a coin-operated telephone became taxable.

**Tax 11.66(5)** is revised to reflect the repeal of sec. 77.54(24), Wis. Stats., effective September 1, 1995. This law change repealed the exemption for equipment in central offices of telephone companies.

The text of Tax 11.66(2)(intro.) and (5) is as follows:

11.66(2)(intro.) GENERAL.  
The sale of telecommunications services, ~~not including services paid for by the insertion of coins in a coin-operated telephone,~~ is subject to Wisconsin sales or use tax if both of the following occur:

(5) PURCHASES BY PERSONS PROVIDING SERVICE.  
Persons engaged in the business of providing communications telecommunications services are consumers, not retailers, of the tangible personal property used by them or transferred incidentally by them in providing those services. The tax applies to the sale of property to them. ~~However, s. 77.54(24), Stats., exempts "apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals."~~ ☐



## 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

#### Business expenses

*Jeff S. and Debra J. Elsoffer*  
(p. 12)

#### Domicile

*Konstantine and Marion George*  
(p. 13)

#### Late filed returns

*Gordon and Lynda Hoffmann*  
(p. 14)

#### Marital property

*Werner W. Brandt and Werner W. and Elizabeth Brandt*  
(p. 14)

### Corporation Franchise and Income Taxes

#### Deductions — state franchise or income taxes

*Delco Electronics Corporation*  
(p. 15)

#### Leases — 1986 and prior — safe harbor rules

*Northern States Power Company* (p. 16)

#### Nexus — business loss carryforward

*Extrusion Dies, Inc.* (p. 16)

### Homestead Credit

#### Homestead credit — housing subject to property tax

*Jean B. Martin* (p. 17)

### Farmland Preservation and Farmland Tax Relief Credits

#### Farmland preservation credit — gross farm profits

Farmland tax relief credit — gross farm profits  
*Warren and Patricia Clow*  
(p. 17)

### Sales and Use Taxes

#### Boats, vessels and barges — non-resident purchases

*Raymond and Patricia Wehrs*  
(p. 18)

#### Exemptions — commercial vessels and barges

*LaCrosse Queen, Inc.* (p. 19)

#### Exemptions — telephone company central office equipment

*Ameritech Mobile Communications, Inc.* (p. 20)

#### Officer liability

*Maurice D. West* (p. 20)

#### Penalties — negligence — incorrect return

*Dolphin Swimming Pool Co., Inc.* (p. 21)

#### Statute of limitations — nonfilers

Manufacturing — exemption of property consumed or destroyed  
*Zignego Company, Inc.* (p. 21)

### INDIVIDUAL INCOME TAXES

**Business expenses.** *Jeff S. and Debra J. Elsoffer vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 2, 1997). The issue in this case is whether business expenses deducted by the taxpayers on their 1990 to 1992 income tax returns were proper deductions.

Taxpayer Jeff S. Elsoffer ("the taxpayer") and Charles Chvala incorporated Practical Publications, Inc., as a Wisconsin corporation in June 1990. In 1991, the name of the corporation was changed to Premiere Publishing, Inc. ("Premiere"). At the time of incorporation, the taxpayer and Mr. Chvala intended that Premiere would engage in three forms of business: (1) production of a magazine; (2) production of advertising copy for both the magazine and other publications; and (3) sales of the magazine. They planned to use the production of the magazine to develop an advertising agency.

The taxpayers were stockholders of Premiere. The percentage of the stock they owned varied during the period under review. Initially they were to own approximately 15 to 20% of Premiere's stock. As other investors, including Mr. Chvala, left the venture and returned their stock in Premiere, the taxpayers' percentage approached 40%, but at no time did they ever own more than 50% of the stock.

During the period under review, the taxpayer traveled in excess of 40 hours per week in Wisconsin, sell-

ing advertising in the magazine and selling advertising copy that was placed in other publications by Premiere's customers. He never received any wages, salary, reimbursements for expenses, or other compensation from Premiere, and Premiere never filed a Form W-2 on behalf of the taxpayer.

The Commission concluded that the taxpayers' business expenses disallowed by the department were not properly deducted during the years in which they were incurred, because the taxpayer was not compensated during any of the years at issue. Section 162(a), Internal Revenue Code (IRC). The expenses were also not deductible as employee business expenses, because the taxpayer was not a statutory employee within the meaning of sec. 3121, IRC, since he was not remunerated for his services.

The taxpayers have not appealed this 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. □

**— Domicile.** *Konstantine and Marion George vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 21, 1997). The issue in this case is whether taxpayer Konstantine S. George ("Dr. George") was domiciled in Wisconsin during the years 1987 through 1991 (the period under review, to which all facts pertain unless otherwise stated), or whether he was a Florida resident and domiciled there.

This is the only issue involved in this appeal. There is no dispute concerning Dr. George's wife, Marion L. George ("Dr. M. George"), who was

domiciled in Wisconsin during the period under review.

Dr. George was born, raised, and educated in Greece. He came to the United States for medical residency and post-graduate training in orthopedic surgery, eventually marrying Dr. M. George. They moved to Wisconsin in 1961. They jointly owned a residence in Elm Grove, Wisconsin prior to and throughout the period under review.

In the early 1980's Dr. George developed heart problems that ultimately required his retirement from orthopedic surgery in 1986 and the winding down and cessation of his medical practice. He performed only gratuitous services in 1988, the final year he practiced medicine. His Wisconsin license to practice medicine, which he held throughout the period under review, expired in 1993.

Dr. George did not dispose of his ownership interest in his medical practice until 1989 and in the building which housed it until 1991. He also held majority ownership interests in several other Wisconsin businesses, and he owned rental real estate in Milwaukee and real estate in Franklin, Wisconsin, which he intended to develop.

The taxpayers had a joint checking account in Wisconsin until 1990, which was used only by Dr. M. George. Their primary checking account was in Florida, at least since 1988, and Dr. George also had a money market account there. Dr. George also owned an automobile which he registered in Wisconsin for six months in 1991, prior to shipping it to Greece in January 1992.

In 1986 Dr. George took title to, and in 1987 decorated, furnished, and occupied a condominium home in St. Petersburg, Florida. He voted in

elections there, acquired Florida driver's and motor vehicle licenses, made charitable contributions there in 1987, 1988, and 1989, and was granted a permanent resident homestead real estate tax exemption by Florida tax authorities. However, he did **not** file annual Florida Individual Intangible Tax Returns for the period under review, even though Florida residents are required by law to do so.

In each year during the period under review, Dr. George divided his time between Florida, Greece, Wisconsin, and Colorado. He testified that he spent the greatest portion in Florida, ranging from about 35% to 41%. His estimate of time spent in Wisconsin ranged from about 18% to 23%. He retained his Wisconsin driver's license during the period under review. When he was in Wisconsin he stayed at the Elm Grove residence he owned jointly with his wife. Whenever he traveled to his native Greece, Dr. George returned first to the Wisconsin family residence and then departed from Chicago.

At the time of the hearings in this matter, Dr. George was dying from a rare form of stomach cancer. He died in August 1996 at the family home in Elm Grove and was buried in Brookfield, Wisconsin in a family plot.

The Commission concluded that taxpayer Konstantine S. George remained domiciled in Wisconsin during the period under review.

Weighing in favor of a Florida domicile are Dr. George's Florida car insurance, his Florida homestead partial property tax exemption, his Florida voting registration and exclusive voting record there, his substantial Florida charitable contributions in 1987, 1988, and 1989, and the greater amount of time he spent there during the period under review.

Supporting the finding of a retained Wisconsin domicile are Dr. George's failure to file and pay the required tax on Florida Intangible Property, his retention of and continuing attention to substantial business and commercial real estate ownership interests in Wisconsin, his failure to surrender his license to practice medicine here, and his regularly returning to his Wisconsin family and businesses before traveling to his native Greece.

Dr. George's failure to file Florida Intangible tax returns for any of the years under review casts the most serious doubt on his claim of domicile there, particularly since such returns were filed for later years. Casting further doubt are the Wisconsin annual corporation reports filed by two of his businesses, one of which reports Dr. George's address as Elm Grove, Wisconsin, until 1991, when it was changed to his Florida address. On the other business' reports, Dr. George's address is shown as Elm Grove, Wisconsin until September 30, 1989, after which it was changed to Florida.

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

**— Late filed returns.** *Gordon and Lynda Hoffmann vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 7, 1997). The issue in this case is whether the school property tax/rent credit and farmland tax relief credit for 1989 were properly disallowed because the taxpayers' 1989 income tax return was filed after the last date for claiming those credits, and whether the 25% negligence penalty on the late-filed 1989 return is appropriate.

The department issued a doomage assessment against the taxpayers on

July 31, 1995, for calendar years 1988, 1989, and 1990. The taxpayers then filed Wisconsin tax returns for 1988, 1989, and 1990. All were received by the department on August 25, 1995.

On November 27, 1995, the department cancelled the doomage assessment and issued a "Notice of Amount Due" to the taxpayers, on their 1989 Wisconsin income tax return. The assessment included income tax, delinquent interest, a 25% negligence penalty, and a \$30.00 late filing fee. The school property tax credit claimed on the 1989 return was disallowed because it was filed more than four years after the original due date, and the Wisconsin farmland tax relief credit claimed on the 1989 return was disallowed because it was not claimed by December 31, 1990.

Taxpayer Gordon Hoffmann testified that he was sure that he had filed returns for 1988, 1989, and 1990 before August of 1995, but his testimony was unsubstantiated. He was unable to show that he had previously filed these returns and was unable to estimate when he might have filed the returns. The taxpayer alleged in the petition for redetermination that the returns became part of an earlier audit file, but he did not testify regarding that allegation or that he had seen any of the returns in that audit file.

The department introduced as evidence, letters to the taxpayers dated February 23 and August 17, 1990, asserting that while the taxpayers had made estimated tax payments for 1988, the department had no record of their having filed a 1988 Wisconsin income tax return.

The Commission concluded that since it had no basis for finding that the taxpayers' 1989 return was filed prior to August 25, 1995, they were ineligible to claim the school proper-

ty tax/rent credit for 1989 because the last date for claiming this credit was April 15, 1994. The taxpayers were also ineligible to claim the Wisconsin farmland tax relief credit for 1989, because the last date for claiming that credit was December 31, 1990.

The Commission also found that since the taxpayers' 1988, 1989, and 1990 Wisconsin income tax returns were filed late, without reasonable cause, a negligence penalty of 25% of the tax due is not unwarranted.

The taxpayers have not appealed this 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. □

**— Marital property.** *Werner W. Brandt, and Werner W. and Elizabeth Brandt vs. Wisconsin Department of Revenue* (Circuit Court for Milwaukee County, March 25, 1997). This is a review of a May 23, 1996, decision of the Wisconsin Tax Appeals Commission ("Commission"). See *Wisconsin Tax Bulletin* 99 (October 1996), page 17, for a summary of the Commission decision. The issue is whether Werner Brandt had any ownership interest in stock inherited by his former wife Melitta Brandt and was thus entitled to capital loss carryforwards for 1979 through 1987 from the sale of this stock at a loss during their marriage.

In March 1989 and March 1990, the department assessed the taxpayers for additional taxes and interest for 1979 through 1987. The department deemed Continental stock shares to be the individual property of Melitta Brandt at the time of sales of the stock at a loss in 1969 through 1974,

and therefore not subject to capital loss carryforwards claimed on the taxpayers' tax returns for the years indicated. The department denied petitions for redetermination, and the taxpayers filed a Petition for Review to the Commission.

In 1991, the Commission held that Werner Brandt had not established that the beneficial stock ownership was joint. Werner Brandt then filed a Petition for Judicial Review in the Circuit Court for Milwaukee County, which remanded the case to the Commission for a full hearing on the issue of joint beneficial interest in the Continental stock. The Commission was also directed to consider the effect of *Brandt v. Brandt*, 145 Wis. 2d 394 (Ct. App. 1988). In May 1996, the Commission again held in favor of the department, and the taxpayers again appealed to the Circuit Court.

The facts in this case are taken from the Commission's findings of fact which largely parallel the Court of Appeals findings in *Brandt v. Brandt*. The issues presented to the Court of Appeals in *Brandt v. Brandt* involved the manner of division of the marital estate of Werner and Melitta Brandt as a result of their divorce in 1982.

The Circuit Court concluded that the Commission's finding that Melitta Brandt was the sole owner of the Continental stock was proper in the circumstances, that the Commission did properly follow the remand instructions and correctly interpreted and applied the Court of Appeals holding in *Brandt v. Brandt*, and that the Commission was correct in denying Werner Brandt's claim of joint beneficial ownership.

The taxpayers have appealed this decision to the Court of Appeals. □

## CORPORATION FRANCHISE AND INCOME TAXES

**I — Deductions — state franchise or income taxes.** *Delco Electronics Corporation vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 16, 1997). The issue to be decided is whether, during the period under review, the Michigan single business tax was deductible by a corporation from its gross income in calculating its liability under the Wisconsin franchise tax.

The taxpayer, Delco Electronics Corporation ("Delco"), is a corporation organized and existing under the laws of the State of Delaware, with its principal offices in Kokomo, Indiana. Delco is a second-tier subsidiary of General Motors Corporation ("GM").

Delco is the world's largest supplier of automotive electronics. Delco produces entertainment systems for GM vehicles, as well as anti-lock braking controllers, suspension and steering controllers, remote keyless entry systems, and computer products that include engine, transmission, power train, and vehicle control modules.

During the years 1986 through 1989 ("the period under review"), Delco had manufacturing facilities in Indiana, Michigan, and Wisconsin, and was engaged in business both inside and outside these states.

During the period under review, Delco incurred a liability for the Michigan single business tax ("MSBT") by reason of the business activities it conducted in the State of Michigan.

Delco is part of a consolidated group, the common parent of which is GM. During the period under review, Delco did not file a separate

MSBT return but was included in GM's consolidated MSBT return.

During the period under review, Delco claimed a deduction on its federal corporate income tax return for its accrued, estimated liability for the MSBT. Because the MSBT liability for the consolidated group had not been finally determined at the time Delco filed its federal income tax returns for each of the years under review, the amounts claimed represented accruals of Delco's estimated MSBT liability.

In determining its MSBT liability, Delco calculated its Michigan adjusted tax base pursuant to Michigan Compiled Laws § 208.9 — by a modified addition method — as opposed to the optional gross receipts method provided for in Michigan Compiled Laws § 208.31(2).

Delco timely filed Wisconsin franchise tax returns on a calendar year basis during the period under review. In doing so, Delco claimed an MSBT deduction in an amount equal to the deduction claimed on each of its federal corporate income tax returns.

The department denied each MSBT deduction.

The Commission concluded:

1. Delco Electronics Corporation was not entitled to deduct the Michigan single business tax from its gross income under sec. 71.04(3), Wis. Stats. (1985-86), or sec. 71.26(3)(g), Wis. Stats. (1989-90), during the period under review because the MSBT is a state tax on or measured by all or a portion of Delco's net income.
2. Delco Electronics Corporation was not entitled to deduct the Michigan single business tax from its gross income under sec.

71.04(3), Wis. Stats. (1985-86), or sec. 71.26(3)(g), Wis. Stats. (1989-90), during the period under review because the MSBT is a state tax on or measured by all or a portion of Delco's gross receipts.

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

**Leases — 1986 and prior — safe harbor rules.** *Wisconsin Department of Revenue vs. Northern States Power Company* (Court of Appeals, District III, July 8, 1997). The department appealed the Circuit Court's order affirming a decision and order of the Wisconsin Tax Appeals Commission, which reversed a franchise tax assessment made by the department against Northern States Power Company (Northern). On appeal, the department asserts that Northern's amortization deduction for its safe harbor lease expenditures is not an allowable deduction for purposes of the Wisconsin franchise tax. For summaries of the prior decisions, see *Wisconsin Tax Bulletins* 98 (July 1996), page 23, and 101 (April 1997), page 14.

Northern is a public utility incorporated in Wisconsin and engaged in the business of producing, distributing, and selling electric power and distributing natural gas in Wisconsin. In 1982, Northern, as buyer/lessor, purchased and leased property in the form of safe harbor leases under Internal Revenue Code (IRC) sec. 168(f)(8), in order to acquire from the seller/lessee the federal income tax benefits related to the property, as well as the Wisconsin franchise tax benefits at issue here and Minnesota tax benefits for its parent corporation.

Northern's safe harbor leases covered approximately \$50 million worth of equipment. In connection with the

safe harbor leases, Northern paid \$13,782,811 in cash to a number of corporations, and \$262,886 for transactional costs, for a total 1982 expenditure of \$14,045,697. The transactions involved a total of 13 safe harbor leases, with the majority being for a 15-year term.

In 1982, IRC sec. 168(f)(8) permitted "safe harbor leases," which would not have otherwise qualified as leases for federal income tax purposes, to be treated as leases to permit a "seller/lessee" of property to transfer to a "buyer/lessor" the benefit of federal depreciation deductions and federal investment tax credits. However, in 1982, the Wisconsin franchise tax was not federalized and did not include the provisions of IRC sec. 168(f)(8). Sec. 71.04(15)(b), Wis. Stats. (1981-82).

For federal income tax purposes, safe harbor leases were treated as bona fide purchases of equipment by Northern from the sellers/lessees, followed by the lease of the equipment back to the seller/lessee. Under Wisconsin law, safe harbor leases were not considered actual sales and leasebacks, and each seller/lessee remained as the true owner of the equipment at all times. Accordingly, for Wisconsin tax purposes, Northern did not claim any tax benefits attributable to equipment ownership. However, Northern did claim a \$212,762 deduction in 1982 for the amortization of its \$14,045,697 investment in the safe harbor leases, including the payments to sellers/lessees and transaction costs. For each lease, Northern's costs were amortized over the term of the respective lease.

The department disallowed \$209,242 of the \$212,762 Northern claimed in its taxable year 1982 for the amortization of its investment in the safe harbor leases, but allowed the remaining \$3,520 for the amortization of Northern's transactional fees,

including legal fees, for the safe harbor leases.

The Commission reversed the department's decision, and the Circuit Court affirmed the Commission.

The Court of Appeals agreed with the Commission's interpretation. The tax benefits purchased by Northern were income-producing property, held by Northern as an intangible asset for the fixed term of the duration of each lease. As such, the amounts paid by Northern for federal tax benefits were properly amortized and deducted under IRC sec. 167, as incorporated into Wisconsin's franchise tax.

The department has not appealed this decision. ☐

**Nexus — business loss carryforward.** *Extrusion Dies, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Chippewa County, May 29, 1997). The taxpayer appealed the Wisconsin Tax Appeals Commission's decision that 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. See *Wisconsin Tax Bulletin* 100 (January 1997), page 23, for a summary of the Commission's decision.

During the proceedings before the Commission, the argument focused on the activities of EDC International Corp. prior to its merger with Extrusion Dies, Inc. The merger date was presented as February 1, 1989, but later determined to be January 18, 1989. The taxpayer did not argue that the change of the merger date should change the department's position.



The taxpayer first raised the argument of the merger date before the Circuit Court. In an oral decision, the Circuit Court reversed the Commission's decision and found that EDC International Corp. had nexus in Wisconsin for its taxable year ending January 31, 1989. This decision was based partly on the date of the merger occurring prior to the end of the taxable year.

The department appealed the Circuit Court's decision to the Court of Appeals, but withdrew the appeal on August 5, 1997. □

## HOMESTEAD CREDIT

### — Homestead credit — housing subject to property tax.

*Jean B. Martin vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 15, 1997). The issue in this case is whether the claimant, who resides in and rents from a tax exempt, private nonprofit housing facility which makes payments in lieu of property taxes to the Village of Mishicot, is eligible for homestead tax credits if she satisfies all other eligibility criteria.

The claimant is a senior citizen who resides at Mishicot, Wisconsin, in a multi-unit apartment complex owned by the Mishicot Housing Corporation ("MHC"). MHC is a not-for-profit corporation organized in 1976 to provide rental housing for elderly and low income persons. The properties of MHC are exempt from local property taxes. The corporation makes payments in lieu of real estate taxes to the Village of Mishicot, patterned on a 1976 "Cooperation Agreement" between the Village and MHC.

The claimant applied for and received homestead tax credits for 1986, 1987, 1988, and 1989. During

1987, 1988, and 1989, she reported no income other than social security. The source of her income for 1986 is not indicated in the record.

In January 1991, the department made an assessment disallowing the claimant's four homestead credits. The claimant is one of eight residents at the apartment complex from whom the department sought repayment of disallowed homestead credits. In March 1991, the claimant and the seven others filed a petition for redetermination. In September 1991, the department denied the petition for redetermination, stating that since MHC is a privately owned, nonprofit corporation, is exempt from taxation under ch. 70, Wis. Stats., and does not make payments in lieu of taxes under sec. 66.40(22), Wis. Stats. (1987-88), the claimants do not qualify for homestead credit for 1986, 1987, 1988, and 1989.

The Commission concluded that the claimant was ineligible for homestead credits during the period under review because the apartments of the Mishicot Housing Corporation where she rented and lived were exempt from property taxation under sec. 70.11(4), Wis. Stats., and MHC did not make payments in lieu of taxes under sec. 66.40(22), Wis. Stats.

The claimant has not appealed this decision. □

## FARMLAND PRESERVATION AND FARMLAND TAX RELIEF CREDITS

### — Farmland preservation credit — gross farm profits;

**Farmland tax relief credit — gross farm profits.** *Warren and Patricia Clow vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 20, 1997). The issues in this case are:

- A. Whether farmland preservation credits and federal gas tax credits may be used in calculating the "gross farm profits" requirement to qualify for farmland tax relief credit (FTRC) and farmland preservation credit (FPC).
- B. Whether proceeds from the sale of a bulk milk tank, which was once an indispensable part of a dairy operation, may be used in calculating the "gross farm profits" requirement to qualify for FTRC and FPC, under any circumstances.

The taxpayers, Warren and Patricia Clow, owned and operated a farm in 1991, the period under review. Warren Clow ("the taxpayer") had been a dairy farmer. In August 1988, the farm was hit by a tornado which caused so much damage to his property that he was forced to sell his cows and give up the dairy operation. Previously, the taxpayer had entered into a farmland preservation agreement, with an expiration date of May 15, 2010.

In April 1992, the taxpayers filed their 1991 Wisconsin income tax return. On Schedule F they claimed farm income of \$3,345: \$1,944 from crop insurance proceeds and \$1,401 from federal gas tax refunds. They also claimed as income a farmland preservation credit for 1990, received in 1991. They did not claim a farmland preservation credit or a farmland tax relief credit for 1991.

In April 1996, the taxpayers filed an amended 1991 Wisconsin return, on which they claimed a farmland preservation credit and a farmland tax relief credit. The department denied the claims for both FPC and FTRC, stating that they do not meet the gross farm profit requirement for either credit. The department indicated that gross farm profits for 1991 were \$1,944, which is less than the \$6,000 requirement, and the gross

farm profits for 1989, 1990, and 1991 combined were \$12,775 (\$7,782 + \$3,049 + \$1,944), which is less than the \$18,000 three-year requirement. The department stated that the farmland credits and the gas tax credit do not qualify for the gross farm profit requirement.

The taxpayers filed a timely petition for redetermination, claiming that the farmland preservation credit, farmland tax relief credit, and federal gas tax credit should be considered as part of gross farm profits in calculating the \$6,000 or \$18,000 threshold requirements to qualify for the FPC and FTRC. They also stated they were actively farming the land and realized a gain of \$6,403 from the sale of farming equipment, previously reported on their original 1991 return. This gain was from the sale of a bulk milk tank which the taxpayer had not been able to use since the tornado.

The Commission concluded as follows:

- A. The taxpayers' farmland preservation credits and federal gas tax credits may not be used in calculating the "gross farm profits" required to qualify for farmland preservation credit and farmland tax relief credit for 1991.
- B. The proceeds from the taxpayers' sale of a bulk milk tank in 1991 may be used in calculating the "gross farm profits" required to qualify for farmland preservation credit and farmland tax relief credit for 1991, under circumstances in which the taxpayers were the victims of a tornado which wiped out their dairy operation, followed by two additional years of bad weather.

The Commission held that tax credits are to be strictly construed, and that

generally the sale of a farmer's farm equipment should not be calculated as part of gross farm profits, but that this is an extremely unusual case. In this case, the taxpayers were the victims of a tornado in 1988, followed by a drought, followed by excessively wet weather. Throughout, they attempted to continue farming and to honor their farmland preservation agreement.

In 1991, they grew a crop but withheld that crop from the market until the price improved, and consequently they received no income for this work in 1991. They did sell their bulk milk tank in 1991, and under these extreme circumstances, the proceeds from the sale may be viewed as gross receipts from dairying. The taxpayers have thus satisfied the gross farm profits requirements.

The department has not appealed this 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. ☐

## SALES AND USE TAXES

**Boats, vessels and barges — nonresident purchases.** *Raymond and Patricia Wehrs vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 2, 1997). The issues in this case are:

- A. Whether the taxpayers qualify for exemption from use tax under sec. 77.53(17m), Wis. Stats., on the purchase of a boat.
- B. Whether the boat at issue is exempt from use tax under sec. Tax 11.85(2)(d), Wis. Adm. Code.

At the times relevant to this matter, the taxpayers were domiciled in the state of Illinois. On July 2, 1992, the taxpayers bought a 12-meter boat. On the day of the sale, the taxpayers were in Illinois and the boat was physically located in Florida. The taxpayers were represented at the closing in Florida by Mr. Bernie Walker. While he was in Illinois, Raymond Wehrs (the taxpayer) gave his permission for Mr. Walker to enter into the agreement for the purchase of the boat.

A bill of sale was executed on the day of sale in the state of Florida. The boat was never registered or titled in Florida, and no sales tax was paid to the state of Florida on the sale of the boat. Almost immediately after the sale, the boat was moved to Illinois. On the day of the purchase, the taxpayers rented a slip in Racine, Wisconsin, for both 1992 and 1993. The boat was stored at this slip until at least September 12, 1992. The boat was used in Wisconsin for a short time in 1992 and was stored in Racine when not in use.

The application for title and registration for the boat, signed by the taxpayer, listed Wisconsin as the state of principal use and Racine County as the county where the boat was kept. On the application, the taxpayer claimed an exemption from use tax under sec. 77.53(17m), Wis. Stats., and the taxpayers did not pay any use tax.

When the taxpayer applied for insurance for the boat, Racine, Wisconsin was listed as the location of the boat. The boat was registered with the United States Coast Guard. At some point after 1992, it appears that the boat was registered in Illinois; however, no sales tax was paid to the state of Illinois in conjunction with the taxpayers' purchase of the boat.

The Commission concluded:

- A. The department properly imposed use tax on the purchase of the boat. The boat at issue was not purchased in the state of Illinois, thus, the taxpayers do not qualify for the exemption from use tax under sec. 77.53(17m), Wis. Stats.
- B. The boat at issue is not exempt from use tax under sec. Tax 11.85(2)(d), Wis. Adm. Code, because this exemption applies only to temporary use within Wisconsin, not to storage over a period of at least two months.

There is no doubt that, aside from the two exemptions at issue, the taxpayers' storage and use of the boat in Wisconsin during 1992 was sufficient to make the boat subject to the use tax. Because they are domiciled in Illinois, the taxpayers do not qualify for the exemption in sec. 77.53(17m), Wis. Stats., unless the boat was purchased in Illinois. While the taxpayers were not in Florida on the day of the sale, the boat, the taxpayers' representative, and the seller's representative were.

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

**Exemptions — commercial vessels and barges.** *La Crosse Queen, Inc., vs. Wisconsin Department of Revenue* (Wisconsin Supreme Court, April 18, 1997). This is an appeal from the April 14, 1996 decision of the Court of Appeals, District IV. For a summary of the Court of Appeals decision, see *Wisconsin Tax Bulletin* 99 (October 1996), page 22.

The issue in this case is whether a boat leased by the taxpayer to Riverboats America, Inc. was used primarily in interstate commerce so as to exempt the gross receipts from the lease from sales tax.

During the years in issue, 1989 through 1991, the taxpayer was the owner and lessor of a boat known as the La Crosse Queen IV ("La Crosse Queen"). The boat, an excursion paddle wheeler exceeding 50 tons, was leased to a related corporation, Riverboats America, Inc., for the purpose of providing sightseeing and dinner cruises exclusively on the Mississippi River. The boat is operated under Interstate Commerce Commission ("ICC") authority transferred to the taxpayer in 1975 when the boat was purchased. Until the time of deregulation, the vessel was required to file tariff charges with the Interstate Commerce Commission.

The previous owner of the boat had challenged the imposition of the sales tax on its sales of tickets for the cruises on the Mississippi claiming, among other things, that the sales tax resulted in an unconstitutional burden on interstate commerce. The Dane County Circuit Court held that the sales tax did not burden commerce because no interstate commerce was involved in the previous owner's operations.

The taxpayer's president, Linda Sayther, conceded that her method of operation and its purpose during the years in issue was "basically the same" as that of the previous owner. Thus, according to the La Crosse Queen's president, the primary purpose of the La Crosse Queen's operation during the period in question was recreation, entertainment, and dining. The cruises on the La Crosse Queen were advertised as one and one-half hour cruises on the Mississippi River. During her excursions from 1989 through 1991, the La Crosse Queen crossed between Wisconsin and Minnesota waters on the Mississippi River.

The La Crosse Queen's passengers are individuals and groups from Wisconsin and other states. On her

northern trip, the La Crosse Queen loads at a wharf in La Crosse, travels up the river several miles to the lock and dam north of the I-90 bridge, turns around, and returns to the same wharf in La Crosse. Since there are no facilities where the La Crosse Queen can dock on either her northern or southern trip, the passengers never disembark until their return to the wharf in La Crosse. Thus, all passengers embark and disembark at the same dock in La Crosse, Wisconsin.

The Wisconsin Supreme Court concluded that the LaCrosse Queen was not engaged in interstate commerce during the years in issue and the gross receipts of LaCrosse Queen, Inc. from the lease of the LaCrosse Queen are not exempt under sec. 77.54(13), Wis. Stats. It was unnecessary for the Wisconsin Supreme Court to discuss whether the vessel is "primarily" engaged in interstate commerce.

When the taxpayer's boat picks up passengers at the wharf in La Crosse for the purpose of an excursion cruise either up or down the Mississippi River and then returns them to the same wharf in La Crosse, it is not conducting interstate commerce or interstate business. Although the La Crosse Queen crosses over into Minnesota waters, there is no commerce or business carried on between Wisconsin and Minnesota as a result of the excursion cruises. The people who use the taxpayer's boat are not using it for the purpose of being transported from Wisconsin to Minnesota, but rather for the purpose of recreation and entertainment.

The voyages of the La Crosse Queen do not constitute a necessary link for the completion of an interstate journey. The La Crosse Queen's journey ends where it begins, with no stops in between. The relationship of the La Crosse Queen to interstate com-

merce is, at best, "casual and incidental."

In order for an activity to qualify as interstate commerce, there must not only be interstate movement but also interstate business. There was none involved here. The taxpayer's boat is not involved in the transfer of any goods, money, or people from Wisconsin to any other state.

The taxpayer has not appealed this decision. ☐

**Exemptions — telephone company central office equipment.** *Ameritech Mobile Communications, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, November 22, 1996). The Wisconsin Tax Appeals Commission issued a decision on December 21, 1995, which was appealed to the Circuit Court. See *Wisconsin Tax Bulletin* 96 (April 1996), page 19, for a summary of the Commission decision. The issues in this case are:

- A. Whether the taxpayer's cell site equipment is exempt from Wisconsin sales and use taxes under sec. 77.54(24), Wis. Stats.
- B. Whether sec. 77.54(24), Wis. Stats., as it may be applied to the transactions involving the cell site equipment, is in violation of the Equal Protection Clauses of the constitutions of the State of Wisconsin and of the United States.

The taxpayer, a wholly-owned subsidiary of Ameritech Corporation, is a Delaware corporation, with its principal place of business in Illinois. During January 1, 1985 through December 31, 1988, the taxpayer and certain of its affiliates were engaged in the business of

providing cellular telephone services in Wisconsin and elsewhere. The equipment at issue consists of equipment purchased for and used at the cell sites.

The Commission concluded:

- A. The cell site equipment at issue was not exempt from Wisconsin sales and use taxes under sec. 77.54(24), Wis. Stats., during the taxable period.
- B. Section 77.54(24), Wis. Stats., as it may be applied to the transactions involving the cell site equipment, is not found to be in violation of the Equal Protection Clauses of the constitutions of the State of Wisconsin and of the United States.

The Circuit Court reviewed the decision by the Wisconsin Tax Appeals Commission denying the taxpayer's claim for a sales and use tax exemption under sec. 77.54(24), Wis. Stats. Because the decision is free from material legal error and supported by substantial evidence, The Tax Appeals Commission decision is affirmed.

The taxpayer has appealed this decision to the Court of Appeals. ☐

**Officer liability.** *Maurice D. West vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 12, 1997). The issue in this case is whether the taxpayer is a responsible person under sec. 77.60(9), Wis. Stats.

In the spring of 1993, the taxpayer, Grant Vaughan, and Arthur Koehler formed a corporation called W.A.G., Inc., to acquire and operate a tavern in Fond du Lac, Wisconsin. The tavern was purchased

from the taxpayer's brother. Mr. Vaughan and Mr. Koehler were each issued 100 shares of stock and were elected president and vice president, respectively. The taxpayer was elected secretary/treasurer, and all three men were made directors. Although the taxpayer put no money into the new business and received no stock, he was elected an officer, made a director, and named operating manager of the tavern because, unlike the others, he had a background in the tavern business.

The taxpayer was given substantial authority to operate the business, hire and pay employees, order supplies, and pay vendors. The taxpayer had control over the checkbook and the receipts and records, although the other officers could also write checks.

The Commission concluded that the taxpayer was a responsible person under sec. 77.60(9), Wis. Stats., for the delinquent sales taxes assessed.

Having control of the checkbook and access to the bank balance statements, as well as the authority to pay bills, including taxes, the taxpayer could not escape responsibility to pay taxes. Seeing to it that the taxes are paid goes with the territory when a person is the treasurer of a corporation, a director, the manager of the business, the person who controls the checkbook, and the person who normally pays the bills.

The taxpayer has not appealed this 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. ☐

**Penalties — negligence — incorrect return.** *Dolphin Swimming Pool Co., Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, April 16, 1997). The Wisconsin Tax Appeals Commission issued a decision on October 3, 1996, which was appealed to the Circuit Court. See *Wisconsin Tax Bulletin* 101 (April 1997), page 16, for a summary of the Commission's decision. The issue in this case is whether the Commission correctly determined that the department properly imposed the negligence penalty pursuant to sec. 77.60(3), Wis. Stats. The taxpayer seeks a reversal of the Commission's decision.

The department's assessment mainly involved sales and use tax on the taxpayer's purchase of tangible personal property used in its construction of new inground swimming pools and spas. The department also assessed the 25% negligence penalty on underreported sales and use tax.

The taxpayer admitted in the record that it did not have "good cause" for filing incorrect returns and for failing to report all the sales and use tax owing. Although the law places the filing and reporting obligation on the taxpayer, the taxpayer argues that it relied on the advice and counsel of a CPA firm in preparing the returns in its attempt to comply with its sales and use tax obligations.

The Circuit Court concluded that the Commission acted in appropriate discretion, in accordance with the law, and based its decision upon substantial evidence in the record. The Court affirmed the decision of the Commission.

The taxpayer has not appealed this decision. ☐

**Statute of limitations — nonfilers; Manufacturing — exemption of property consumed or destroyed.** *Zignego Company, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, May 22, 1997). This is an appeal from the April 9, 1996 decision of the Circuit Court for Dane County.

The Circuit Court affirmed the conclusion of the Wisconsin Tax Appeals Commission (Commission) that the taxpayer was liable for sales and use tax on materials it purchased for use in its construction business. The Circuit Court reversed the Commission's conclusion that the taxpayer's failure to file a sales and use tax return tolled the statute of limitations. For a summary of the Circuit Court decision, see *Wisconsin Tax Bulletin* 99 (October 1996), page 24.

The issues are:

- A. Whether, as a result of the taxpayer's failure to file a sales and use tax return, the applicable statute of limitations never began to run.
- B. Whether the taxpayer was liable for sales and use tax on materials it bought and used in its construction business.

The taxpayer builds roads and highways for various units of government. It purchases cement, aggregate, and other ingredients and mixes them in a "batch plant" or what are commonly called "cement trucks." It takes the concrete to construction sites and places it in forms, where it is finished by the taxpayer's employees. The result is completed road surface and curb and gutter.

From April 1, 1984 to March 31, 1992, the taxpayer paid no sales or use tax on most of the materials used to make its concrete. As a result of a field audit, the department issued an assessment against the taxpayer for unpaid sales and use taxes, interest, penalties, and late filing fees.

The Court of Appeals concluded:

- A. As a result of the taxpayer's failure to file a sales and use tax return, the applicable statute of limitations never began to run.

The Commission's conclusion — that if a sales and use tax return is never filed, the four years never begins to run — is a reasonable interpretation of sec. 77.59(3), Wis. Stats. A department determination of sales or use tax liability can never be untimely where the taxpayer fails to file a sales and use tax return.

- B. The taxpayer was liable for sales and use tax on materials it bought and used in its construction business.

The Commission's conclusion that the taxpayer's purchases of materials used in making concrete were not exempt from sales and use tax is reasonable.

The taxpayer appealed this decision to the Wisconsin Supreme Court, which denied the petition for review. The case is on remand to the Commission regarding the issue of a sales tax exemption for occasional sales. ☐



## 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. Computing Taxable Social Security Benefits for Lump-Sum Payments (p. 22)
2. Renter's School Property Tax Credit — Tax-Exempt Housing (p. 37)
3. Taxation of Stock Options (p. 37)

### Sales and Use Taxes

4. Gasoline Service Station Equipment (p. 41)

## INDIVIDUAL INCOME TAXES

### 1 Computing Taxable Social Security Benefits for Lump-Sum Payments

**Statutes:** Section 71.05(6)(b)21, Wis. Stats. (1995-96)

**Note:** For illustration purposes, references are made in this tax release to the 1996 forms and federal worksheets available to compute taxable social security for 1996. However, this tax release applies to all periods open to adjustment. Line references may change when using the worksheets for other years.

**Background:** Generally, for purposes of computing taxable social security benefits, a lump-sum (or retroactive) payment of social security benefits is included in total benefits for the year in which it is received.

However, for federal tax purposes a taxpayer who received a lump-sum payment of benefits in 1996 that included retroactive benefits for one or more earlier years can figure whether any part of these earlier year benefits are taxable based on the earlier year's income. If it will lower the amount of taxable benefits, the taxpayer may elect to treat the earlier year benefits as received in the earlier year. In that case, any part of the earlier year benefits that is taxable is then added to the taxable benefits for 1996 and the total is included in 1996 income. No adjustment is made to the earlier year's return.

When this election is made for federal tax purposes, the taxpayer must complete separate worksheets for each earlier year for which benefits were received and for 1996 to determine the amount of taxable social security benefits includable in federal adjusted gross income for 1996. These worksheets are found in federal Publication 915, *Social Security and Equivalent Railroad Retirement Benefits*.

**Wisconsin Treatment:** The maximum portion of an individual's social security benefits which is taxable for Wisconsin income tax purposes is 50%. For taxable years beginning after 1993, for federal income tax purposes up to 85% of social security benefits are taxable. When federal adjusted gross income (the starting point for calculating Wisconsin taxable income) includes more than 50% of an individual's social security benefits, a subtraction adjustment may be made for Wisconsin purposes.

**Note:** A subtraction adjustment will be available only if the taxpayer received a lump-sum payment of social security benefits for 1994 or a subsequent year and line 8 of the taxpayer's federal Worksheet 2 for 1994 or 1995 (or line 7 of Worksheet 4 for 1996) is more than \$34,000 (\$44,000 if married filing jointly or \$0 if married filing a separate return and the taxpayer lived with his or her spouse at any time during the year). Worksheets 2 and 4 are from federal Publication 915. Worksheet 2 is used to determine the taxable portion of a lump-sum payment for 1994 or 1995 received in 1996 (see Exhibit E of the example). Worksheet 4 is used to compute federal taxable social security for 1996 using

the lump-sum election method (see Exhibit K of the example).

**Calculating the Wisconsin Subtraction:** The following four steps are used to determine any Wisconsin subtraction adjustment available for the difference between the amount of social security benefits taxable for Wisconsin and federal tax purposes.

**Step 1:** Determine the additional amount of social security benefits taxable to Wisconsin for each prior year for which a lump-sum payment was received.

A. *For 1986 through 1993* — The additional amount of social security benefits which is taxable for federal tax purposes is also taxable for Wisconsin. This is the amount from line 14 of federal Worksheet 3 for a lump-sum payment for 1993 or an earlier year, as determined for each year for which a lump-sum payment was received. (See Exhibit B of the example).

B. *For 1994 and 1995* — The following worksheet may be used to determine what portion of the lump-sum payment for 1994 and 1995 is taxable to Wisconsin. Complete a separate worksheet for each year for which a lump-sum payment was received.

1. One-half of the total social security benefits received for the year (line 2 of federal Worksheet 2 - see Exhibit E) . . . 1. \_\_\_\_\_
2. Adjusted income after subtraction of exemption amount (line 10 of federal Worksheet 2 - see Exhibit E) . . . . . 2. \_\_\_\_\_
3. Fill in one-half of line 2 above . . . 3. \_\_\_\_\_
4. Compare line 1 and line 3. Fill in the smaller amount . . . . . 4. \_\_\_\_\_
5. Social security benefits previously taxed by Wisconsin . . . 5. \_\_\_\_\_
6. Subtract line 5 from line 4. This is the additional amount taxable by Wisconsin . . . . . 6. \_\_\_\_\_

**Step 2:** Determine the amount of social security benefits taxable to Wisconsin for the current year without considering the lump-sum payment for prior years (see Exhibit L).

**Step 3:** Add the amounts determined in Step 1 to the amount determined in Step 2 (see lines 2 through 6 of Exhibit M).

**Step 4:** Subtract the total social security benefits taxable to Wisconsin (as determined in Step 3) from the total social security benefits taxable for federal tax purposes for the current year. If the taxpayer is filing Form 1, the result should be entered on Schedule 2 of Form 1 as a subtraction for nontaxable social security benefits. If the taxpayer is filing Form 1A, the result should be entered on line 5 (nontaxable retirement benefits) of the Retirement Benefit Worksheet in the Form 1A instructions. (See Exhibit M)

**Example:** The taxpayer was single for 1993 through 1996. The taxpayer had the following income for the year indicated.

	1993	1994	1995	1996
Pension	\$30,000	\$30,000	\$30,000	\$30,000
Interest income	2,000	2,200	2,500	3,000
IRA distribution	-0-	10,000	15,000	12,000
Social security	12,000	12,600	13,000	18,000

The social security benefits received in 1996 included a lump-sum payment of \$1,000 for 1993, \$1,000 for 1994, and \$1,000 for 1995. For federal tax purposes, the taxpayer has elected to treat these amounts as received in the earlier year.

See Exhibits A through M for worksheets showing computation of the Wisconsin adjustment for nontaxable social security benefits.

**Exhibit A:** Taxable social security benefits as originally determined for federal tax purposes for 1993.**Social Security Benefits Worksheet—Lines 21a and 21b (keep for your records)**

If you are married filing separately and you **lived apart** from your spouse for all of 1993, enter "D" to the left of line 21a.

- |  |                  |
|--|------------------|
| 1. Enter the total amount from <b>box 5</b> of all your <b>Forms SSA-1099</b> and <b>Forms RRB-1099</b> (if applicable) . . . . .  | 1. <u>12,000</u> |
| <b>Note:</b> If line 1 is zero or less, stop here; none of your social security benefits are taxable. Otherwise, go to line 2.   |                  |
| 2. Divide line 1 above by 2 . . . . .  | 2. <u>6,000</u>  |
| 3. Add the amounts on Form 1040, lines 7, 8a, 9 through 15, 16b, 17b, 18 through 20, and line 22. Do not include here any amounts from box 5 of Forms SSA-1099 or RRB-1099 . . . . .   | 3. <u>32,000</u> |
| 4. Enter the amount from Form 1040, line 8b . . . . .  | 4. <u>- 0 -</u>  |
| 5. Add lines 2, 3, and 4 . . . . .   | 5. <u>38,000</u> |
| 6. Enter the total adjustments from Form 1040, line 30 . . . . .   | 6. <u>- 0 -</u>  |
| 7. Subtract line 6 from line 5 . . . . .   | 7. <u>38,000</u> |
| 8. Enter on line 8 the amount shown below for your filing status:  |                  |
| <ul style="list-style-type: none"> <li>• Single, Head of household, or Qualifying widow(er), enter \$25,000</li> <li>• Married filing jointly, enter \$32,000</li> <li>• Married filing separately, enter -0- (\$25,000 if you <b>lived apart</b> from your spouse for all of 1993)</li> </ul>   | 8. <u>25,000</u> |
| 9. Subtract line 8 from line 7. If zero or less, enter -0- . . . . .   | 9. <u>13,000</u> |
| <ul style="list-style-type: none"> <li>• If line 9 is zero, stop here. None of your social security benefits are taxable. Do not enter any amounts on lines 21a or 21b. <b>But</b> if you are married filing separately and you <b>lived apart</b> from your spouse for all of 1993, enter -0- on line 21b. Be sure you entered "D" to the left of line 21a.</li> <li>• If line 9 is more than zero, go to line 10.</li> </ul> |                  |
| 10. Divide line 9 above by 2 . . . . .   | 10. <u>6,500</u> |
| <b>11. Taxable social security benefits.</b>   |                  |
| <ul style="list-style-type: none"> <li>• First, enter on Form 1040, line 21a, the amount from line 1.</li> <li>• Then, enter the <b>smaller</b> of line 2 or line 10 here and on Form 1040, line 21b . . . . .</li> </ul>  | 11. <u>6,000</u> |

**Note:** If part of your benefits are taxable for 1993 **and** they include benefits paid in 1993 that were for an earlier year, you may be able to reduce the taxable amount shown on the worksheet. Get Pub. 915 for details.



**Exhibit B:** Federal worksheet (from Publication 915) for computing the taxable portion of the lump-sum payment received in 1996 for 1993.

**Worksheet 3. Lump-Sum Payment for 1993 or Earlier Year Received in 1996**  
(For Use with Worksheet 4)

Enter earlier year 1993

1. Enter the total amount from box 5 of ALL your Forms SSA-1099 and RRB-1099 for the earlier year, plus the lump-sum payment for the earlier year received after that year ....	1. <u>13,000</u>
<i>Note: If line 1 is zero or less, skip lines 2 through 13 and enter -0- on line 14. Otherwise, go on to line 2.</i>	
2. Enter one-half of line 1 .....	2. <u>6,500</u>
3. Enter the adjusted gross income reported on your return for the earlier year .....	3. <u>38,000</u>
4. Enter the total of any exclusions/adjustments you claimed in the earlier year for Series EE U.S. savings bond interest (Form 8815), foreign earned income or housing (Form 2555 or Form 2555-EZ), and certain income of bona fide residents of American Samoa (Form 4563) or Puerto Rico .....	4. <u>- 0 -</u>
5. Enter any tax-exempt interest received in the earlier year .....	5. <u>- 0 -</u>
6. Add lines 2, 3, 4, and 5. ....	6. <u>44,500</u>
7. Enter the taxable benefits reported on your return for the earlier year .....	7. <u>6,000</u>
8. Subtract line 7 from line 6 .....	8. <u>38,500</u>
9. Enter \$25,000 (\$32,000 if married filing jointly for the earlier year; \$0 if married filing separately for the earlier year and you lived with your spouse at any time during the year) .....	9. <u>25,000</u>
10. Subtract line 9 from line 8. ....	10. <u>13,500</u>
<i>Note: If line 10 is zero or less, skip lines 11 through 13 and enter -0- on line 14. Otherwise, go on to line 11.</i>	
11. Enter one-half of line 10 .....	11. <u>6,750</u>
12. <b>Refigured taxable benefits.</b> Enter the <b>smaller</b> of line 2 or line 11 .....	12. <u>6,500</u>
13. Enter taxable benefits reported on your return for the earlier year (or as refigured due to a previous lump-sum payment for the year) .....	13. <u>6,000</u>
14. <b>Additional taxable benefits.</b> Subtract line 13 from line 12. Also enter this amount on line 19 of Worksheet 4 .....	14. <u>500</u>

*Note: Do not file an amended return for this earlier year. Complete a separate Worksheet 2 or Worksheet 3 for each earlier year for which you received a lump-sum payment in 1996.*

**Note:** The portion of the lump-sum payment (\$500) which is taxable for federal tax purposes is also taxable for Wisconsin.

**Exhibit C:** Taxable social security benefits as originally determined for federal tax purposes for 1994.**Social Security Benefits Worksheet—Lines 20a and 20b (keep for your records)**

If you are married filing separately and you **lived apart** from your spouse for all of 1994, enter "D" to the left of line 20a.

- |   |                   |
|---|-------------------|
| 1. Enter the total amount from <b>box 5</b> of all your <b>Forms SSA-1099</b> and <b>RRB-1099</b> . . . . .   | 1. <u>12,600</u>  |
| <b>Note:</b> If line 1 is zero or less, stop; none of your social security benefits are taxable. Otherwise, go to line 2.   |                   |
| 2. Enter one-half of line 1 . . . . .   | 2. <u>6,300</u>   |
| 3. Add the amounts on Form 1040, lines 7, 8a, 9 through 14, 15b, 16b, 17 through 19, and 21. Do not include amounts from box 5 of Forms SSA-1099 or RRB-1099 . . . . .  | 3. <u>42,200</u>  |
| 4. Enter the amount, if any, from Form 1040, line 8b . . . . .  | 4. <u>- 0 -</u>   |
| 5. Add lines 2, 3, and 4 . . . . .  | 5. <u>48,500</u>  |
| 6. Enter the amount from Form 1040, line 30 . . . . .   | 6. <u>- 0 -</u>   |
| 7. Subtract line 6 from line 5 . . . . .  | 7. <u>48,500</u>  |
| 8. Enter \$25,000 (\$32,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time in 1994) . . . . .   | 8. <u>25,000</u>  |
| 9. Subtract line 8 from line 7. If zero or less, enter -0- . . . . .  | 9. <u>23,500</u>  |
| <b>Is line 9 more than zero?</b>  |                   |
| <b>No.</b> Stop; none of your social security benefits are taxable. Do not enter any amounts on lines 20a or 20b. <b>But</b> if you are married filing separately and you <b>lived apart</b> from your spouse for all of 1994, enter -0- on line 20b. Be sure to enter "D" to the left of line 20a. |                   |
| <b>Yes.</b> Go to line 10.  |                   |
| 10. Enter \$9,000 (\$12,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time in 1994) . . . . .   | 10. <u>9,000</u>  |
| 11. Subtract line 10 from line 9. If zero or less, enter -0- . . . . .  | 11. <u>14,500</u> |
| 12. Enter the <b>smaller</b> of line 9 or line 10 . . . . .   | 12. <u>9,000</u>  |
| 13. Enter one-half of line 12 . . . . .   | 13. <u>4,500</u>  |
| 14. Enter the <b>smaller</b> of line 2 or line 13 . . . . .   | 14. <u>4,500</u>  |
| 15. Multiply line 11 by 85% (.85). If line 11 is zero, enter -0- . . . . .  | 15. <u>12,325</u> |
| 16. Add lines 14 and 15 . . . . .   | 16. <u>16,825</u> |
| 17. Multiply line 1 by 85% (.85) . . . . .  | 17. <u>10,710</u> |
| 18. <b>Taxable social security benefits.</b> Enter the <b>smaller</b> of line 16 or line 17 . . . . .   | 18. <u>10,710</u> |
| <ul style="list-style-type: none"> <li>• Enter the amount from line 1 on Form 1040, line 20a.</li> <li>• Enter the amount from line 18 on Form 1040, line 20b.</li> </ul>   |                   |

**Note:** If part of your benefits are taxable for 1994 and they include benefits paid in 1994 that were for an earlier year, you may be able to reduce the taxable amount shown on the worksheet. Get Pub. 915 for details.

**Exhibit D:** Taxable social security benefits as originally determined for Wisconsin tax purposes for 1994.

**Wisconsin Social Security  
Benefits Worksheet (Keep for  
your records)**

1. Amount from line 3 of  
Retirement Benefit  
Worksheet above ..... 1. 10,710.
2. Amount from line 2 of  
your federal Social  
Security Benefits  
Worksheet ..... 2. 6,300.
3. Amount from line 9 of  
your federal Social  
Security Benefits  
Worksheet ..... 3. 23,500.
4. Fill in 1/2 of line 3 ..... 4. 11,750.
5. Compare line 2 and  
line 4. Fill in the  
smaller amount ..... 5. 6,300.

**Note:** The social security benefits taxable to Wisconsin is the amount on line 5 of the above worksheet. This worksheet is from the 1994 Form 1A instructions (line 6 of this worksheet has been omitted because the amount which appears on that line is not relevant in this computation). If the taxpayer filed Form 1 for 1994, the taxable amount would be the amount on line 4 of the Wisconsin Social Security Benefits Worksheet included in the 1994 Schedule I instructions.

**Exhibit E:** Federal worksheet (from Publication 915) for computing the taxable portion of the lump-sum payment received in 1996 for 1994.

**Worksheet 2. Lump-Sum Payment for 1994 or 1995 Received in 1996**  
(For use with Worksheet 4)

Enter earlier year 1994

1. Enter the total amount from box 5 of ALL your Forms SSA-1099 and RRB-1099 for the earlier year, plus the lump-sum payment received for the earlier year received after that year.....	1.	<u>13,600</u>
<i>Note: If line 1 is zero or less, skip lines 2 through 20 and enter -0- on line 21. Otherwise, go on to line 2.</i>		
2. Enter one-half of line 1.....	2.	<u>6,800</u>
3. Enter the adjusted gross income reported on your return for the earlier year.....	3.	<u>52,910</u>
4. Enter the total of any exclusions/adjustments you claimed in the earlier year for Series EE U.S. savings bond interest (Form 8815), foreign earned income or housing (Form 2555 or Form 2555-EZ), and certain income of bona fide residents of American Samoa (Form 4563) or Puerto Rico.....	4.	<u>- 0 -</u>
5. Enter any tax-exempt interest received in the earlier year.....	5.	<u>- 0 -</u>
6. Add lines 2, 3, 4, and 5.....	6.	<u>59,710</u>
7. Enter taxable benefits reported on your return for the earlier year.....	7.	<u>10,710</u>
8. Subtract line 7 from line 6.....	8.	<u>49,000</u>
9. Enter \$25,000 (\$32,000 if married filing jointly for the earlier year; \$0 if married filing separately for the earlier year and you lived with your spouse at any time during the year).....	9.	<u>25,000</u>
10. Subtract line 9 from line 8.....	10.	<u>24,000</u>
<i>Note: If line 10 is zero or less, skip lines 11 through 20 and enter -0- on line 21. Otherwise, go on to line 11.</i>		
11. Enter \$9,000 (\$12,000 if married filing jointly for the earlier year; \$0 if married filing separately for the earlier year and you lived with your spouse at any time during the year).....	11.	<u>9,000</u>
12. Subtract line 11 from line 10. If zero or less, enter -0-.....	12.	<u>15,000</u>
13. Enter the smaller of line 10 or line 11.....	13.	<u>9,000</u>
14. Enter one-half of line 13.....	14.	<u>4,500</u>
15. Enter the smaller of line 2 or line 14.....	15.	<u>4,500</u>
16. Multiply line 12 by 85% (.85). If line 12 is zero, enter -0-.....	16.	<u>12,750</u>
17. Add lines 15 and 16.....	17.	<u>17,250</u>
18. Multiply line 1 by 85% (.85).....	18.	<u>11,560</u>
19. <b>Refigured taxable benefits.</b> Enter the smaller of line 17 or line 18.....	19.	<u>11,560</u>
20. Enter taxable benefits reported on your return for the earlier year (or as refigured due to a previous lump-sum payment for the year).....	20.	<u>10,710</u>
21. <b>Additional taxable benefits.</b> Subtract line 20 from line 19. Also enter this amount on line 19 of Worksheet 4.....	21.	<u>850</u>

**Note:** Do not file an amended return for this earlier year. Complete a separate Worksheet 2 or Worksheet 3 for each earlier year for which you received a lump-sum payment in 1996.

**Exhibit F:** Worksheet for determining the Wisconsin taxable portion of the lump-sum payment received in 1996 for 1994.

1.	One-half of the total social security benefits received for the year (line 2 of federal Worksheet 2 - see Exhibit E) . . . . .	1.	<u>6,800.</u>
2.	Adjusted income after subtraction for exemption amount (line 10 of federal Worksheet 2) . . . . .	2.	<u>24,000.</u>
3.	Fill in one-half of line 2 above . . . . .	3.	<u>12,000.</u>
4.	Compare line 1 and line 3. Fill in the smaller amount . . . . .	4.	<u>6,800.</u>
5.	Social security benefits previously taxed (see Exhibit D) . . . . .	5.	<u>6,300.</u>
6.	Subtract line 5 from line 4. This is the additional amount taxable by Wisconsin . . . . .	6.	<u>500.</u>

**Exhibit G:** Taxable social security benefits as originally determined for federal tax purposes for 1995.**Social Security Benefits Worksheet—Lines 20a and 20b**  
(keep for your records)

If you are married filing separately and you **lived apart** from your spouse for all of 1995, enter "D" to the left of line 20a.

- |  |                   |
|--|-------------------|
| 1. Enter the total amount from <b>box 5</b> of all your <b>Forms SSA-1099</b> and <b>RRB-1099</b> . . . . .  | 1. <u>13,000</u>  |
| <b>Note:</b> If line 1 is zero or less, stop; none of your social security benefits are taxable. Otherwise, go to line 2.  |                   |
| 2. Enter one-half of line 1 . . . . .  | 2. <u>6,500</u>   |
| 3. Add the amounts on Form 1040, lines 7, 8a, 9 through 14, 15b, 16b, 17 through 19, and 21. Do not include amounts from box 5 of Forms SSA-1099 or RRB-1099 . . . . .   | 3. <u>47,500</u>  |
| 4. Enter the amount, if any, from Form 1040, line 8b . . . . .   | 4. <u>- 0 -</u>   |
| 5. Add lines 2, 3, and 4 . . . . .   | 5. <u>54,000</u>  |
| 6. Enter the amount from Form 1040, line 30 . . . . .  | 6. <u>- 0 -</u>   |
| 7. Subtract line 6 from line 5 . . . . .   | 7. <u>54,000</u>  |
| 8. Enter \$25,000 (\$32,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time in 1995) . . . . .  | 8. <u>25,000</u>  |
| 9. Subtract line 8 from line 7. If zero or less, enter -0- . . . . .   | 9. <u>29,000</u>  |
| <b>Is line 9 more than zero?</b>   |                   |
| <b>No.</b> Stop; none of your social security benefits are taxable. Do not enter any amounts on lines 20a or 20b of Form 1040. <b>But</b> if you are married filing separately and you <b>lived apart</b> from your spouse for all of 1995, enter -0- on line 20b. Be sure to enter "D" to the left of line 20a. |                   |
| <b>Yes.</b> Go to line 10.   |                   |
| 10. Enter \$9,000 (\$12,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time in 1995) . . . . .  | 10. <u>9,000</u>  |
| 11. Subtract line 10 from line 9. If zero or less, enter -0- . . . . .   | 11. <u>20,000</u> |
| 12. Enter the <b>smaller</b> of line 9 or line 10 . . . . .  | 12. <u>9,000</u>  |
| 13. Enter one-half of line 12 . . . . .  | 13. <u>4,500</u>  |
| 14. Enter the <b>smaller</b> of line 2 or line 13 . . . . .  | 14. <u>4,500</u>  |
| 15. Multiply line 11 by 85% (.85). If line 11 is zero, enter -0- . . . . .   | 15. <u>17,000</u> |
| 16. Add lines 14 and 15 . . . . .  | 16. <u>21,500</u> |
| 17. Multiply line 1 by 85% (.85) . . . . .   | 17. <u>11,050</u> |
| 18. <b>Taxable social security benefits.</b> Enter the <b>smaller</b> of line 16 or line 17 . . . . .  | 18. <u>11,050</u> |

• Enter the amount from line 1 on Form 1040, line 20a.

• Enter the amount from line 18 on Form 1040, line 20b.

**TIP**

If part of your benefits are taxable for 1995 and they include benefits paid in 1995 that were for an earlier year, you may be able to reduce the taxable amount shown on the worksheet. Get Pub. 915 for details.

**Exhibit H:** Taxable social security benefits as originally determined for Wisconsin tax purposes for 1995.

**Wisconsin Social Security  
Benefits Worksheet (Keep for  
your records)**

1. Amount from line 3 of  
Retirement Benefit  
Worksheet above ..... 1. 11,050 .
2. Amount from line 2 of  
your federal Social  
Security Benefits  
Worksheet ..... 2. 6,500 .
3. Amount from line 9 of  
your federal Social  
Security Benefits  
Worksheet ..... 3. 29,000 .
4. Fill in 1/2 of line 3 ..... 4. 14,500 .
5. Compare line 2 and  
line 4. Fill in the  
smaller amount ..... 5. 6,500 .

**Note:** The social security benefits taxable to Wisconsin is the amount on line 5 of the above worksheet. This worksheet is from the 1995 Form 1A instructions (line 6 of this worksheet has been omitted because the amount which appears on that line is not relevant in this computation). If the taxpayer filed Form 1 for 1995, the taxable amount would be the amount on line 5 of the Wisconsin Social Security Benefits Worksheet included in the 1995 Form 1 instructions.

**Exhibit I:** Federal worksheet (from Publication 915) for computing the taxable portion of the lump-sum payment received in 1996 for 1995.

**Worksheet 2. Lump-Sum Payment for 1994 or 1995 Received in 1996**  
(For use with Worksheet 4)

Enter earlier year 1995

1. Enter the total amount from box 5 of ALL your Forms SSA-1099 and RRB-1099 for the earlier year, plus the lump-sum payment received for the earlier year received after that year .....	1.	<u>14,000</u>
<i>Note: If line 1 is zero or less, skip lines 2 through 20 and enter -0- on line 21. Otherwise, go on to line 2.</i>		
2. Enter one-half of line 1 .....	2.	<u>7,000</u>
3. Enter the adjusted gross income reported on your return for the earlier year .....	3.	<u>58,550</u>
4. Enter the total of any exclusions/adjustments you claimed in the earlier year for Series EE U.S. savings bond interest (Form 8815), foreign earned income or housing (Form 2555 or Form 2555-EZ), and certain income of bona fide residents of American Samoa (Form 4563) or Puerto Rico .....	4.	<u>- 0 -</u>
5. Enter any tax-exempt interest received in the earlier year .....	5.	<u>- 0 -</u>
6. Add lines 2, 3, 4, and 5. ....	6.	<u>65,550</u>
7. Enter taxable benefits reported on your return for the earlier year .....	7.	<u>11,050</u>
8. Subtract line 7 from line 6 .....	8.	<u>54,500</u>
9. Enter \$25,000 (\$32,000 if married filing jointly for the earlier year; \$0 if married filing separately for the earlier year and you lived with your spouse at any time during the year) .....	9.	<u>25,000</u>
10. Subtract line 9 from line 8. ....	10.	<u>29,500</u>
<i>Note: If line 10 is zero or less, skip lines 11 through 20 and enter -0- on line 21. Otherwise, go on to line 11.</i>		
11. Enter \$9,000 (\$12,000 if married filing jointly for the earlier year; \$0 if married filing separately for the earlier year and you lived with your spouse at any time during the year) .....	11.	<u>9,000</u>
12. Subtract line 11 from line 10. If zero or less, enter -0- .....	12.	<u>20,500</u>
13. Enter the smaller of line 10 or line 11 .....	13.	<u>9,000</u>
14. Enter one-half of line 13 .....	14.	<u>4,500</u>
15. Enter the smaller of line 2 or line 14 .....	15.	<u>4,500</u>
16. Multiply line 12 by 85% (.85). If line 12 is zero, enter -0- .....	16.	<u>17,425</u>
17. Add lines 15 and 16 .....	17.	<u>21,925</u>
18. Multiply line 1 by 85% (.85) .....	18.	<u>11,900</u>
19. <b>Refigured taxable benefits.</b> Enter the smaller of line 17 or line 18 .....	19.	<u>11,900</u>
20. Enter taxable benefits reported on your return for the earlier year (or as refigured due to a previous lump-sum payment for the year) .....	20.	<u>11,050</u>
21. <b>Additional taxable benefits.</b> Subtract line 20 from line 19. Also enter this amount on line 19 of Worksheet 4 .....	21.	<u>850</u>

**Note:** Do not file an amended return for this earlier year. Complete a separate Worksheet 2 or Worksheet 3 for each earlier year for which you received a lump-sum payment in 1996.



**Exhibit J:** Worksheet for determining the Wisconsin taxable portion of the lump-sum payment received in 1996 for 1995.

1.	One-half of the total social security benefits received for the year (line 2 of federal Worksheet 2 - see Exhibit I) . . . . .	1.	<u>7,000.</u>
2.	Adjusted income after subtraction for exemption amount (line 10 of federal Worksheet 2) . . . . .	2.	<u>29,500.</u>
3.	Fill in one-half of line 2 above . . . . .	3.	<u>14,750.</u>
4.	Compare line 1 and line 3. Fill in the smaller amount . . . . .	4.	<u>7,000.</u>
5.	Social security benefits previously taxed (see Exhibit H) . . . . .	5.	<u>6,500.</u>
6.	Subtract line 5 from line 4. This is the additional amount taxable by Wisconsin . . . . .	6.	<u>500.</u>

**Exhibit K:** Federal worksheet (from Publication 915) for computing taxable social security for persons who received a lump-sum payment in 1996.

**Worksheet 4. Lump-Sum Election Method**

Complete Worksheet 1 and Worksheets 2 and 3 as appropriate before completing this worksheet.	
1. Enter the total amount from box 5 of ALL your Forms SSA-1099 and RRB-1099, minus the lump sum payment for years before 1996.....	1. <u>15,000</u>
<i>Note: If line 1 is zero or less, enter zero on lines 2 and 11 and skip lines 3 through 10. Otherwise, go on to line 2.</i>	
2. Enter one-half of line 1 .....	2. <u>7,500</u>
3. Enter the amount from line 3 of Worksheet 1 .....	3. <u>45,000</u>
4. Enter the amount from line 4 of Worksheet 1 .....	4. <u>- 0 -</u>
5. Add lines 2, 3, and 4 .....	5. <u>52,500</u>
6. Enter the amount from line 6 of Worksheet 1 .....	6. <u>- 0 -</u>
7. Subtract line 6 from line 5 .....	7. <u>52,500</u>
8. Enter the amount from line 8 of Worksheet 1 .....	8. <u>25,000</u>
9. Subtract line 8 from line 7. If zero or less, enter -0- .....	9. <u>27,500</u>
<i>Note: If line 9 is zero or less, skip lines 10 through 17 and enter -0- on line 18. Otherwise, go on to line 10.</i>	
10. Enter the amount from line 10 of Worksheet 1 .....	10. <u>9,000</u>
11. Subtract line 10 from line 9. If zero or less, enter -0- .....	11. <u>18,500</u>
12. Enter the smaller of line 9 or line 10 .....	12. <u>9,000</u>
13. Enter one-half of line 12 .....	13. <u>4,500</u>
14. Enter the smaller of line 2 or line 13 .....	14. <u>4,500</u>
15. Multiply line 11 by 85% (.85). If line 11 is zero, enter -0- .....	15. <u>15,725</u>
16. Add lines 14 and 15 .....	16. <u>20,225</u>
17. Multiply line 1 by 85% (.85) .....	17. <u>12,750</u>
18. Enter the smaller of line 16 or line 17 .....	18. <u>12,750</u>
19. Enter the total of the amounts from line 21 of Worksheet 2 and line 14 of Worksheet 3 for all earlier years for which the lump-sum payment was received .....	19. <u>2,200</u>
20. Taxable benefits under lump-sum election method. Add lines 18 and 19 .....	20. <u>14,950</u>
<i>Note: If line 20 above is not smaller than line 18 of Worksheet 1, you cannot use this method to figure your taxable benefits. Instead, follow the instructions on Worksheet 1 to report your benefits.</i>	
You can choose to report your taxable benefits under this method if line 20 above is smaller than line 18 of Worksheet 1. To elect this method:	
<ul style="list-style-type: none"> <li>Make the following entries on your return: On Form 1040, enter "LSE" to the left of line 20a. On Form 1040A, enter "LSE" to the left of line 13a.</li> <li>Enter the amount from line 1 of Worksheet 1 on Form 1040, line 20a or on Form 1040A, line 13a. If you are married filing separately and you lived apart from your spouse for all of 1996, also make the entries described at the top of Worksheet 1.</li> <li>If line 20 above is zero, follow the instructions below line 9 on Worksheet 1. Otherwise, enter the amount from line 20 above on Form 1040, line 20b or on 1040A, line 13b.</li> </ul>	

**Note:** When using the lump-sum election method, federal Worksheet 1 must be completed before completing Worksheet 4. Worksheet 1 is shown on the following page.

**Exhibit K: (Cont'd.)****Worksheet 1. Social Security and Equivalent Railroad Retirement Benefits**

*If you are married filing separately and you lived apart from your spouse for all of 1996, make the following entries on your return.*

- On Form 1040, enter "D" to the left of line 20a.
- On Form 1040A, enter "D" to the left of line 13a.

1. Enter the total amount from box 5 of ALL your Forms SSA-1099 and RRB-1099 ....	1.	18,000
<i>Note: If line 1 is zero or less, stop here; none of your benefits are taxable. Otherwise, go on to line 2.</i>		
2. Enter one-half of line 1 .....	2.	9,000
3. Enter the total of the amounts from:		
<i>Form 1040:</i> Lines 7, 8a, 8b, 9-14, 15b, 16b, 17-19, and 21.		
<i>Form 1040A:</i> Lines 7, 8a, 8b, 9, 10b, 11b, and 12. ....	3.	45,000
4. <i>Form 1040A filers:</i> Enter any exclusion for Series EE U.S. savings bond interest (Form 8815, line 14.)		
<i>Form 1040 filers:</i> Enter the total of any exclusions/adjustments for:		
• Series EE U.S. savings bond interest (Form 8815, line 14),		
• Foreign earned income or housing (Form 2555, lines 43 and 48, or Form 2555-EZ, line 18), and		
• Certain income of bona fide residents of American Samoa (Form 4563, line 15) or Puerto Rico .....	4.	- 0 -
5. Add lines 2, 3, and 4 .....	5.	54,000
6. Enter the amount from Form 1040, line 30 or from Form 1040A, line 15c .....	6.	- 0 -
7. Subtract line 6 from line 5 .....	7.	54,000
8. Enter \$25,000 (\$32,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time during 1996) .....	8.	25,000
9. Subtract line 8 from line 7. If zero or less, enter -0- .....	9.	29,000
<i>Note: If line 9 is zero or less, stop here; none of your benefits are taxable. (Do not enter any amounts on Form 1040, line 20a or 20b or on Form 1040A, line 13a or line 13b. But if you are married filing separately and you lived apart from your spouse for all of 1996, enter -0- on Form 1040, line 20b or on Form 1040A, line 13b.) Otherwise, go on to line 10.</i>		
10. Enter \$9,000 (\$12,000 if married filing jointly; \$0 if married filing separately and you lived with your spouse at any time during 1996) .....	10.	9,000
11. Subtract line 10 from line 9. If zero or less, enter -0- .....	11.	20,000
12. Enter the <b>smaller</b> of line 9 or line 10 .....	12.	9,000
13. Enter one-half of line 12 .....	13.	4,500
14. Enter the <b>smaller</b> of line 2 or line 13 .....	14.	4,500
15. Multiply line 11 by 85% (.85). If line 11 is zero, enter -0- .....	15.	17,000
16. Add lines 14 and 15 .....	16.	21,500
17. Multiply line 1 by 85% (.85) .....	17.	15,300
18. <b>Taxable benefits.</b> Enter the <b>smaller</b> of line 16 or line 17 .....	18.	15,300

- Enter the amount from line 1 above on Form 1040, line 20a or on Form 1040A, line 13a.
  - Enter the amount from line 18 above on Form 1040, line 20b or on Form 1040A, line 13b.
- Note: If you received a lump-sum payment in this year that was for an earlier year, also complete Worksheet 2 or 3 and Worksheet 4 to see whether you can report a lower taxable benefit.*

**Exhibit L:** Worksheet for determining the Wisconsin taxable portion of social security benefits received in 1996 for 1996.

1.	One-half of the total social security benefits (line 2 of federal Worksheet 4 - see Exhibit K) . . . . .	1.	<u>7,500.</u>
2.	Adjusted income after exemption amount (line 9 of federal Worksheet 4) . . . . .	2.	<u>27,500.</u>
3.	Fill in one-half of line 2 above . . . . .	3.	<u>13,750.</u>
4.	Compare line 1 and line 3. Fill in the smaller amount. This is the amount taxable to Wisconsin . . . . .	4.	<u>7,500.</u>

**Exhibit M:** Worksheet for determining the portion of the social security benefits which are taxable for federal purposes but not for Wisconsin for 1996.

1.	Amount of benefits taxable for federal purposes (line 20 of federal Worksheet 4 - see Exhibit K) . . . . .	1.	<u>14,950.</u>
2.	Amount of lump-sum payment taxable by Wisconsin for 1993 (line 14 of federal Worksheet 3 - see Exhibit B) . . . . .	2.	<u>500.</u>
3.	Amount of lump-sum payment taxable by Wisconsin for 1994 (line 6 of Exhibit F worksheet) . . . . .	3.	<u>500.</u>
4.	Amount of lump-sum payment taxable by Wisconsin for 1995 (line 6 of Exhibit J worksheet) . . . . .	4.	<u>500.</u>
5.	Amount of benefits received for 1996 which are taxable by Wisconsin (line 4 of Exhibit L worksheet) . . . . .	5.	<u>7,500.</u>
6.	Add lines 2, 3, 4, and 5 . . . . .	6.	<u>9,000.</u>
7.	Subtract line 6 from line 1. This is the portion of the social security benefits which are taxable for federal purposes but not for Wisconsin . . . . .	7.	<u>5,950.</u>

**Note:** The amount on line 7 should be entered on Schedule 2 of Form 1 as a subtraction for nontaxable social security benefits. If the taxpayer is filing Form 1A this amount should be entered on line 5 (nontaxable retirement benefits) of the Retirement Benefit Worksheet in the Form 1A instructions. ☐

## 2 Renter's School Property Tax Credit — Tax-Exempt Housing

This tax release supersedes the tax release with the same title which was published in *Wisconsin Tax Bulletin* 85 (January 1994), page 27. The original tax release has been revised to reflect the Wisconsin Tax Appeals Commission decision of July 15, 1997 in *Jean B. Martin vs. Wisconsin Department of Revenue* (a summary of this case appears on page 17). Although the Martin decision involved Homestead credit, the Homestead and school property tax credit statutes regarding the treatment of rent paid for tax-exempt housing are virtually identical.

**This change in position regarding the treatment of rent paid for tax-exempt housing for purposes of the school property tax credit first applies to rent paid in 1997.**

**Note:** The department's position regarding the treatment of rent paid for tax-exempt housing for purposes of Homestead credit has not changed. The *Martin* case upheld the department's position as set forth in a tax release published in *Wisconsin Tax Bulletin* 35 (January 1984), page 19.

**Statutes:** Section 71.07(9)(a)4, Wis. Stats. (1995-96)

**Background:** The renter's school property tax credit is available to individuals who pay rent during the year for living quarters used as a principal residence.

The credit is equal to 10% of the first \$2,000 (\$1,000 if married filing a separate return) of rent constituting property taxes paid during the year. "Rent constituting property taxes" means 25% of rent if heat is not included or 20% of rent if heat is included.

Section 71.07(9)(a)4, Wis. Stats. (1995-96), provides that "rent" does not include rent paid for the use of housing which was exempt from property tax, except housing for which payments in lieu of taxes were made under sec. 66.40(22), Wis. Stats. (1995-96). Section 66.40(22) relates to housing authorities.

**Facts and Question:** The University of Wisconsin — Madison owns housing that is exempt from property taxes. The housing is rented to faculty, staff, and employees at rates set to reflect fair market rentals for similar housing in the private sector. The University makes payments to the municipality for services. However, these payments for services are not made under sec. 66.40(22), Wis. Stats. (1995-96).

Does the rent paid by an individual for the University faculty housing qualify for the renter's school property tax credit?

**Answer:** No. Section 71.07(9)(a)4, Wis. Stats. (1995-96), provides that rent paid for housing which is exempt from property tax may not be used to compute the renter's school property tax credit unless payments in lieu of taxes have been made under sec. 66.40(22), Wis. Stats. (1995-96), with respect to the property. The University of Wisconsin - Madison has not made payments in lieu of taxes under sec. 66.40(22), Wis. Stats. (1995-96). Therefore, rent paid by tenants may not be used to compute a renter's school property tax credit. □

## 3 Taxation of Stock Options

**Statutes:** Sections 71.01(6), 71.04(1)(a), 71.05(6)(b)9, 71.08(1)(bm), 71.63(6), and 71.64(1)(a), Wis. Stats. (1995-96)

**Background:** Corporations may grant employees the right to purchase stock in the corporation. The stock options are a form of compensation. Stock options may be granted to employees both as a reward for past services and as an incentive for future services. There are two types of stock options: (1) statutory or qualified options which are granted and the taxation determined under specific sections of the Internal Revenue Code (IRC), and (2) non-statutory or nonqualified options which are taxed under the general principles relating to compensation and recognition of income.

**Federal Treatment of Nonstatutory Stock Options** Under federal law, if an employee receives nonstatutory (nonqualified) stock options as payment for services, the excess of the fair market value of such property over the amount paid for the property is included in gross income of the person who performed such services in the first taxable year in which the rights are transferable or not subject to a substantial risk of forfeiture. (IRC sec. 83.)

If the nonqualified option does not have a readily ascertainable fair market value, the grant of the option is not a taxable event; the purchase of the optioned stock triggers taxation. The employee recognizes ordinary income (compensation) in the amount of the value of the stock purchased, minus any amounts paid for the stock or the option. Any gain or loss recognized when the employee subsequently sells the stock is capital in nature.

If a nonqualified option is actively traded or has a readily ascertainable fair market value, the employee must recognize ordinary income (compensation) in the amount of the fair market value less any amount paid for the option in the year the option

is granted. Any gain or loss recognized on the subsequent sale of the stock is capital in nature.

An employer is allowed to deduct the value of a nonqualified stock option as a business expense for the tax year in which the option is included in the gross income of the employee. The deduction amount is the same as the amount included as ordinary income by the employee in gross income. (IRC sec. 83(h).)

*Federal Treatment of Statutory Stock Options* There are two kinds of statutory (qualified) stock options. These are incentive stock options (IRC sec. 422) and options granted under employee stock purchase plans (IRC sec. 423). Employees who qualify under these statutory plans do not include any amount in gross income either at the time the option is granted or at the time it is exercised. Income or loss is reported only when the stock is sold, and any gain or loss from the sale is capital gain or loss. However, if a discount was given under an employee stock purchase plan, the value of the discount (i.e., the amount by which the fair market value at the time of grant exceeded the option price) is taxed as ordinary income, and any further gain is taxed as capital gain.

If the employee does not meet the required holding period tests, there is a disqualifying disposition and ordinary income (compensation) is reported in the year the stock is sold. The amount reportable as ordinary income is the amount by which the stock's fair market value, as of the date the option was exercised, is more than the option price. If the gain is more than the amount reported as ordinary income, the remaining amount is capital gain.

The employer is allowed a deduction for the tax year in which the

employee is required to recognize ordinary income for the amount of such ordinary income.

*Wisconsin Treatment of Stock Options* For a specific taxable year, Wisconsin generally follows the IRC in effect on December 31 of the prior year with some exceptions (sec. 71.01(6), Wis. Stats. (1995-96)). Thus income from a stock option is taxable by Wisconsin in the same manner and at the same time as for federal tax purposes. For example, for federal tax purposes, an employee who is granted an incentive stock option does not include any amount in gross income either at the time the option is granted or at the time it is exercised. Income or loss is reported only when the stock is sold and any gain or loss from the sale is capital gain or loss. This same treatment applies for Wisconsin tax purposes.

Whether income from a stock option granted to an employee as compensation for the performance of services is taxable by Wisconsin depends on the individual's residency status at the time the income is reportable for federal income tax purposes. Section 71.04(1)(a), Wis. Stats. (1995-96), provides that:

- All income or loss of resident individuals shall follow the residence of the individual, and
- Income from personal services of nonresident individuals shall follow the situs of the services.

Based on this statute, if an individual is a resident of Wisconsin (i.e., is domiciled in Wisconsin) at the time income from a stock option is required to be recognized for federal tax purposes, the same amount that is taxable for federal tax purposes is also taxable by Wisconsin, regardless of whether the stock option was attributable to personal services

performed in Wisconsin or outside Wisconsin.

If an individual is *not* a resident of Wisconsin (i.e., is not domiciled in Wisconsin) at the time income from a stock option is required to be recognized for federal tax purposes, the income is taxable by Wisconsin only to the extent it is attributable to personal services performed in Wisconsin.

For assets held more than one year, sec. 71.05(6)(b)9, Wis. Stats. (1995-96), provides an exclusion for 60% of the capital gain as computed under the IRC. Capital gains and losses for all assets are netted before applying the percentage.

*Alternative Minimum Tax* Incentive stock options are subject to the federal alternative minimum tax. The excess of the fair market value of the option (determined without regard to any lapse restriction) over the amount paid for the option must be included for alternative minimum tax purposes at the first time the employee's rights in the option become transferable or when these rights are no longer subject to a substantial risk of forfeiture. (IRC sec. 56(b)(3).)

The starting point for determining Wisconsin alternative minimum taxable income is federal alternative minimum taxable income. Thus the federal adjustment for incentive stock options will also be included in Wisconsin alternative minimum taxable income. In the case of a nonresident of Wisconsin, the portion of the amount included in federal alternative minimum taxable income which is attributable to personal services performed in Wisconsin must be included in Wisconsin alternative minimum taxable income. (Sec. 71.08, Wis. Stats. (1995-96).)

Section 71.08(1)(bm), Wis. Stats. (1995-96), provides that at the time that the incentive stock option is included in federal alternative minimum taxable income, the amount included in Wisconsin alternative minimum taxable income may be reduced by 20%. When the incentive stock is disposed of, 20% of the federal alternative minimum tax adjustment resulting from refiguring gain or loss on the disposition of the stock must be added to federal alternative minimum taxable income when computing Wisconsin alternative minimum taxable income.

### ***Wisconsin Resident — Taxation of Stock Options***

**Question 1:** A Wisconsin resident is required to report income related to a stock option on his/her federal income tax return. Is this income also taxable by Wisconsin?

**Answer 1:** Yes. Under sec. 71.04(1)(a), Wis. Stats. (1995-96), all income or loss of a Wisconsin resident is taxable by Wisconsin. Income related to a stock option is taxable by Wisconsin regardless of whether the income is attributable to personal services performed in Wisconsin or outside Wisconsin.

**Example 1:** An employee was granted a nonqualified stock option to purchase 1,000 shares of the company's stock for \$10 per share as part of a five-year contract, with the ability to exercise the option anytime after five years have passed. The employee was a resident of Ohio at the time the option was granted in 1992. For the first two years of the five-year contract, the employee worked in Ohio. The employee was then transferred to Wisconsin where he became a resident and worked the remaining three years of the contract. In 1997, while a Wisconsin resident, the employee exercised the option and purchased the stock for

\$10,000. At the time of exercise, the stock had a fair market value of \$20 a share or \$20,000.

For federal tax purposes, the employee must recognize ordinary income of \$10,000 (\$20,000 fair market value of stock less \$10,000 paid for the stock) for 1997. Because the employee is a resident of Wisconsin at the time the stock option was exercised, the same amount that is taxable for federal tax purposes is taxable by Wisconsin.

**Example 2:** An employee was granted an incentive stock option in 1992 while he was a nonresident of Wisconsin. The employee exercised the option in 1993. Because this was an incentive stock option, the employee did not include any amount in federal income at the time the option was granted or exercised. The employee became a resident of Wisconsin in January of 1997. In May of 1997, the employee sold the stock which had been acquired under the incentive stock option.

A long-term capital gain on the sale of the stock of \$10,000 will be reported on the employee's 1997 federal income tax return. The employee must also report the \$10,000 gain on the sale of the stock as Wisconsin income on his 1997 Wisconsin income tax return. Because under federal law the gain is treated as a long-term capital gain, for Wisconsin tax purposes the long-term capital gain will be netted with other capital gains and losses and be subject to the exclusion for 60% of net long-term capital gain.

### ***Nonresident of Wisconsin — Taxation of Stock Options***

**Question 2:** A nonresident of Wisconsin is required to report income related to a stock option on his/her federal income tax return. Is this income also taxable by Wisconsin?

**Answer 2:** Because the individual is not a resident of Wisconsin at the time income related to the stock option is required to be recognized for federal tax purposes, the income is taxable by Wisconsin only to the extent it is attributable to personal services performed in Wisconsin.

The amount of income related to the stock option which is taxable for federal purposes must be allocated to reflect only the portion of the income which is attributable to personal services performed in Wisconsin. Depending on the facts and circumstances, one method that may produce a fair and equitable result is an allocation on the basis of time worked in and outside Wisconsin.

Under this method, if personal services are performed both in and outside Wisconsin, the portion taxable by Wisconsin in the case of a nonresident is the income recognized for federal tax purposes multiplied by the ratio of the days worked in Wisconsin during the employment contract period granting the option over the total days worked under the contract.

If recognition of the income on an employer-provided stock option occurs when the stock purchased under the option is sold and the individual is not a resident of Wisconsin, the income taxable by Wisconsin will be the lesser of the gain recognized on the sale of the stock or the amount which would have been recognized at the exercise of the option, multiplied by the ratio of the days worked in Wisconsin under the employment contract granting the option over the total days worked under the contract.

**Note:** In this tax release, when income from a stock option is taxable to a nonresident of Wisconsin, the portion of the income attributable to personal services performed in

Wisconsin will be determined on the basis of time worked in and outside Wisconsin during the employment contract period granting the option. The department recognizes that, depending on the facts and circumstances in a particular case, other methods of allocation may be appropriate.

*Example 3:* An employee is granted a nonqualified stock option to purchase 1,000 shares of the company's stock for \$10 per share as part of a five-year contract, with the ability to exercise the option anytime after five years have passed. For the first two years of the five-year contract, the employee worked in Wisconsin. The employee was then transferred to Ohio where he became a resident and worked the remaining three years of the contract. In 1997, while an Ohio resident, the employee exercised the option and purchased the stock for \$10,000. At the time of exercise, the stock had a fair market value of \$20 a share or \$20,000.

For federal tax purposes, the employee must recognize ordinary income of \$10,000 (\$20,000 fair market value of stock less \$10,000 paid for the stock) for 1997. The portion of the income from the nonqualified stock option which is attributable to personal services performed in Wisconsin and taxable by Wisconsin for 1997 is \$4,000, determined as follows:

$$\frac{2 \text{ (years worked in Wisconsin)}}{5 \text{ (total years under employment contract)}} \times \$10,000 = \$4,000$$

Assuming the employee is not a resident of Wisconsin at the time of disposition, any future gain or loss on the disposition of the stock acquired under the nonqualified stock option is not taxable by Wisconsin.

*Example 4:* In 1990 an employee was granted an incentive stock option to purchase 1,000 shares of the company's stock for \$6 per share as part of a five-year contract, with the ability to exercise the option anytime after five years. The individual worked in Wisconsin for the five-year contract period and exercised the option in 1995. The fair market value of the stock at the time the option was exercised was \$12 per share. Because this option qualified as an incentive stock option, the employee was not required to report income from the exercise of the option on either his 1995 federal or Wisconsin income tax return.

The employee subsequently retired and moved to Florida in 1997. While a Florida resident, the individual sold the 1,000 shares of stock for \$15,000. He reports the \$9,000 gain (\$15,000 selling price less \$6,000 cost) on the sale of the stock as a long-term capital gain on Schedule D of federal Form 1040.

In this situation, all personal services were performed in Wisconsin during the five-year employment contract period. Therefore, the amount taxable by Wisconsin is \$6,000 (the lesser of the gain recognized on the sale of the stock or the amount that would have been recognized at the exercise of the option).

Because under federal law the taxable amount is treated as a long-term capital gain, the \$6,000 which is taxable by Wisconsin is also treated as a long-term capital gain for Wisconsin tax purposes. The \$6,000 long-term capital gain will be netted with other capital gains and losses and be subject to the Wisconsin exclusion for 60% of net long-term capital gain.

*Example 5:* An employee is granted an incentive stock option to purchase 1,000 shares of the company's stock

for \$5 per share as part of a three-year contract, with the ability to exercise the option after three years have passed. The employee worked two years under the contract in Wisconsin and one year in Georgia. The employee exercised the option in December of 1996 at the end of the three-year period. The fair market value of the stock at the time the option is exercised is \$11 per share or \$11,000. Because the option qualifies as an incentive stock option, the employee did not report income from the exercise of the option on his 1996 federal income tax return.

While a resident of Georgia, the employee sells the stock for \$15 a share (\$15,000) in August of 1997. This sale is treated as a disqualifying disposition as the stock was disposed of within one year from the date the shares were transferred to the employee.

For federal tax purposes, the employee must report \$6,000 as ordinary income (the difference between the \$11,000 fair market value of the stock at the time the option was exercised and the \$5,000 cost of the stock). The balance of the gain (\$4,000) is reported as a capital gain.

The amount attributable to personal services performed in Wisconsin and taxable by Wisconsin is \$4,000, determined as follows:

$$\frac{2 \text{ (years worked in Wisconsin)}}{3 \text{ (total years under employment contract)}} \times \$6,000 = \$4,000$$

Because the difference between the cost and the fair market value of the stock at the time the option was exercised is treated as ordinary income for federal tax purposes, it does not qualify for the Wisconsin capital gain exclusion.



### **Alternative Minimum Tax Treatment**

**Question 3:** A nonresident of Wisconsin is required to include an incentive stock option adjustment in federal alternative minimum taxable income. The adjustment is for the difference between the fair market value of stock acquired under his employer's incentive stock option plan and the amount paid for the option. Does the adjustment to alternative minimum taxable income apply for Wisconsin alternative minimum tax purposes?

**Answer 3:** The adjustment to federal alternative minimum taxable income applies for Wisconsin alternative minimum tax purposes to the extent the adjustment amount is attributable to personal services performed in Wisconsin. The portion of the income attributable to personal services performed in Wisconsin is determined on the basis of time worked in and outside Wisconsin during the employment contract period granting the option. For Wisconsin alternative minimum tax purposes, the federal adjustment for an incentive stock option may be reduced by 20%, as provided by sec. 71.08(1)(bm)1, Wis. Stats. (1995-96).

**Example 6:** An employee was granted an incentive stock option in 1992 to purchase 10,000 shares of the company's stock for \$10 per share as part of a five-year contract. The employee worked two years under the contract in Wisconsin. He was then transferred to Texas. He became a resident of Texas and worked the remaining three years of the five-year contract in Texas. The employee exercised the option in 1997 when the stock had a fair market value of \$30 per share. For 1997, the employee was required to include \$200,000 in his federal alternative minimum taxable income as an

adjustment for the incentive stock option.

Under sec. 71.08(1)(bm)1, Wis. Stats. (1995-96), the federal adjustment may be reduced by \$40,000 (20% of \$200,000). The portion of the adjustment for the incentive stock option which is attributable to personal services performed in Wisconsin and which must be included in Wisconsin alternative minimum taxable income is \$64,000, determined as follows:

$$\frac{2 \text{ (years worked in Wisconsin)}}{5 \text{ (total years under employment contract)}} \times \$160,000 = \$64,000$$

**Question 4:** Must Wisconsin income tax be withheld on the compensation element of qualified and nonqualified stock options?

**Answer 4:** Yes, Wisconsin income tax is required to be withheld from the compensation element of stock options. Under secs. 71.63(6) and 71.64(1)(a), Wis. Stats. (1995-96), an employer is required to withhold from wages. "Wages" means all remuneration for services performed by an employee for an employer. (There are exceptions to the definition of "wages" which do not apply to this tax release.)

Wisconsin withholding is required when the employee (or former employee) recognizes the income for Wisconsin income tax purposes. For example, an employee exercises a nonqualified stock option on October 10, 1997. Income from the exercise of the option is required to be reported on the employee's 1997 federal and Wisconsin income tax returns. Wisconsin withholding is required for the pay period in which the option was exercised.

For a nonresident of Wisconsin, withholding is required only to the

extent the compensation is attributable to personal services performed in Wisconsin.

Where recognition of the income on an employer-provided stock option occurs when the stock purchased under the option is sold and the gain is treated as a long-term capital gain for federal tax purposes, withholding is required on only 40% of the compensation element reportable to Wisconsin. Because of the Wisconsin exclusion for 60% of the capital gain as computed under the Internal Revenue Code, 60% of the compensation element reportable to Wisconsin will not be subject to Wisconsin tax and is therefore not subject to Wisconsin withholding.

If the employee's salary is insufficient to pay the additional taxes due, the employee and employer must arrange to have enough money available so the employer can remit the proper amount of withholding tax. □

## **4 Gasoline Service Station Equipment**

**Statutes:** Sections 77.51(2) and (20) and 77.52(2)(a)10, Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.68, April 1994 Register

**Note:** This tax release supercedes the tax release titled "Gasoline Service Station Equipment" that appeared in *Wisconsin Tax Bulletin 4* (July 1977).

**Question:** Is property described in the table below that is installed and repaired at a gasoline service station real property or tangible personal property?

**Answer:** Beginning January 1, 1998, for sales by contractors to service stations of the property

described in the table below, the department will follow the treatment indicated in Column 2. For sales by contractors to service stations prior to January 1, 1998, where Columns 2 and 3 differ, contractors may follow the tax treatment noted in Column 2 or 3, whichever is to their advantage. The items where Columns 2 and 3 differ are shaded.

“Transitional Provisions,” following the table below, illustrates how contractors may determine the sales and use tax treatment for sales by contractors to service stations prior to January 1, 1998.

For purposes of the table below, TPP and RP have the meaning and tax treatment as follows:

**TPP** means the property remains tangible personal property after installation and for purposes of various services performed on the property thereafter. The contractor's charge to a customer for labor and materials to install or repair or service the property is subject to Wisconsin sales or use tax unless an exemption applies. The contractor may purchase the property without sales or use tax because it is for resale.

**RP** means the property becomes real property when installed and for purposes of various services performed on the property thereafter. The contractor's charge to a customer for labor and materials to install or repair or service the property is not subject to Wisconsin sales or use tax. However, the contractor is subject to Wisconsin sales or use tax on its purchase of the property installed or provided with the service.

Column 1 Property	Column 2 Treatment Effective 1/1/98	Column 3 Treatment Prior to 1/1/98
<b>A. Submersible pump:</b> This pump is underground on top of the tank. The motor is installed in the tank and pushes the gas from the tank to piping that will take the gas to a dispenser.	TPP	TPP
<b>B. Housing for pump:</b> This housing is underground to enclose the pump and sits on the top of the underground tank.	TPP	TPP
<b>C. Piping:</b> This pipe connects the submersible pump to the dispenser and allows gas to flow to the dispenser.	TPP	RP
<b>D. Pump wiring:</b> Wiring brings electricity from the building power source (amp service box) directly to the submersible pump.	RP	RP
<b>E. Vent pipe:</b> Allows gasoline vapors to escape from tank.	TPP	TPP
<b>F. Fill pipe:</b> This pipe is underground and connects with the underground storage tank. This is where the seller of the fuel to the service station dispenses the fuel from its truck to the underground storage tank.	TPP	RP
<b>G. Spill container:</b> The spill container is underground and connects to the fill pipe. It collects fuel that overflows from the fill pipe.	TPP	RP
<b>H. Electronic monitor:</b> This device is underground and is used to determine the fuel remaining in the tank. It also detects leaks in the tank.	TPP	TPP

Column 1 Property	Column 2 Treatment Effective 1/1/98	Column 3 Treatment Prior to 1/1/98
<b>I. Electronic monitor display unit:</b> This unit displays information collected by the electronic monitor and warns of possible problems. It is similar to a computer screen and is mounted to the wall in the service station building.	TPP	TPP
<b>J. Display unit wiring:</b> Wiring that connects the display unit in the building to the electronic monitor in the underground tank.	TPP	TPP
<b>K. Dispenser piping:</b> This piping allows gas from the tank to be delivered to the dispenser. The majority of the piping is underground.	TPP	RP
<b>L. Pump connected to dispenser:</b> In contrast with the submersible pump (Item A), this pump is above ground and is connected to the gasoline dispenser. Rather than pushing the gas out of the underground tank, this pump pulls the gas from the tank.	TPP	TPP
<b>M. Gasoline dispenser:</b> Unit that sits on the island from which the gasoline is dispensed into a motor vehicle.	TPP	TPP
<b>N. Canopy:</b> A shelter structure over gasoline dispensers that consists of support columns and a roof.	RP	RP
<b>O. Island lights:</b> If a service station does not have a canopy which contains lights, lights similar to parking lot lights and street lights are installed on the island or in the general vicinity of the island to illuminate the area.	RP	TPP
<b>P. Canopy lighting:</b> A light fixture is installed in the canopy roof for illumination of the area.	RP	RP
<b>Q. Dispenser wiring:</b> Wiring brings electricity from the building power source (amp service box) directly to the gasoline dispenser.	RP	RP
<b>R. Island light wiring:</b> Wiring brings electricity from the building power source (amp service box) directly to the island lights.	RP	TPP
<b>S. Canopy light wiring:</b> Wiring brings electricity from the building power source (amp service box) directly to the canopy lights.	RP	RP
<b>T. Underground tank:</b> Prefabricated tank located underground used to store gasoline.	RP	RP
<b>U. Tank foundation:</b> Gravel or cement base located underground on which the underground tank is placed.	RP	RP

Column 1 Property	Column 2 Treatment Effective 1/1/98	Column 3 Treatment Prior to 1/1/98
<b>V. Island:</b> The concrete foundation upon which the dispensers and other equipment are placed.	RP	RP
<b>W. Hoist:</b> An encased underground hydraulic cylinder connected to an above ground platform.	TPP, except for foundation	TPP, except for foundation

### Transitional Provisions for Sales by Contractors to Service Stations Prior to January 1, 1998

#### Items A, B, D, E, H, I, J, L, M, N, P, Q, S, T, U, V, and W (No Change)

The treatment as provided in Column 2 should be followed.

#### Items C, F, G, and K (Real Property Changed to Tangible Personal Property)

If you treated Items C, F, G, or K as real property and paid Wisconsin sales or use tax based on your purchase price of the item, rather than the selling price of the materials and labor, you have two options:

1. Do nothing. The department will not adjust your sales and use tax return for these items.
2. File a claim for refund for the sales and use tax you paid on the purchase price of the item and report sales tax on the selling price of the item, unless an exemption applies.

**Note:** See *Wisconsin Tax Bulletin* 91 (April 1995), pages 21 to 26, for a tax release about filing claims for refund and passing on the tax collected from buyers.

If you treated Items C, F, G, or K as tangible personal property and

charged Wisconsin sales or use tax based on the selling price of the items (materials and labor), nothing has to be done. You have treated the items in a manner consistent with the department's treatment effective January 1, 1998.

**Example 1:** In 1997, you are audited by the department for the year 1996. You did not charge sales tax on the \$2,000 sale and installation for Service Station A of piping from a submersible pump to a gasoline dispenser because you thought the installation was real property. You did pay Wisconsin sales tax to your suppliers on your purchases of the piping used in the installation. Although the department's revised treatment effective January 1, 1998, as shown in the preceding table, Column 2 (Item C), is that this is a sale and installation of tangible personal property which is subject to sales tax, unless an exemption applies, the department will not assess you sales tax on the sale and installation nor will the department refund you the amount of Wisconsin sales or use tax you paid on your purchase of the piping.

**Example 2:** In January 1997, you installed for \$1,000 piping from a submersible pump to a gasoline dispenser for a Wisconsin municipal-

ity. You treated the installation as a real property improvement and, therefore, paid Wisconsin use tax to the department on your purchase price of the piping (\$300).

Since the department's treatment effective January 1, 1998, as shown in the preceding table, Column 2 (Item C), is that this is a sale and installation of tangible personal property which is subject to Wisconsin sales tax, unless an exemption applies, you were not required to pay Wisconsin sales or use tax on your purchase of the piping. In addition, because your sale was to a Wisconsin municipality, the \$1,000 sale is exempt from Wisconsin sales and use tax. You may file a claim for refund for the use tax you paid to the department on your purchase of the piping.

**Example 3:** In February 1997, you installed piping from a submersible pump to a gasoline dispenser for a Wisconsin municipality for \$1,000. You treated this sale as a sale and installation of tangible personal property. Since you were installing the piping for a Wisconsin municipality, the \$1,000 sale was exempt from Wisconsin sales or use tax. In addition, you did not pay Wisconsin sales or use tax on your purchase price of the piping (\$300).

Since the department's treatment effective January 1, 1998, as shown in the preceding table, Column 2 (Item C), is that this is a sale and installation of tangible personal property which is subject to Wisconsin sales or use tax, unless an exemption applies, you do not need to do anything. You have treated the installation of the piping in a manner consistent with the department's treatment effective January 1, 1998.

#### **Items O and R (Tangible Personal Property Changed to Real Property)**

If you treated Items O and R as tangible personal property and charged your customers Wisconsin sales or use tax based on your selling price of the items (materials and labor), you have two options:

1. Do nothing. The department will not adjust your sales and use tax liability for these items.
2. File a claim for refund for the amount of tax you charged to your customer, however, you would owe Wisconsin use tax based on your purchase price of these materials.

**Note:** See *Wisconsin Tax Bulletin* 91 (April 1995), pages 21 to 26, for a tax release about filing claims for refund and passing on the tax collected from buyers.

If you treated Items O and R as real property and paid Wisconsin sales or use tax based on your purchase price of the items, you do not need to do anything. You have treated the items in a manner consistent with the department's treatment effective January 1, 1998, as shown in the preceding table, Column 2.

**Example 1:** In March 1997, you installed for \$1,500 island lights for Company A. You charged Service Station A Wisconsin sales or use tax of \$75 on this sale and installation ( $\$1,500 \times 5\% = \$75$ ). You did not pay Wisconsin sales or use tax on your purchase of the lights (\$1,000).

Since the department's treatment effective January 1, 1998, as shown in the preceding table, Column 2 (Item O), is that the island lights are real property and the sale and installation of the lights are not subject to Wisconsin sales or use tax, you may file a claim for refund for the sales tax of \$75 which you charged your customer in error.

However, if you file a claim for refund on your sale and installation of the island lights because the repair is a real property improvement, you would owe Wisconsin use tax of \$50 on your purchase of the lights used in the installation ( $\$1,000 \times 5\% = \$50$ ).

**Example 2:** In December 1996, you repaired for \$200 island lights for Service Station A. You treated the repair as a real property improvement and, therefore, paid Wisconsin sales or use tax based on your purchase price of the materials (\$75) used in the repair of the lights.

Since the department's treatment effective January 1, 1998, as shown in the preceding table, Column 2 (Item O) is that island lights are real property and repairs to them are not subject to Wisconsin sales or use tax, you do not need to do anything. You have treated the item in a manner consistent with the department's treatment effective January 1, 1998.

For sales occurring on or after January 1, 1998, the proper amount of Wisconsin sales and use tax must be determined based on the treatment reflected in the preceding table, Column 2.



## 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:

### Corporation Franchise and Income Taxes; Sales and Use Taxes

#### Nexus

W9728006 (p. 46)

#### Sales and Use Taxes

Admissions — stage performances  
W9727004 (p. 48)

Exemptions — artificial equipment  
W9727003 (p. 49)

✱ **W9728006**, April 18, 1997

**Type Tax:** Corporation Franchise and Income; Sales and Use

**Issue:** Nexus

**Statutes:** Sections 71.23(3) and 77.51(13g), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Sections Tax 2.82 (January 1979 Register) and 11.97 (March 1991 Register)

This letter responds to your request for a private letter ruling, which requests confirmation of your understanding of the sales and use tax and income and franchise tax reporting requirements of JKL Corporation (JKL).

#### Facts

Per your request and subsequent telephone conversations, the facts are as follows:

- JKL is a retailer of tangible personal property (i.e., buys and resells canned computer programs such as Lotus and Word).
- JKL does not sell or license any of its own programs for use in Wisconsin. JKL buys other companies' canned computer programs and resells the programs to Wisconsin customers.
- JKL operates two retail stores in Wisconsin.
- JKL employs salespeople who solicit sales from corporate, government, and educational organizations.
- The salespeople are based throughout the country and made sales calls to companies in Wisconsin.
- JKL also sells its products via mail order and solicits mail order sales primarily through catalogs and other materials which are sent directly to consumers.
- JKL also accepts mail order sales through its web page and does engage in some outgoing telephone solicitation.
- All items sold through the mail order division are delivered to customers by common carrier.
- All orders are accepted and approved at its corporate headquarters located outside of Wisconsin and are delivered into Wisconsin from inventory stored in a warehouse which is located outside of Wisconsin.
- JKL is closing the two retail outlets located in Wisconsin.
- The retail outlets were leased and the lease agreements run through Month X. JKL is negotiating with the landlord to terminate the lease agreements prior to Month X.
- JKL no longer operates sales offices or employs direct salespeople, and with the closure of its retail stores in Wisconsin and termination of the lease agreements, will no longer have a physical presence in Wisconsin.
- Once JKL closes its retail stores and terminates the leases in Wis-

consin, its only contact with Wisconsin will be the soliciting of customers through the use of catalogs or other similar promotional mailings, soliciting customers through JKL's web page, or soliciting customers over the telephone. All these activities will be done by persons located outside of Wisconsin, and any orders will be delivered via common carrier from a location outside of Wisconsin.

- JKL mailed a formal withdrawal application for its Wisconsin Certificate of Authority to the Wisconsin Secretary of State on Date Y.

### Request

You ask whether JKL has nexus in Wisconsin for corporate income and franchise tax purposes and/or sales and use tax purposes, since it no longer has a physical presence in Wisconsin (i.e., no longer operates sales offices, employs direct salespeople, or has retail stores located in Wisconsin).

### Rulings

#### *Corporate Income and Franchise Tax Purposes*

For Wisconsin corporate income and franchise tax purposes, Wisconsin does not recognize "part-year" nexus. Therefore, for Wisconsin corporate income and franchise tax purposes, JKL will no longer have nexus in Wisconsin beginning on the first day after the close of the taxable year in which JKL closes its retail stores in Wisconsin, terminates the leases and has no other nexus creating activities in Wisconsin. Beginning with the first day after the end of the taxable year in which JKL no longer has a Certificate of Authority from Wisconsin or has nexus in Wisconsin, Wisconsin cannot

require JKL to file a Wisconsin corporate income or franchise tax return.

**Example:** JKL's taxable year runs from April 1 through March 31. JKL withdraws its Certificate of Authority from Wisconsin by March 31, 1997. JKL's only nexus creating activity in Wisconsin after March 31, 1997, is that it is leasing property in Wisconsin until May 1997. JKL has nexus in Wisconsin and must file a Wisconsin income tax return which covers the taxable year April 1, 1997 through March 31, 1998, because Wisconsin does not recognize part-year nexus and JKL had nexus creating activities in Wisconsin on or after April 1, 1997. Assuming JKL's operations do not change from the facts described in this ruling, JKL will not be required to file a Wisconsin corporate income or franchise tax return for taxable years beginning after March 31, 1998.

#### *Sales and Use Tax Purposes*

For Wisconsin sales and use tax purposes, once JKL closes its retail stores in Wisconsin, terminates the leases, and has no other physical presence in Wisconsin, as described in the facts above, JKL no longer has nexus in Wisconsin, and Wisconsin cannot require JKL to collect Wisconsin sales or use tax on its sales of tangible personal property which are shipped to Wisconsin customers via common carrier. JKL may, however, at its option, choose to collect and remit Wisconsin use tax for the convenience of its Wisconsin customers.

(Note: If JKL has third party representatives providing certain services in Wisconsin, such as warranty repair services, training services, or installation services, it may still have nexus in Wisconsin for both Wisconsin sales and use tax purposes and

Wisconsin corporate income or franchise tax purposes. If JKL has third party representatives conducting services in Wisconsin, it may wish to furnish information about the third party representative's activities to the Department of Revenue so that a ruling can be issued on whether these activities create nexus for JKL in Wisconsin.)

### Analysis

#### *Corporate Income and Franchise Tax Purposes*

For Wisconsin corporate income and franchise tax purposes, sec. Tax 2.82(2)(b), Wis. Adm. Code, provides that under Public Law 86-272, Wisconsin may not impose its franchise or income tax on a business selling tangible personal property in Wisconsin if the business' only activities in Wisconsin are the solicitation of orders which are sent outside of Wisconsin for approval and filled by delivery from a point outside of Wisconsin.

Based on the facts provided in your request, since JKL's activities in Wisconsin will not exceed those activities protected under Public Law 86-272, Wisconsin may not impose its corporate income or franchise tax on JKL.

#### *Sales and Use Tax Purposes*

For Wisconsin sales and use tax purposes, sec. Tax 11.97, Wis. Adm. Code, provides that activities which in and of themselves **do not** create nexus in Wisconsin include:

- a) Advertising in newspapers published in or outside of Wisconsin.
- b) Sending catalogs into Wisconsin from a location outside of Wisconsin if subsequent orders are shipped either by mail or common carrier into Wisconsin.

- c) Receiving mail or telephone orders outside of Wisconsin from customers located in Wisconsin if the orders are shipped into Wisconsin either by mail or common carrier.

Based on the facts provided in your request, since JKL's activities in Wisconsin will be limited to the sending of catalogs or other promotional mailings to Wisconsin customers, soliciting orders via JKL's web page, or soliciting orders via the telephone, and having the orders delivered into Wisconsin either by mail or common carrier, JKL's activities in Wisconsin do not create nexus in Wisconsin for Wisconsin sales and use tax purposes, and JKL will not be required to collect Wisconsin sales or use tax. ☐

✱ **W9727004**, April 16, 1997

#### **Type Tax:** Sales and Use

**Issue:** Admissions — stage performances

**Statutes:** Section 77.52(2)(a)2, Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.65 (June 1991 Register)

This letter responds to your request for a private letter ruling, concerning whether Wisconsin sales tax applies to receipts of ABC Organization (ABC) from the sale of admission tickets for performances of the XYZ Theater (XYZ).

#### **Facts**

ABC is a newly established non-stock, not for profit, charitable organization, which has been organized for the purpose of bringing the performing arts and visual arts to the small, rural community of DEF and surrounding areas.

Its mission is to provide an environment that encourages a variety of opportunities to enlighten, enrich, and develop artistic growth for community members of all ages.

ABC has received a determination of exemption from the Internal Revenue Service under sec. 501(c)(3) of the Internal Revenue Code.

ABC's "fine arts season" includes a variety of enriching, entertaining events which cover many artistic styles. The following nationally-acclaimed, professional touring groups have been booked for the 1997-8 season: LMN, OPQ, RST, UVW, and XYZ. All performances will take place in the venue of ABC which is located at the north end of the DEF Public School building. Admission (ticket sales) is charged to the public for these performances.

It is XYZ for which you are requesting a "Private Letter Ruling."

XYZ provides an avenue for young people in your community to experience a stage performance that will not only tap on their talents, but also enhance their self-esteem as they participate in a full-scale musical. This experience is good for children. Growth is seen in self-confidence and skills within the drama and music areas. The community is able to share in the entertainment value of this performance. All ages can appreciate the joyful, positive excitement of the show. By bringing this artistic experience into your community, the community will be reminded of how much the arts can do for children and how relevant the arts are within the whole educational process.

Since 1970, XYZ has been creating professional drama for children with a unique style of production. It is a style that provides local audiences with the rare opportunity to experi-

ence simultaneously the polished craft of professional theatre, and the refreshing energetic talents and skills of local children, adults, and community actors.

When XYZ visits DEF, Wisconsin, it will be for a week-long residency that culminates in a full-scale musical production of a classic children's tale. Approximately 50 local performers, ranging from kindergarten to high school, are cast in the production. Five days of intensive rehearsals follow. Older students serve as assistant directors and spend the week becoming familiar with all technical aspects. The tour is complete with sets, costumes, make-up, and basic lighting equipment.

Two actor-directors from XYZ play the major roles in the production. Roles cast locally range from ensemble chorus, to Dorothy in "The Wizard of Oz," or the title characters in "Cinderella" and "Jack and the Beanstalk." Other productions include "Pinocchio," "Snow White and the Seven Dwarfs," "Johnny Appleseed," "Betty Lou and the Country Beast," "The Fisherman and His Wife," "Hansel and Gretel," "Tales of Hans Christian Anderson," "The Pied Piper," "Alice in Wonderland," and "Rumpelstiltskin."

For the audience, it's a unique, high-quality performance. For the cast, it's an intensive theatrical experience that none will soon forget. The residency includes two public performances of the final production. The actor-directors will also conduct enrichment workshops for interested school or community groups.

To help offset XYZ's fees, workshop expenses, and related advertising costs, ABC will be charging a ticket price of \$5.00 for the public performances. The audience will



primarily consist of parents, grandparents, siblings, friends, and neighbors of the children as cast and crew. Based on a standard 75% of house capacity, ABC's sales tax impact of tickets sold for these performances could amount to approximately \$200.

### Request

You requested a ruling exempting ABC from making payment of Wisconsin sales tax on its receipts from sales of admission tickets for XYZ performances.

### Ruling

ABC's gross receipts from sales of admission tickets for XYZ performances are subject to Wisconsin sales tax.

### Analysis

Section 77.52(2)(a)2, Wis. Stats. (1995-96), imposes Wisconsin sales tax on the sale of admissions to amusement, athletic, entertainment, or recreational events or places.

Section Tax 11.65(1)(a), Wis. Adm. Code, June 1991 Register, provides, in part, that sales of admissions to musical and dance performances and plays are subject to Wisconsin sales tax.

The Wisconsin Tax Appeals Commission, in the case of *Historic Sites Foundation, Inc. d/b/a Circus World Museum vs. Wisconsin Department of Revenue*, January 21, 1986, found that the "primary objective" interpretation of sec. 77.52(2)(a)2, Wis. Stats., should be used in considering the taxability of Circus World Museum's admission fees. The primary objective interpretation, as it applies to ABC's receipts from admissions to XYZ performances, is provided below.

Although the productions, including the week-long residency, are educational for the children and other cast members involved in the productions, the facts indicate that for the audience, the XYZ performances are primarily entertainment events.

Because admissions to the XYZ performances are primarily for entertainment purposes, ABC's sales of such admissions are subject to sales tax under sec. 77.52(2)(a)2, Wis. Stats. (1995-96). □

✱ **W9727003**, April 10, 1997

**Type Tax:** Sales and Use

**Issue:** Exemptions — medical appliances

**Statutes:** Section 77.54(22), Wis. Stats. (1995-96)

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

### Facts

Your client, an optometrist, is anticipating the sale of prescribed optical aids to achieve improvement in eyesight for individuals with permanent visual handicaps. The vision aids prescribed will be portable and desk top devices which magnify items such as newspapers, magazines, books, photographs, pill bottles, telephone directories, etc., and display the magnified images onto a television set, monitor, or head mount display unit.

The vision aids are described below:

- The Vision Aid A (VAA) is a portable, light weight, hand held electronic magnifier which connects to any television set to provide enhanced reading ability for those with low vision. VAA is a proven reading aid for individu-

als with macular degeneration, retinitis pigmentosa, diabetic retinopathy, and other low vision conditions helped by electronic magnification.

The VAA uses a camera unit which weighs seven ounces. The camera is held in either hand, making scanning and reading easy. Magnification is variable, and is changed by raising or lowering the camera from the reading material.

The VAA has two controls located on the hand held camera, an on-off switch and an image control to adjust contrast and reduce glare. The hand held camera connects to a video processor.

Power is supplied either by an AC transformer or by a battery pack, both of which connect to the video processor.

The video processor has outlet jacks for connection to a television set, a portable six inch flat screen monitor, or a head mount display unit.

- The Vision Aid B (VAB) is a light weight portable reader (camera unit) with variable magnification built in. The VAB has dual mountings — rollerbase and flexarm. The VAB can be used with any television set.

Accessories included are AC to DC power supply, push-on channel and video cables, video enhance/control module, manual A/B switch, 8 AA alkaline battery pack, training manual, workbook, flexarm and C-clamp mount, instructions, and carrying case.

- The Vision Aids C, D, and E (VAC, VAD, and VAE) are desk top readers which can be used

with any television set. These readers are also sold with 19" monitors for an additional charge.

- The Vision Aid F (VAF) is a stereoscopic, lightweight color headset monitor (head mount display unit) which is used with the VAB and, in some cases, is used with the VAC, VAD and VAE. Accessories included with the VAF are AC to DC power supply, rechargeable battery with charger, connection block and cable, foam forehead pad, video and audio cable, monaural audio adapter, clip-on visor for light shielding, users manual, and carrying case.
- The Vision Aid G (VAG) is a black and white portable monitor.
- Vision Aid H (VAH) model 12, 14, 19, and 25 desk top readers with 12", 14", 19", or 25" monitors.
- Vision Aid I (VAI) desk top reader with built-in 14" monitor.

Although prescribed, none of the visual aids described above are individually designed, constructed, or altered for a particular person.

### Request

You requested a ruling of whether sales of these vision aids are subject to Wisconsin sales tax or if they are tax exempt sales under sec. 77.54(22), Wis. Stats. (1995-96).

### Ruling

Sales of the following vision aids are exempt from sales and use tax:

- VAA head mount display unit, and accessories and parts.
- VAF, and accessories and parts.

For sales of exempt vision aids, it is not necessary for the seller to obtain an exemption certificate from the buyer.

Sales of the following vision aids are subject to sales and use tax:

- VAA camera unit, video processor, and battery pack.
- VAA portable six inch flat screen monitor.
- VAB.
- VAG.
- VAC, VAD, and VAE.
- VAH model 19, 25, 14, and 12 desk top readers and monitors.
- VAI desk top reader and monitor.

### Analysis

Section 77.52(1), Wis. Stats. (1995-96), imposes sales tax on retail sales of tangible personal property, unless an exemption applies.

Section 77.54(22)(a), and (b), Wis. Stats. (1995-96), provides sales and use tax exemptions for "The gross receipts from the sales of or the storage, use or other consumption of the following property and of parts and accessories for the following property:

(a) Artificial devices individually designed, constructed or altered solely for the use of a particular physically disabled person so as to become a brace, support, supplement, correction or substitute for the bodily structure including the extremities of the individual.

(b) Artificial limbs, artificial eyes, hearing aids and other equipment worn as a correction or substitute for

any functioning portion of the body."

"Correction" is defined in Webster's Ninth New Collegiate Dictionary, 1991, in part, as "a bringing into conformity with a standard."

"Worn" is defined in Webster's Ninth New Collegiate Dictionary, 1991, as the past part of "wear." "Wear" is defined as follows: "1: to bear or have on the person ..."

Because none of the vision aids described in the facts are individually designed, constructed, or altered solely for the use of a particular physically disabled person, none of these vision aids qualify for exemption under sec. 77.54(22)(a), Wis. Stats. (1995-96).

The VAA head mount display unit and VAF, and accessories and parts for them, qualify for exemption under sec. 77.54(22)(b), Wis. Stats. (1995-96), because the VAA head mount display unit and VAF are worn as a correction or substitute for any functioning portion of the body.

Because the VAA camera unit, video processor, and battery pack; VAG, VAB, VAC, VAD, and VAE; VAH model 19, 25, 14, and 12 desk top readers; and VAI desk top readers are not worn by the user, they do not qualify for exemption under sec. 77.54(22)(b), Wis. Stats. (1995-96).

**Note:** If the VAA head mount display system, consisting of the VAA camera unit, video processor, power supply, battery pack, and head mount display unit, is sold for a total price, a reasonable allocation of the selling price may be made for the head mount display unit. The portion of the selling price allocable to the head mount display unit is exempt from sales and use tax, and the remaining portion is taxable. □