



# Wisconsin TAX BULLETIN



## New Publications

See article on page 3.

## Federal Laws Enacted in 1997 Also Apply for Wisconsin

For taxable years beginning in 1997, the Wisconsin Legislature has adopted the Internal Revenue Code (IRC) as amended through December 1996, **plus** IRC provisions of two federal laws enacted on August 5, 1997, which apply to 1997 and prior taxable years.

The changes made to the IRC by the federal Balanced Budget Act of 1997 (Public Law 105-33) and the Taxpayer Relief Act of 1997 (Public Law 105-34) that affect taxable years beginning before January 1, 1998, apply for Wisconsin franchise or income tax purposes at the same time as for federal purposes. (**Note:** Changes made by these federal Acts that first affect taxable years beginning on or after January 1, 1998, have not been adopted for Wisconsin purposes. Adoption of these changes will be considered during the Legislature's session in 1998.)

Two of the major federal IRC provisions enacted by Public Laws 105-33 and 105-34 which apply for Wisconsin are as follows:

- The \$250,000 exclusion (\$500,000 for married persons filing jointly) of gain from the sale of a personal residence after May 6, 1997.
- The exclusion (up to \$5,250) of certain educational assistance benefits received by an employee for courses that begin on or after July 1, 1997. ☐

## Schedule WD Revisions Are Minor

There are no major changes to the Wisconsin Schedule WD for 1997. Because of changes in federal law, there has been concern by many tax practitioners that there would be major changes to the 1997 Schedule WD.

The 1997 federal Schedule D has 31 more lines than the 1996 version and may appear more complicated. However, because of the way in which the federal Internal Revenue Service incorporated the law changes for 1997, there is almost no impact on the Wisconsin Schedule WD.

Only minor changes in the instructions for Wisconsin Schedule WD were needed to reference different lines on the federal Schedule D. ☐

## Senior Citizen Credit Limited for 1997

For taxable years beginning in 1997, the \$25 senior citizen credit on Wisconsin individual income tax returns, for persons age 65 or over, is phased out if Wisconsin adjusted gross income exceeds a certain "threshold" amount, as shown in the table below. For 1996 and prior taxable years, the \$25 senior citizen credit was available to persons age 65 or over, without regard to income.

The full \$25 credit is available to persons whose income does not exceed the threshold amount. The credit phases out over the next \$1,000 of income (the credit is reduced by 2.5% of the income above the threshold amount).

The 1997 Wisconsin individual income tax instruction booklets include a worksheet for doing this computation.

1997 Senior Citizen Credit	(Filing Status)		
	Single	Married Filing Jointly	Married Filing Separately
Full credit if income is:	\$30,000 or less	\$40,000 or less	\$20,000 or less
Credit phased out if income is between:	\$30,000 and \$31,000	\$40,000 and \$41,000	\$20,000 and \$21,000
No credit if income is:	\$31,000 or more	\$41,000 or more	\$21,000 or more

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## Information About Working Families Tax Credit Sent to Employers

Information relating to the new Wisconsin Working Families Tax Credit, which is available for 1998, was included with the Form WT-7 mailing to employers in December 1997. This information includes the following:

1. A notice titled "New Tax Credit For Employes May Affect Withholding." This notice informs employers that certain employees (those who qualify for this new income tax credit) may elect to claim exemption from Wisconsin withholding for 1998. The notice also encourages employers to reproduce an enclosed flyer and distribute copies to employees who may qualify for the credit.
2. A flyer titled "Employes — New Tax Credit May Permit

You To Claim Exemption From Wisconsin Withholding Tax." The flyer contains information about the new Working Families Tax Credit. It includes a worksheet which an employee may use to determine if he or she qualifies to claim exemption from Wisconsin withholding for 1998, and a certificate to complete and give to the employer.

A copy of the notice for employers appears on page 30 of this Bulletin. A copy of the flyer which employees will receive appears on pages 31 and 32. □

## Tax Computation Changed for Form 1NPR Filers

For taxable years beginning in 1997, nonresidents and part-year residents of Wisconsin are required to prorate the various income tax brackets used to compute tax. The brackets are to be multiplied by a fraction, the

numerator of which is their Wisconsin adjusted gross income and the denominator of which is their federal adjusted gross income.

As a result of this proration, persons filing Form 1NPR (income tax return for nonresidents and part-year residents) will no longer use a tax table to determine their tax. Instead, a tax computation worksheet is provided in the Form 1NPR instructions. □

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## 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 "Topical Index" portion 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 "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 41 of this Bulletin. ☐

## 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). ☐

## 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

on a monthly basis. The *Report* was sent to other sales and use tax registrants (quarterly and annual filers) with their sales and use tax returns in late December.

The *Sales and Use Tax Report* includes explanations of recent sales and use tax law changes and notification of an increase in the amount subject to use tax for motor vehicles used by dealership employees. A copy of the *Report* appears on pages 33 to 38 of this Bulletin. ☐

## Focus on Publications: Extensions, Tax Paid to Another State

What tax forms can have their filing deadline extended, and how is this accomplished? How can a taxpayer get credit for taxes paid to both Wisconsin and another state on the same income? The answers to these questions and more can be found in the Department of Revenue's two new publications, Publication 401, *Extensions of Time to File*, and Publication 125, *Credit for Tax Paid to Another State*.

Publication 401 contains information about how to obtain an extension of time to file a Wisconsin tax return or report, including the names and due dates of tax forms that need to be filed, extension periods available, and which extension form to use. It also includes information about federal extensions and how they apply for Wisconsin, obtaining "Wisconsin-only" extensions, and how extensions affect tax payments.

Publication 125 contains information about credit for tax paid to another state, including who may claim the credit, how to compute the credit, and how and when to claim the credit. It also includes information about the credit as it relates to

## Sales and Use Tax Report Mailed

A special issue of the *Sales and Use Tax Report* (97-1, November 1997) was sent in November to sales and use tax registrants who file returns

changes made on the other state's tax return, and to tax-option (S) corporation shareholders and members of LLCs treated as partnerships.

Copies of these and other publications are available free of charge. See the article titled "Tax Publications Available" on page 13 of this Bulletin for a list of publications and how to obtain them. ☐

## Municipalities Adopt Premier Resort Area Tax

The City of Bayfield and the Village of Lake Delton have enacted ordinances declaring themselves to be "premier resort areas" and imposing a 0.5% premier resort area sales tax. The tax is imposed on the gross receipts from the sale, lease, or rental of goods and services that are: (1) made within the premier resort area, (2) subject to the state sales tax under subch. III of Ch. 77, Wis. Stats., and (3) made by "tourism related retailers" as defined in sec. 77.994(1), Wis. Stats., as created by 1997 Wis. Act 27, effective October 14, 1997. The 0.5% premier resort area tax will take effect on April 1, 1998 in both of these municipalities.

For additional information about the premier resort area tax, see *Wisconsin Tax Bulletin 104* (November 1997), pages 31 to 34. ☐

## Estimated Payments for Single-Owner Entities Who "Check-the-Box"

Special rules apply to certain estimated tax payments made for taxable years beginning in 1997. Under the federal "check-the-box" regulations relating to Internal Revenue Code (IRC) sec. 7701, a single-owner entity may elect to be disregarded as a separate entity for federal tax purposes. If the entity is disregarded for federal tax purposes, it is also disregarded as a separate

entity for Wisconsin franchise and income tax purposes. (See *Wisconsin Tax Bulletin 104*, November 1997, page 40.)

The sole owner is subject to the franchise or income tax on or measured by the entity's income and is required to make estimated tax payments based on the total income. If the sole owner of a single-owner entity has elected to be disregarded as a separate entity, the owner may claim any estimated tax payments made by the entity that is disregarded for taxable year 1997, on the owner's 1997 tax return.

To claim the estimated tax payments:

- Enter "IRC Sec. 7701 - See Attached Statement" on the estimated tax payments line of the owner's Wisconsin franchise or income tax return.
- Attach a statement to the front of the return indicating the name and federal employer ID number used for the payments made by the entity that is disregarded, and the amount of the estimated tax payments.
- Indicate in the statement whether the estimated payments were made by the entity as a partnership or a corporation.

(Note: For tax-option (S) corporations and qualified subchapter S subsidiaries, also see additional instructions under Line 12 (Estimated Tax Payments) in the 1997 Form 5S booklet.) ☐

## Schedule 3K-1s — File on Magnetic Media?

Partnerships with 100 or more partners are encouraged to file their Wisconsin Schedule 3K-1s, *Partner's Share of Income, Deductions, etc.*, on magnetic media. The

types of magnetic media allowed include magnetic tape, cartridge, and diskette.

If your Schedule 3K-1s are prepared by software, ask your software company if they can provide these documents on magnetic media rather than on paper. Filing these documents on magnetic media will save both preparers and the department valuable resources, such as paper, shipping costs, and processing time. It's another way the department is streamlining your process of filing tax returns.

To get information and specifications for filing your Form 3K-1s magnetically, contact:

Kris Jager  
Wisconsin Department of Revenue  
Corporation Processing Unit  
P.O. Box 8908  
Madison, WI 53708-8908

Phone: (608) 266-0800

Email: [KJager@mail.state.wi.us](mailto:KJager@mail.state.wi.us) ☐

## Use of Form 4X Eliminated for 1997

Beginning with 1997 corporate tax returns, Wisconsin Form 4X will no longer be used for amending a Form 4 or Form 5, *Wisconsin Corporation Franchise or Income Tax Return*. Instead, a "checkbox" is included on Forms 4 and 5, for taxpayers to designate that the form is an amended return. (Note: Form 4X will still be used for amending 1996 and prior years' Forms 4 and 5.)

Instructions are included in the Form 4 and Form 5 booklets, regarding the filing of an amended return. These instructions include worksheets to determine the correct amount of additional tax due or overpayment. ☐

## Withholding Exemption Certificate Revised

The *Employer's Wisconsin Withholding Exemption Certificate*, Form WT-4, has been revised to accommodate information needed by the Department of Workforce Development (DWD) for their New Hire Reporting program.

An employer will need to mail or fax a copy of Form WT-4 to DWD for every newly-hired employee, unless the employer has elected one of the other acceptable methods of reporting to DWD, such as electronic filing. Employers will still need to mail copies of Form WT-4 to the Department of Revenue (DOR) when an employee claims more than ten exemptions, has claimed complete exemption from withholding and earns more than \$200 a week, or is believed to have claimed more exemptions than he or she is entitled to.

A copy of the revised Form WT-4 was mailed to each registered employer with Form WT-7, *Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages*, in December 1997. This mailing also included information from DWD regarding the New Hire Reporting program.

Additional copies of Form WT-4 can be obtained by calling DOR's forms order line at (608) 266-1961, by calling Fax-A-Form at (608) 261-6229 from a fax telephone, or by accessing the department's Web page at <http://www.dor.state.wi.us>. □

## Two New Combined Nonresident Tax Returns

Wisconsin combined nonresident tax returns have been available for several years, Form 1CNP since 1987 and Form 1CNS since 1988. These forms enable partnerships to report the Wisconsin income of two

or more of their nonresident partners on one form (Form 1CNP) or tax-option (S) corporations to report the Wisconsin income of two or more of their nonresident shareholders on one form (Form 1CNS). For 1997, two additional Wisconsin combined nonresident tax returns are available: Form 1CNA, for nonresident members of a professional athletic team; and Form 1CND, for nonresident directors of a corporation.

A professional athletic team that has activities in Wisconsin and has two or more nonresident team members whose only Wisconsin income is compensation from the team may file a combined return, Form 1CNA, on behalf of those members. "Members" includes active and disabled players; and coaches, managers, trainers, and others who regularly travel with and perform services for the team.

A corporation that does business in Wisconsin and has two or more nonresident directors whose only Wisconsin income is directors' fees from the corporation may file a combined return, Form 1CND, on behalf of those directors.

The Form 1CNA or 1CND, which takes the place of the individual income tax return of each participating team member or director, must be filed on a calendar-year basis. Team members or directors may not participate in the combined return for 1997 in any of the following cases:

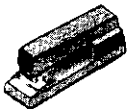
- The member or director files a tax return for 1997 on a fiscal-year basis.
- The member or director is a part-year or full-year resident of Wisconsin in 1997.
- The member or director derives 1997 taxable income or deductible loss from Wisconsin other than compensation from one profes-

sional athletic team or director's fees from one corporation.

- The member or director wishes to claim any deductions or tax credits for 1997.

Additional information about any of the four combined nonresident tax returns can be obtained by writing to Wisconsin Department of Revenue, Administration Technical Services, P.O. Box 8933, Madison, WI 53708-8933, or by calling (608) 266-5464. □

## Attaching Copy of Federal Return



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

### Federal Form 1040PC or TeleFile Filers

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

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

their federal TeleFile worksheet to their Wisconsin Form 1 or 1NPR in lieu of federal Form 1040, 1040A, or 1040EZ.

### Taxpayers Not Required to File With the IRS

Some taxpayers who are required to file a Wisconsin income tax return are not required to file a federal income tax return with the IRS. For example, a single person under age 65, with gross income of at least \$5,200 but less than \$6,800 for 1997, must file a 1997 Wisconsin return but is not required to file a 1997 federal return.

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

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

### Don't Forget Due Dates for Information Returns

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

Information returns due February 2, 1998 (January 31 is a Saturday) include Wisconsin Form 9b (or federal Form 1099-R, 1099-MISC, or W-2) to report retirement plan distributions and other nonwage compensation; Form W-2 to report

wages, tips, and other compensation; and Form W-2G to report gambling winnings.

Information returns due March 16, 1998 (March 15 is a Sunday), or April 15 by payers other than corporations, include Form 9b (or federal Form 1099-MISC) to report rents or royalties; and Form 8 to report capital stock transfers (by corporations only).

Additional information is available in Wisconsin Publication 117, *Guide to Wisconsin Information Returns*. See the article titled "Tax Publications Available" on page 13 of this Bulletin for information about how to obtain a copy of the publication. □

### Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue are presenting a series of joint sales and use tax seminars over the next several months, which will include information on differences between the two states' laws. The following seminars are open to the public without charge:

Date	Location
March 3, 1998	Hudson, WI <i>General Businesses</i>
March 3, 1998	Duluth, MN <i>Contractors</i>
April 21, 1998	LaCrosse, WI <i>General Businesses</i>
May 5, 1998	Duluth, MN <i>General Businesses</i>
May 5, 1998	Winona, MN <i>Contractors</i>

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

## Question and Answer

**Q** How will the new "Wisconsin Works" family assistance program, which replaces AFDC, affect taxable income for income tax purposes, and homestead credit?

**A** Participants in the Wisconsin Works (or "W-2") assistance program can receive various types of payments from the program. Listed below are the types of Wisconsin Works payments, and how they affect taxable income and homestead credit.

- "Trial jobs" payments. These payments are taxable wages received from an employer, who is subsidized by the Wisconsin Works program. The payments are includable in both taxable income for income tax purposes and household income for homestead credit purposes, just as any other wages.
- "Community service job" payments and "transitional placement" payments. These payments are monthly amounts paid under the Wisconsin Works program. The payments are not taxable for income tax purposes but must be included in household income for homestead credit purposes. In addition, allowable property taxes or rent on the homestead credit claim must be reduced by one-twelfth for each month these payments were received during the year.
- "Custodial parent of infant" payments. These are also monthly payments, which terminate when the recipient's infant reaches age 12 weeks. The payments are not taxable for income tax purposes but must be included in household income for homestead credit purposes. However, these payments do not require the one-twelfth reduction

of property taxes or rent on the homestead credit claim.

- d) "Job access loans," "health care coverage," "child care subsidies," and "transportation assistance." These payments are not taxable for income tax purposes and are not includable in household income for homestead credit purposes. They do not require the one-twelfth reduction of property taxes or rent on the homestead credit claim.

**Q** Are charges for snowplowing subject to Wisconsin sales and use tax?

**A** No. Snowplowing is not a taxable service.

**Q** Are charges for sanding and salting roads, sidewalks, or parking lots subject to Wisconsin sales and use tax?

**A** No. However, persons providing those services must pay Wisconsin sales or use tax on their purchases of the sand and salt used in providing the services. ☐

## Tips to Speed Refund Processing

If you have a refund coming on your 1997 Wisconsin income tax return and want your return processed as quickly as possible, you can help by following the tips listed below.

### File Electronically

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

- It's fast and safe. Most refund checks are sent within a week. Direct deposits are even faster, and there's no check to lose.

- It's documented. Your electronic return transmitter is notified that your Wisconsin return has been received and accepted.
- It's easy and accurate. Approved tax preparers and others can file electronically for you, and the electronic filing system checks the return for common errors.

### Use the Quick Refund Program

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

- File a signed and complete 1997 Form WI-Z, 1A, or 1, by April 1, 1998.
- Use the department-printed mailing label with no changes.
- Be sure **your** correct name, social security number, and address are on the label you are using.
- Have a Wisconsin address on the label.
- Enter the refund amount (including cents) in the quick refund box at the top of the return.
- Not claim homestead or farmland preservation credit, and owe no delinquent taxes or debts to other state agencies.
- Mail the return to Quick Refund, P.O. Box 38, Madison, WI 53787-0001.

### Use Your Label

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

- Use the label even if you are filing a computerized return or a return completed by a preparer.

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

### File an Accurate and Complete Return

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

- Make entries legible and on the correct lines.
- Attach the correct withholding statements.
- Claim only Wisconsin tax withheld, not federal tax, social security, or tax withheld for another state.
- Attach **all** necessary supporting schedules.
- Fill in **all** requested information when claiming the school property tax credit.
- Attach a **complete** copy of your federal return and schedules if you file on Form 1 or 1NPR.
- Attach a completed rent certificate or a copy of your 1997 property tax bill if you are claiming homestead credit (not necessary if you are claiming only the school property tax credit). ☐

### Visit the Department of Revenue Internet Site!

You can receive updated Wisconsin tax information via the internet, by accessing the Department of Revenue's World Wide Web site at <http://www.dor.state.wi.us>. This site contains several valuable areas of information, including the following:

- **What's New.** Contains press releases and other informational materials published by the department.
- **Forms & Publications.** Includes downloadable tax forms and instructions, as well as publications relating to tax matters.
- **Agency Information.** Describes the functions of each office or division, lists executives, administrators, and other managers, and gives information about how to contact various offices.
- **Frequently Asked Questions.** Answers questions relating to various taxes, filing returns, obtaining forms, office locations, taxpayer assistance, and other tax-related matters.
- **Survey.** Gives visitors an opportunity to give the department their opinion on what's good and not so good about the web page, and to suggest ideas for improving it.
- **Related Sites of Interest.** Gives information about other Wisconsin agencies' sites, federal sites, and other sites of interest.

If you would like additional information about the department's web site, contact the department's internet coordinator, Mary Lou Clayton, at (608) 261-2272. □

## Withholding Tax Update Sent to Employers

The annual Withholding Tax Update was sent in December 1997, along with Forms WT-7, *Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update appears on pages 39 and 40 of this Bulletin. □

## Form 1099-Gs and 1099-INTs Mailed to Taxpayers

The Department of Revenue is mailing approximately 660,000 Form 1099-Gs and 1,000 Form 1099-INTs in January 1998. Federal law requires that the department provide 1997 Form 1099-Gs to persons who received a Wisconsin income tax refund in 1997 and claimed state income tax payments as an itemized deduction on the federal tax return for the year to which the refund applies. Form 1099-INTs must be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue.

Regardless of whether a taxpayer is sent a Form 1099-INT, the taxpayer must report all interest received from the department in 1997 as income on his or her 1997 federal and Wisconsin tax returns.

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

Form 1099-G explains how the refund reported to the Internal Revenue Service (IRS) was determined. The first line shows the amount of the refund. Subsequent lines show adjustments for: amounts applied to next year's estimated taxes; endangered resources donations; late filing penalties and interest; homestead, farmland preservation, farmland tax relief, and earned income credits; retirement plan penalties; and other adjustments. The last line shows the refund reported to the IRS. □

## Businessman Jailed for Permit Violation

Jerome S. Burdick, 56, Eagle River, was sentenced in September 1997, to 30 days in jail for operating a business without a seller's permit, after it had been revoked. Oneida County Circuit Court Judge Mark A. Mangerson also ordered Burdick to pay restitution for delinquent sales taxes and withholding taxes, within nine months. He was permitted work release privileges in connection with the jail term.

Burdick, who operated Minocqua Cleaners in Minocqua, was charged in December 1996 with the "operating without a permit" violation, after his seller's permit had been revoked on two separate occasions.

In November 1997, Gerald J. Becker, 51, the former owner of Tony's Place restaurant in Oshkosh, was charged with two counts of filing false income tax returns. The charges were filed in Winnebago County Circuit Court.

According to the criminal complaint, Becker failed to report income of over \$70,000 in each of the years 1994 and 1995. His reported income was \$12,000 in 1994 and \$14,000 in 1995. If convicted, he faces possible imprisonment, fines, prosecution costs, and over \$11,000 in unpaid taxes.

William J. Brown, 40, a Green Bay used car dealer, was charged in December 1997, with felony theft of state sales taxes. According to the criminal complaint filed in Brown County Circuit Court, Brown collected over \$115,000 in sales tax monies from September 1989 through September 1994, which he failed to pay over to the state. The



customers on motor vehicles he sold through his business known as Quality Plus Auto Sales.

If convicted of the theft, Brown could face up to ten years in prison and up to \$10,000 in fines. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, penalty, and interest due follows the conviction for criminal violation. ☐

## How to Avoid Processing Delays

Each year thousands of tax returns and credit claims are sent back to taxpayers or letters are required, because of missing schedules or information. In the 1997 processing season (1996 returns and claims) the department sent back nearly 100,000 tax returns and credit claims. Listed below are tips for avoiding correspondence or "sendbacks" of tax returns and credit claims.

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

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

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

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

### Homestead Credit (Schedule H)

- Include Wisconsin return, copy of federal return and schedules, and wage statements with Schedule H, or attach complete copy of tax return if Schedule H is filed separately from the tax return.
- Attach explanation if low or no income is reported.
- Follow special instructions for married, separated, or divorced persons.
- Attach rent certificate.
- Be sure rent certificate is filled in completely, is not altered, is not a photocopy, and has an original signature.
- Attach copy of 1997 property tax bill (not county receipt, installment stub, mortgage statement, canceled check, etc.).
- Attach ownership verification (copy of deed, land contract, divorce judgment, final judgment in an estate, etc.) if tax bill shows owners other than claimant and spouse.
- Attach explanation if claiming less than twelve months' rent and/or property taxes.
- Sign the Schedule H.

### Farmland Preservation Credit (Schedule FC)

- Attach copies of all 1997 property tax bills, not tax receipts.
- Attach ownership verification (copy of deed, land contract, divorce judgment, final judgment in an estate, etc.) if tax bill shows owners other than claimant and spouse.
- Attach correct and complete zoning certificate.
- Attach copy of **executed** farmland preservation agreement.
- Attach closing agreement for sale or purchase of land if a transfer took place during the year.
- Attach statement signed by county treasurer to verify payment of prior year's property tax when tax bill indicates delinquent taxes.
- Attach extension agreement if farmland preservation agreement is expired.

### Partnership (Form 3)

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

## Avoid Errors on Income or Franchise Tax Returns

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

## Errors Discovered in Processing Returns

Common errors discovered in processing 1996 individual income tax returns include the following:

### Math Errors —

250,000 returns (10% of returns processed) were adjusted for math errors.

### School Property Tax Credit —

33,000 returns were adjusted for errors in claiming this credit; 80% of the errors included looking up the wrong amount of credit.

### Itemized Deduction Credit —

31,000 returns were adjusted; two-thirds of the errors included looking up the incorrect amount of standard deduction.

### Incomplete Returns —

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

### Estimated Tax Underpayment —

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

### Temporary Recycling Surcharge —

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

### Tax Withholding —

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

## Errors Discovered in Auditing

Errors discovered in auditing Wisconsin individual income, corporate, and sales and use tax returns and

credit claims resulted in the collection of \$109.3 million in taxes, excess credits, penalties, and interest in the fiscal year ending June 30, 1997. This includes sales and use taxes of \$58 million, individual and fiduciary income taxes of \$22 million, and corporation taxes of \$29.3 million. The most common errors are described below.

## INDIVIDUAL AND FIDUCIARY

### Income Computed Incorrectly —

- unemployment compensation or social security income (federal/Wisconsin differences calculated incorrectly)
- tax-option (S) corporation income (wrong amount entered from Schedule K-1)
- math errors (errors on federal return carried over to Wisconsin form)

### Income Omitted —

- IRA distributions
- total gross receipts
- municipal interest
- interest and dividends
- gambling winnings that are not reported on a Form 1099-G

### Credits Computed Incorrectly —

- school property tax (incorrectly claimed on business portion, or claimed in year taxes not paid)
- dependent (incorrectly claimed for self or spouse)
- earned income (claimed in error or computed incorrectly)
- taxes paid to other states (incorrectly claimed other state's withholding)

- itemized deduction (percentage of income not subtracted from medical or miscellaneous deductions)

### Incorrect Deductions or Expenses —

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

### Other Errors —

- IRA penalty omitted
- Wisconsin return not amended for IRS adjustments
- incorrect filing status used
- farm loss limitation not properly computed
- income earned in another state omitted on Wisconsin return
- capital loss carryover not claimed in subsequent year
- refund entered on estimated tax offset line

## HOMESTEAD CREDIT

### Household Income Omitted —

- AFDC
- IRA/deferred compensation deductions
- gross pension
- depreciation or sec. 179 expense
- tax-exempt interest
- unemployment compensation

### Property Taxes —

- taxes not reduced for months AFDC received
- special assessments incorrectly claimed
- more than one acre claimed for nonfarm property
- taxes not properly prorated for co-ownership or for occupancy only part of year

### Rent —

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

### Credit —

- amount looked up incorrectly in computation table

### FARMLAND PRESERVATION CREDIT

### Household Income Omitted —

- gross pension
- depreciation
- deferred compensation
- capital gain exclusion
- capital loss carryover
- gross social security

### Property Taxes —

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

### Credit Percentage —

- incorrect percentage claimed. □

## Common Mistakes Regarding Wisconsin Estate Taxes

Listed below are errors that are commonly made regarding Wisconsin estate taxes, and the filing of a Wisconsin Estate Tax Return, Form W706. This information may be helpful in preparing proper and timely estate tax returns and related documents.

- Failing to file a Wisconsin Form W706. Wisconsin does have an estate tax. Estates that are required to file a federal United States Estate Tax Return (Form 706) are also required to file Wisconsin Form W706.
- Failing to file a **complete** return with the required attachments. Missing attachments commonly include:
  - Complete copy of the federal estate tax return, Form 706, including all schedules.
  - Copy of the decedent's last will, and any codicils.
  - Trust instruments, and amendments if applicable.
  - Complete listing of assets from the federal return.
  - Copy of an approved Form 4768, the Internal Revenue Service extension of time to file

the federal Form 706 after its original due date.

- Failing to file by the due date. The due date of the Wisconsin Form W706 is nine months after the date of death, not twelve months as under the repealed inheritance tax law.
- Failing to timely pay the Wisconsin estate tax. The tax is due nine months after the date of death, even if an extension of time to file has been requested (an extension to file does not extend the time to pay).

The tax should be paid on Form 401T, with an accompanying letter stating that a federal extension to file has been requested, if that is the case. Do not make an estate tax payment on an estimated income tax voucher.

- Incorrectly computing the interest due on a late-paid estate tax. Interest on a late payment must be computed from the date of death, not from the due date of the return.
- Failing to compute and pay the late-filing penalty. A penalty of five percent of the Wisconsin estate tax is due on returns filed more than nine months after the date of death, unless a federal extension has been granted and the return is filed within the extension period. Payment of the estate tax within nine months of the date of death may not affect the imposition of the late-filing penalty.
- Failing to notify the department within 30 days of adjustments made by the Internal Revenue Service (IRS) to federal Form 706, as required under sec. 72.33, Wis. Stats. (1995-96). Notification should include a copy of the

IRS Form 1273, 3228, or 886A, and a cover letter.

- Failing to notify the department that more than one certificate will be requested. Whenever possible, certificate requests for both the fiduciary return and the estate tax return should be made at the same time. If this is not possible, inform the department at the time of the first request that both certificates will be requested. This will help expedite the requests, and you will only need to send one set of documents for the estate. ☐



### 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. ☐

## Department Offers Taxpayer Assistance

During the filing season of January through April 15, 1998, department personnel will be available to answer questions.

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

### Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
* Appleton	265 W. Northland Ave.	(920) 832-2727	7:45-4:30
* Eau Claire	718 W. Clairemont Ave.	(715) 836-2811	7:45-4:30
* Green Bay	200 N. Jefferson St., Rm. 526	(920) 448-5179	7:45-4:30
* Kenosha	5906 10th Ave., Rm. 106	(414) 653-7100	7:45-4:30
* Madison	125 S. Webster St.	NONE	8:00-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
* Milwaukee	819 N. Sixth St., Rm. 408	(414) 227-3883	7:45-4:30
* Racine	616 Lake Ave.	(414) 638-7500	7:45-4:30
* Waukesha	141 N.W. Barstow St.	(414) 521-5310	7:45-4:30

### Offices Providing Assistance on Mondays Only (unless otherwise noted)

Baraboo	1000 Log Lodge Ct.	(608) 356-8973	7:45-4:30
Beaver Dam	211 S. Spring St.	(920) 887-8108	7:45-4:30
Elkhorn	715 W. Walworth St.	(414) 723-4098	7:45-4:30
Fond du Lac	845 S. Main, Ste. 150	(920) 929-3985	7:45-4:30
Grafton	1930 Wisconsin Ave.	(414) 377-6700	7:45-4:30
Hayward	100 Ranch Rd.	(715) 634-8478	7:45-11:45
Hudson	1810 Crestview Dr., Ste. 1B	(715) 381-5060	7:45-4:30
Janesville	101 E. Milwaukee	(608) 758-6190	7:45-4:30 (a)
* La Crosse	620 Main St.	(608) 785-9720	7:45-4:30 (a)
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-4:30
Manitowoc	914 Quay St.	(920) 683-4152	7:45-4:30
Marinette	Courthouse, 1926 Hall Ave.	(715) 732-7565	9:00-12:00
Marshfield	300 S. Peach Ave., Ste. 4	(715) 387-6346	7:45-4:30
Monroe	1518 11th St.	(608) 325-3013	7:45-11:45
Oshkosh	515 S. Washburn, Ste. 105	(920) 424-2100	7:45-4:30
Rhineland	203 Schiek Plaza	(715) 365-2666	7:45-4:30
Rice Lake	11 E. Eau Claire St., Ste. 4	(715) 234-7889	7:45-4:30
Shawano	1340 E. Green Bay St., Ste. 2	(715) 526-5647	7:45-4:30
Sheboygan	807 Center Ave.	(920) 459-3101	7:45-4:30
Superior	1225 Tower Ave., Ste. 315	(715) 392-7985	7:45-4:30
Tomah	203 E. Clifton	(608) 372-3256	7:45-11:45
Watertown	600 E. Main St.	(920) 262-2700	7:45-11:45
Waupaca	644 Hillcrest Dr., Ste. 2	(715) 258-9564	7:45-11:45
Wausau	710 Third St.	(715) 842-8665	7:45-4:30
West Bend	120 N. Main St.	(414) 335-5380	7:45-4:30
Wisconsin Rapids	830 Airport Ave.	(715) 421-0500	9:00-4:30

\* Open During noon hour

(a) Open Monday, Tuesday, and Wednesday

## 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 (12/97)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (10/97)
- 104 Wisconsin Taxation of Military Personnel (10/97)
- 106 Wisconsin Tax Information for Retirees (10/97)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1997 (10/97)
- 112 Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (11/97)
- 113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/97)

- 115 Wisconsin Federal/State Electronic Filing Handbook (12/97)
- 116 Income Tax Payments Are Due Throughout the Year (12/95)
- 119 Limited Liability Companies (LLCs) (12/97)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/97)
- 121 Reciprocity (12/97)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 1997 (11/97)
- 123 Business Tax Credits for 1997 (12/97)
- 125 Credit for Tax Paid to Another State (11/97)
- 600 Wisconsin Taxation of Lottery Winnings (10/97)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (10/97)

### 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 (12/97)
- 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 (10/97)

## Other Topics

- 111 How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (10/97)
- 114 Wisconsin Taxpayer Bill of Rights (11/97)
- 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 (9/97)
- 400 Wisconsin's Temporary Recycling Surcharge (12/97)
- 401 Extensions of Time to File (11/97)
- 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 (12/97)
- 504 Directory for Wisconsin Department of Revenue (10/97)
- 508 Wisconsin Tax Requirements Relating to Nonresident Entrepreneurs (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) ☐

## How to Obtain Copies of Your Tax Returns

### What Is Available

Upon request, the Department of Revenue will provide taxpayers with copies of their previously filed tax returns (or information regarding them). Copies of returns or information are generally mailed within 10 days after a request is received.

The chart at the end of this article lists returns and information that are available, and the number of prior years for which they are available.

When a copy is requested, a copy of the federal return will also be provided if it is a part of the Wisconsin return. Wage statement copies are not always available with Forms 1A and WI-Z.

Copies of tax returns are generally available within four months after the returns are filed.

### Who May Request Copies

Taxpayers, partners in a partnership, or corporation officers may request copies of their own tax returns. Other persons may also request copies, if they provide a power of attorney form or other written authorization, signed by the taxpayer, partner, or corporation officer, and specifying the type of tax return and periods requested. A photocopy or fax copy of an authorization is not acceptable unless the authorization specifically states that copies have the same force as the original.

Requests for copies of a deceased taxpayer's tax returns must include a certified domiciliary letter and be signed by the personal representative of the estate. If there is no estate, a certified copy of the death certificate and a statement of the reason for the request are required.

### Fees

The fee is \$5.00 for each return or information request. There is an additional fee of \$1.00 per return for a certified copy. **Payment must be sent with the request.**

### How to Request

All requests for copies of returns or information must be made in writing or in person. Requests by telephone or fax machine will not be accepted.

Requests must include the following:

1. Name on the requested tax return.
2. Social security number (including spouse's social security number, if applicable), or other identification number of the taxpayer.
3. Type of return and year(s) or period(s) of the tax return being requested.
4. Name and address to which the copies are to be mailed.
5. Signature of the taxpayer, partner, corporation officer, or authorized representative.
6. Payment of appropriate fees for requested information.

### Where to Direct Requests

**Written Requests:** Mail your request to Wisconsin Department of Revenue, Central Files Section, P.O. Box 8903, Madison, WI 53708-8903.

**In-Person Requests:** Make your request at the Department of Revenue, Audit Bureau, 4638 University Avenue, Room 132, Madison, Wisconsin. Office hours are 7:45 a.m. to 4:30 p.m. Proper identification (for example, a driver's license) is required.

## Questions

If you have questions, you may call the Department of Revenue in Madison, at (608) 267-1266.

Returns/Information Available	# of Years
corporation or insurance tax returns	6
gift tax reports	5
homestead credit claims	10
individual income tax returns	4
(electronically filed individual returns)	10
(microfilmed individual returns)	10
microfiche tax roll worksheets	26
partnership tax returns	4
sales/use tax returns	10
trust fiduciary returns	4
withholding statements	5
(microfilmed withholding tax returns)	10

## How to Obtain Wisconsin Tax Forms

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

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

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

### To Pick Up Forms at a Department of Revenue Office

If you want to pick up forms at a department office, you may visit any of the department's 35 offices (including two locations in Madison). The office locations and hours of service are listed in the article titled "Department Offers Taxpayer Assistance" on page 12 of this Bulletin (assistance is also available at these offices).

### To Receive Forms in the Mail

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

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

### To Receive Forms Via Your Fax Machine

You can receive forms via your fax machine by using the department's Fax-A-Form system. Individual income tax, homestead credit, farmland preservation credit, corporation franchise and income tax, estate tax, fiduciary income tax, and partnership forms and instructions for 1995 through 1997 are available via Fax-A-Form. For sales/use, withholding, and alcohol beverage taxes, only 1997 forms and instructions are available. In addition, 1994, 1995,

and 1996 amended individual income tax forms and instructions are available, as well as publications published by the department (see the article titled "Tax Publications Available" on page 13 of this Bulletin).

To use Fax-A-Form, call (608) 261-6229 from the handset of your fax machine or the touch-tone telephone of your fax modem (don't press "start" yet). If your fax machine does not have a handset, use the keypad if tones are transmitted, or connect a touch-tone telephone if tones aren't transmitted. Follow the voice prompts and enter the retrieval codes for the items you want, using the keypad. Press "start," "send," or "copy" (fax modem users click on "manual receive").

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

### To Receive Forms Via the Internet

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

The address to access the department's World Wide Web site to receive forms is

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

## Administrative Rules in Process

Listed below are proposed new administrative rules and changes to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of January 1, 1998, or at the stage in which action occurred during the period from October 2, 1997 to January 1, 1998.

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

- 11.33 Occasional sales - A

### Rules Reviewed by Legislative Council Rules Clearinghouse

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

### Rules Being Reviewed Following Publication of Notice

- 11.12 Farming, agriculture, horticulture and floriculture-A

### Rules Adopted and in Effect (including effective date)

- 11.001 Forward and definitions-A (11-1-97)
- 11.002 Registration-A (11-1-97)
- 11.01 Sales and use tax return forms-A (11-1-97)
- 11.05 Governmental units-A (11-1-97)

- 11.14 Exemption certificates, including resale certificates-A (11-1-97)
- 11.15 Containers and other packaging and shipping materials-A (1-1-98)
- 11.32 "Gross receipts" and "sales price"-A (11-1-97)
- 11.35 Occasional sales by non-profit organizations-A (11-1-97)
- 11.39 Manufacturing-A (11-1-97)
- 11.41 Exemption of property consumed or destroyed in manufacturing-A (11-1-97)
- 11.68 Construction contractors-A (11-1-97)
- 11.86 Utility transmission and distribution lines-A (11-1-97)
- 11.97 "Engaged in business" in Wisconsin-A (11-1-97) □

## Recently Adopted Rules Summarized

Summarized below is information regarding 13 sales and use tax rules which have been revised, effective November 1, 1997 or January 1, 1998. In addition to these rules, seven other sales and use tax rules were revised in 1997 and were summarized in earlier issues of the *Wisconsin Tax Bulletin*.

The 13 rules summarized below are listed under "Rules Adopted and in Effect" in the previous article (titled "Administrative Rules in Process"). To order up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 41 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

**Tax 11.001.** Section Tax 11.001 (intro.) is amended, to add a reference to stadium tax. Subsection (4) is renumbered (5) and new sub. (4) is created, to define "stadium tax." Old sub. (5) is repealed and set forth in newly created sub. (6), to improve style and format.

**Tax 11.002.** Section Tax 11.002(title) is amended (the title is changed to "Registration"), to more clearly reflect the subject of the section. Subsections (1), (2)(c), (4)(a), and (4)(b) are amended, to reflect proper style. Subsection (2)(d) is created, to add provisions for registering for collection of local exposition district taxes. Subsection (3) is amended, to reflect the expanded use of the permit application, Form A-101.

**Tax 11.01.** Subsection (1)(b) is amended, to add a reference to stadium tax. Subsections (1)(i), (1)(j), and (1)(k) are created, to describe Department of Natural Resources forms used for reporting sales or use tax on purchases of boats, snowmobiles, and all-terrain vehicles.

**Tax 11.05.** Subsections (2)(h) and (2)(m) are amended, to reflect correct language, style, and terminology. Subsections (2)(k) and (3)(L) are amended, to more clearly reflect current statutory provisions.

Subsection (2)(s) is amended, to reflect the correct treatment of landscaping services in accordance with August 28, 1996 and April 4, 1997 decisions of the Wisconsin Tax Appeals Commission (WTAC), *Straight Arrow Construction Company, Inc.*, Docket 93-S-569.

Subsection (3)(b) is amended, to reflect the exemption for fuel sold for use in farming. Subsection (4)(a) is amended, to list additional exempt governmental units as provided by law changes. Subsection (4)(b) is repealed and recreated and sub. (4)(e) is amended, to reflect the creation of a



new exemption certificate for governmental units.

**Tax 11.14.** Subsection (2)(a)(intro.) is amended and sub. (2)(a)7 is created, subs. (12) to (14) are renumbered (13) to (15), and new sub. (12) is created, to reflect the creation of a new exemption certificate for governmental units.

**Tax 11.15.** Subsections (1)(a) and (1)(c)5 are amended, to reflect proper language, punctuation, and style. Subsection (3) is repealed, because it duplicates information contained in Tax 11.12, relating to the exemption for containers used in farming; Tax 11.12 is referenced in a note. Accordingly, subs. (4) to (8) are renumbered (3) to (7) and sub. (5) as renumbered is amended, to reflect that there is no statutory provision which permits items sold below cost to be purchased without tax for resale.

**Tax 11.32.** Subsection (4)(a) is renumbered (4)(a)(intro.) and amended, and subs. (4)(a)1, (4)(a)2, and (4)(a)3 are created, to clarify methods a retailer may use to notify customers of sales tax amounts. Subsections (4)(b) and (4)(c) are amended, to replace the term "vending machine operator" with "vending machine retailer" for consistency with other rules, and to reflect proper language and style. Subsection (5) is repealed and recreated, to reflect proper style, to create a 5.1% bracket chart for state and stadium taxes and a 5.6% bracket chart for state, county, and stadium taxes, to reference all applicable statutes, and to remove the reference to posting bracket system cards, now a part of sub. (4)(a). Subsections (6) and (7) are renumbered (7) and (8) and new sub. (6) is created, to provide an alternative bracket system (a mathematical computation).

**Tax 11.35.** Section Tax 11.35 (title) is amended, to remove the reference to the 1989 effective date. Subsections (1) and (2) are renumbered (2) and (1), to reflect proper alphabetical

format, and sub. (2)(b) as renumbered is amended, to correctly state the \$300 limit for entertainment. Subsections (3) and (5)(b) are amended, to reflect proper style. Subsection (6)(a) is amended, to clarify that it may apply to nonprofit organizations.

**Tax 11.39.** Subsections (2)(a), (3)(m), (3)(ze), (3)(zf), and (4)(intro.) are amended, to reflect proper style.

Subsection (3)(fr) is created to add cheese cutting and repackaging plants as a manufacturer, to reflect a Wisconsin Supreme Court decision. Subsections (3)(jd) and (3)(jr) are created, to reflect the department's position that dental labs are manufacturers, and that ductwork fabrication by contractors is considered manufacturing even if the contractor engages in real property construction when it installs the ductwork. Subsections (3)(oc) and (3)(os) are created, to reflect Court of Appeals and Circuit Court decisions. Subsections (3)(wd) and (3)(wr) are created, to reflect the department's position that snowmaking for a ski hill is manufacturing, and that photofinishing is manufacturing.

Subsections (4)(a), (4)(d), (4)(r)2, and (4)(r)4 are repealed, to reflect various WTAC and court decisions, and to reflect the department's position that dental labs are manufacturers. Accordingly, subs. (4)(b) and (4)(c) are renumbered (4)(a) and (4)(b), subs. (4)(e) to (4)(o) are renumbered (4)(c) to (4)(m), sub. (4)(r)(intro.) and 1 is renumbered (4)(n)(intro.) and 1, sub. (4)(r)3 is renumbered (4)(n)2, and subs. (4)(r)5 to 9 and (4)(r)11 to 14 are renumbered (4)(n)3 to 11. As renumbered, sub. (4)(a) is amended, to clarify that certain activities when performed by contractors are not manufacturing, and sub. (4)(k) is amended, to provide consistent use of language.

**Tax 11.41.** Subsection (1) is repealed and recreated and subs. (2) and (3)(b) are repealed, to reflect April 23 and

July 15, 1996 WTAC decisions, *Cherney Microbiological Services, Inc.*, Docket 94-S-209, that a testing laboratory was entitled to claim a sales or use tax manufacturing exemption on certain purchases. Accordingly, subs. (3)(title), (3)(a)(intro.), and (3)(a)1 to 15 are renumbered (2)(title), (2)(a)(intro.), and (2)(a)1 to 3, 4.a., and 5 to 15; sub. (4) is renumbered (3); and subs. (5)(title), (5)(intro.), and (5)(a) to (c) are renumbered (4)(title), (4)(a), and (4)(b)1 to 3. As renumbered, subs. (2)(title), (2)(a)4.a., (3)(title), (3)(intro.), and (4)(a) are amended, to reflect proper language and style. Subsections (2)(a)4.b., (2)(b), and (4)(b)(intro.) are created, to reflect proper style and to address the sales or use tax manufacturing exemption.

**Tax 11.68.** Subsection (4)(a)2 is amended, to reflect proper style. Subsection (5)(L) is amended, to remove "traffic signals," to conform to a court decision. Subsection (6)(a)15 is created, to list additional items which remain personal property when provided under a construction contract. Subsection (10)(c) is amended, to reflect correct punctuation in quoted statutory language.

**Tax 11.86.** Subsection (6) is repealed and recreated, to reflect the correct treatment of landscaping services in accordance with August 28, 1996 and April 4, 1997 WTAC decisions, *Straight Arrow Construction Company, Inc.*, Docket 93-S-569.

**Tax 11.97.** Subsection (1) is amended, to reflect proper punctuation and style. Subsection (6)(b) is repealed and the material is set forth in a note, because it is informational rather than substantive. Accordingly, sub. (6)(a) is renumbered (6) and amended, to reflect the revised title of the permit application, Form A-101, and to provide for the possibility of a business tax registration fee. □



## 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

#### Domicile

*Matthias Klingsporn* (p. 18)

#### State historic rehabilitation credit

*Marc A. and M. Isabel Anderson* (p. 19)

### Homestead Credit

#### Household income — gross pension or annuity

*Faye P. Goocher* (p. 21)

### Sales and Use Taxes

#### Exemptions — telephone company central office equipment

*Ameritech Mobile Communications, Inc.* (p. 21)

#### Occasional sales

*Zignego Company, Inc.* (p. 22)

#### Time-share property

*Telemark Development, Inc.* (p. 22)

### Sales Taxes and Withholding Taxes

#### Officer liability

*David J. Ruppel* (p. 22)

### Withholding Taxes

#### Officer liability

*Michael A. Pharo* (p. 23)

### Fuel Taxes

#### Officer liability

*Jeffrey P. Mach, Sr.* (p. 24)

## INDIVIDUAL INCOME TAXES

**— Domicile.** *Matthias Klingsporn vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 22, 1997). The issues in this case are:

- A. Whether the taxpayer abandoned his Wisconsin domicile and established a Florida domicile during the last seven months of 1995.
- B. Whether Wisconsin is precluded by 49 U.S.C. § 40116(f)(3) from

taxing the taxpayer's compensation as an air carrier employee.

The taxpayer, a permanent resident alien, moved to Wisconsin in 1994 and purchased a house in Franklin, Wisconsin, and an automobile. Both were owned jointly with his girlfriend.

In the Spring of 1995, the taxpayer and his girlfriend broke up, and in June of 1995 he moved in with his aunt in Naples, Florida. His girlfriend moved into an apartment, but sometime later they reconciled and she returned to the Franklin house.

The taxpayer continued to live with his aunt, but never paid rent.

At all times relevant to this matter, the taxpayer was employed as an airline pilot for Midwest Express Airline and flew out of Milwaukee, Wisconsin. During the last seven months of 1995, he commuted to Milwaukee from his aunt's house in Naples, Florida. He worked out of Milwaukee about 10 days per month. During 1995, less than 50 percent of his scheduled flight time was in Wisconsin.

During the last seven months of 1995, when it was necessary to stay overnight in Wisconsin, the taxpayer stayed in his Franklin house. He kept many of his possessions in the Franklin house and the last of his possessions were removed only when the house was sold in 1997. He purchased a home in Florida in 1997.

During the last seven months of 1995, when the taxpayer used a car in Florida, he used a car that he owned and kept in Florida. When he used a car in Wisconsin, he used the car that was jointly owned with his girlfriend. Both cars were registered in Wisconsin.

All times relevant, the taxpayer held a Florida's driver's license. However, he lost his license card sometime before he moved back to Florida in 1995. In October 1994 he obtained a Wisconsin driver's license, which he used when he returned to Florida in June of 1995. In May 1996 he obtained a Florida driver's license card that replaced the one he had lost earlier.

The Commission concluded as follows:

- A. The taxpayer, who established Wisconsin as his domicile in 1994, did not take sufficient steps to demonstrate that his domicile had changed to Florida during the last seven months of 1995.

While the taxpayer probably intended to abandon his Wisconsin domicile and establish a Florida domicile in June of 1995, he simply did not take actions necessary to demonstrate this intent. During the last seven months of 1995, he continued to own and periodically reside in his Franklin home, he continued to carry a Wisconsin driver's license, he continued to operate an automobile in Florida that was registered in Wisconsin, and he continued to keep personal possessions in his Franklin home.

- B. The taxpayer's income earned during 1995 is subject to the Wisconsin income tax notwithstanding 49 U.S.C. § 40116(f)(3), because Wisconsin was the taxpayer's residence in 1995.

49 U.S.C. § 40116(f)(3) forbids a state from taxing the compensation paid to an air carrier employee unless one of two conditions is present. The first condition, that the employee spends more than 50 percent of his total scheduled flight time in the taxing state, was not met for 1995. However, the second condition, that the employee is a resident of the taxing state, is met.

The taxpayer has not appealed this decision.

**CAUTION:** This is a small claims decision of the Wisconsin Tax Ap-

peals Commission and may not be used as a precedent. This decision is provided for informational purposes only. □

**State historic rehabilitation credit.** *Marc A. and M. Isabel Anderson vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 14, 1997). The issue on appeal is whether the doctrine of equitable estoppel should be applied against the department where the taxpayers relied on incorrect advice from another state agency in applying for the state historic rehabilitation credit (SHRC) on their 1993 Wisconsin income tax return.

The taxpayers filed joint 1992 and 1993 Wisconsin income tax returns. On their 1993 Wisconsin income tax return, the taxpayers claimed a SHRC of \$3,441 for work performed in 1989 and 1990 on their house.

The department issued to the taxpayers a notice of amount due for additional income taxes for the years 1992 and 1993. The 1992 adjustment was for temporary recycling surcharge, and the taxpayers agree with the adjustment. The 1993 adjustment disallowed the SHRC that the taxpayers claimed on their 1993 Wisconsin income tax return; the taxpayers filed a petition for redetermination to appeal the disallowance of the credit.

The taxpayers purchased their house in 1982. The house was constructed in 1912 and was designed by Arthur Peabody, the first architect of the State of Wisconsin and the first architect of the University of Wisconsin. The house was at one time occupied by Mr. Peabody as his personal residence.

In June 1983, the taxpayers presented a description of the necessary repairs to rehabilitate their house to the Wisconsin State Historical Society as part of a 1983 federal grants-in-aid program for owners of National Registry Properties. This program was unrelated to the SHRC, and the taxpayers' house was not selected for grant funding.

In September 1989, the taxpayers had the roof replaced on their house at an estimated cost of \$10,063. Beginning in September 1990 and ending in October 1990, the taxpayers had the exterior of their house painted at an estimated cost of \$3,700. Both of these amounts were included by the taxpayers in the computation of the SHRC they claimed on their 1993 Wisconsin income tax return.

Before the taxpayers had either the roof replaced on their house in 1989 or the exterior of their house painted in 1990, they did not obtain prior approval of the rehabilitation project from the State Historical Society.

In 1989 and 1990, the taxpayers' house was designated as historic property. The property is located in the University Heights area of Madison.

The taxpayers did not claim on their 1989 Wisconsin income tax return a SHRC for the costs they incurred as a result of replacing the roof on their house.

The taxpayers did not claim on their 1990 Wisconsin income tax return a SHRC for the costs incurred as a result of painting the exterior of their house.

The taxpayers did not amend their 1989 or 1990 Wisconsin income tax returns.

The Legislature enacted the SHRC in 1988. The SHRC was available only for taxable years 1989 and 1990, for projects begun after December 31, 1988, and was limited to costs incurred after the State Historical Society approved the rehabilitation plan.

The Legislature made several changes to the SHRC in 1989. These changes applied retroactively to taxable years beginning on or after August 1, 1988. Prior approval of the rehabilitation plan by the State Historical Society continued to be a requirement under the revised law.

In 1991, the Legislature repealed sec. 71.07(9r)(b)7, Wis. Stats., thereby eliminating the prior approval requirement for the SHRC for taxable years beginning on or after January 1, 1991.

In August 1993, the Legislature recreated sec. 71.07(9r)(b)7, Wis. Stats., reinstating the prior approval requirement for the SHRC for taxable years beginning on or after January 1, 1993.

Sometime between March 25, 1993, and November 30, 1993, the taxpayers were informed by James Sewell of the State Historical Society that they could claim the SHRC retroactively, even though they had not obtained prior approval. At the time, Mr. Sewell was unaware that the law had been changed in August 1993 to require prior approval for 1993 SHRC claims. Mr. Sewell did not learn of this change until June 1994.

On November 30, 1993, the taxpayers submitted to the State Historical Society an Historic Preservation Certification Application form for the SHRC. The taxpayers' application was approved on April 5, 1994, and a copy of the approval was included in the taxpayers' 1993

Wisconsin income tax return claiming the SHRC.

The taxpayers had already paid for the costs of replacing the roof on their house as well as the painting of the exterior of their house in 1989 and 1990, before they received the advice from Mr. Sewell about the retroactive tax credit.

Upon learning that the State Historical Society had provided incorrect information to the public from January 1, 1993, to May 13, 1994, concerning the prior approval requirement for tax years beginning on or after January 1, 1993, the department adopted a policy that projects begun before January 1, 1991 (the effective date of the *repeal* of the prior approval requirement), required prior approval to qualify for the SHRC; projects begun in tax years beginning on or after January 1, 1991, and before January 1, 1993, did *not* require prior approval; and projects begun in tax years beginning on or after January 1, 1993, required prior approval. In addition, taxpayers who incurred rehabilitation expenses *after* being told by the State Historical Society that prior approval was not necessary were granted the credit by the department based on those expenditures.

Consistent with this policy, under the date of January 6, 1995, Secretary of Revenue Mark Bugher wrote a letter to State Senator Peggy Rosenzweig stating that taxpayers who followed incorrect instructions from the State Historical Society and submitted their plans for approval after beginning the rehabilitation work "may qualify for the tax credit."

The elements of equitable estoppel are (1) action or non-action, (2) on the part of one against whom estoppel is asserted, (3) which induces

reliance thereon by the other, either in action or non-action, and (4) which is to his detriment.

The Commission found several reasons why the taxpayers' claim of estoppel must be denied. First, the action by the State Historical Society is not action by the department, against whom estoppel is asserted.

Second, the only "detriment" to the taxpayers as a result of Mr. Sewell's incorrect advice was the inconvenience of completing and filing the necessary forms to claim the credit. The actual rehabilitation expenditures were made in 1989 and 1990, several years *before* the advice from Mr. Sewell on which they base their estoppel argument. Thus, those expenditures could not have been made in reliance on the 1993 advice from Mr. Sewell. Because the taxpayers did not obtain the prior approval of the State Historical Society as required by the law in effect at the time they incurred the rehabilitation expenditures, it seems clear that they decided to proceed *regardless* of the availability of the SHRC.

Even if the Commission could somehow impute Mr. Sewell's advice to the department, the Commission would not consider the inconvenience to the taxpayers in filing a SHRC claim to be an "unconscionable" result sufficient to apply estoppel and grant a tax credit for which the taxpayers and other taxpayers similarly situated would not otherwise qualify.

Finally, although insufficient information was presented at the hearing concerning the particular facts addressed in Secretary Bugher's letter, the letter appears to be entirely consistent with the department's policy, which recognized the unfairness and financial harm which could result from denying the credit *where taxpayers incurred the rehabilitation*

*expenditures in reliance on the Historical Society's incorrect advice.* Such was *not* the case with the taxpayers.

Therefore, the Commission concluded that the department properly disallowed the state historic rehabilitation credit claimed by the taxpayers on their 1993 Wisconsin income tax return. The taxpayers failed to show the elements necessary for application of equitable estoppel against the department to allow the state historic rehabilitation credit claimed by the taxpayers on their 1993 Wisconsin income tax return.

The taxpayers have not appealed this decision. □

## HOMESTEAD CREDIT

— **Household income - gross pension or annuity.** *Faye P. Goocher vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 23, 1997). The issue in this case is whether a nontaxable distribution of \$2,175.39 is a gross pension or annuity, which must be included as part of the claimant's "household income" in calculating her 1995 homestead credit.

The claimant was employed by the Prudential Insurance Company of America ("Prudential") over a 12-year period ending in 1989. In 1995, she withdrew \$4,000 from an account she had with her former employer. This \$4,000 "distribution" was broken down by Prudential as follows: \$1,824.61 was categorized as a taxable distribution, and \$2,175.39 was categorized as a nontaxable distribution because it was her "employee contribution."

The claimant thereafter applied for a 1995 Wisconsin homestead tax cred-

it. The department adjusted the claim to include the nontaxable portion of the distribution, as gross pension or annuity.

The claimant contended that the \$2,175.39 of the \$4,000 she withdrew from the Prudential Investment Plan, now called the Employee Savings Plan, should now be treated like savings withdrawn from a bank, and it should not be treated as a pension or annuity. The department argued that Prudential filed a Form 1099-R to report the distribution to taxing authorities. This form is used to report "Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc."

The Commission concluded that the distribution from Prudential's Employee Savings Plan, which consisted of the claimant's voluntary, after-tax contributions to the Plan, is not a pension or annuity and thus is not part of "household income" for the calculation of her homestead tax credit.

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

— **Exemptions - telephone company central office equipment.** *Ameritech Mobile Communications, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, October 2, 1997). This is an appeal from the Circuit Court's November 22, 1996 decision. See *Wisconsin Tax Bulletin*

103 (October 1997), page 20, for a summary of that decision. *Wisconsin Tax Bulletin* 96 (April 1996), page 19, provides a summary of the December 21, 1995 decision of the Wisconsin Tax Appeals Commission that the taxpayer appealed to the Circuit Court. The issue in this case was whether the taxpayer's cell site equipment is exempt from Wisconsin sales and use taxes under sec. 77.54(24), Wis. Stats.

The taxpayer is a corporation in the business of providing cellular telephone services in Wisconsin and elsewhere. The taxpayer's cellular system in Wisconsin consisted of three components: 1) the mobile units used by the taxpayer's customers; 2) company-owned facilities known as "cell sites," one of which was located in each of the taxpayer's eighteen service areas; and 3) a single, company-owned Mobile Telephone Switching Office (MTSO).

The taxpayer's mobile units can only communicate with cell sites. The cell sites then relay signals to the MTSO which connect the mobile unit to another mobile unit or land line customer.

Section 77.54(24), Wis. Stats., provides that "gross receipts from the sale of and the storage, use or other consumption of apparatus, equipment and electrical instruments, other than station equipment, in central offices of telephone companies, used in transmitting traffic and operating signals" are exempt from sales tax.

The Wisconsin Tax Appeals Commission held that the term "central office" had a clear meaning in the technical parlance of the telecommunications industry. The cell site equipment was not in "central offices" and, therefore, was not exempt from sales and use tax. The Circuit

Court affirmed the Commission's decision.

The Court of Appeals affirmed the Commission, concluding that the Commission reasonably held that the taxpayer's cell site equipment was not exempt from taxation.

The taxpayer has appealed this decision to the Wisconsin Supreme Court. □

**— Occasional sales.** *Zignego Company, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 29, 1997). This case was remanded to the Commission in a May 22, 1997, decision of the Court of Appeals, to decide the remaining issue regarding a sales tax exemption for occasional sales. See *Wisconsin Tax Bulletin* 103 (October 1997), page 21, for a summary of the Court of Appeals decision.

The department advised the Commission that it no longer wished to further litigate this issue. The Commission therefore dismissed the matter, and the case is closed. □

**— Time-share property.** *Telemark Development, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, July 22, 1997). This is an appeal of a Wisconsin Tax Appeals Commission decision dated October 28, 1996. See *Wisconsin Tax Bulletin* 101 (April 1997), page 17, for a summary of the Commission decision. The issues in the case are:

- A. Whether the Commission correctly interpreted and applied sec. 77.52(2)(a)1, Wis. Stats.
- B. Whether sec. 77.52(2)(a)1, Wis. Stats., is constitutional under the Equal Protection and Uniformity of Taxation Clauses of the Unit-

ed States and Wisconsin Constitutions.

The taxpayer is a Wisconsin corporation in the business of developing and selling time-share condominium units. The taxpayer's sales of time-share units can be classified in two categories: 1) units with guaranteed use periods; and 2) units with flexible use periods. The difference between these two types of time-share units lies in the way they may be used by their owners.

Owners of the "guaranteed use period" units are entitled to the "exclusive use, possession, and occupancy of a unit during the specific Unit Weeks identified in the purchase agreement." Owners of "flexible use period" units are "entitled to exclusive use, possession, and occupancy of a unit...pursuant to a reservation executed by or on behalf of the Management firm."

The taxpayer seeks reversal of the Commission's decision that the sales are properly subject to sales tax as imposed by sec. 77.52(2)(a)1, Wis. Stats. Under this statute, the sales tax is imposed upon the furnishing of lodging to transients through the sale of time-share property if the use of the rooms or lodging is not set at the time of sale as to starting day or lodging unit.

The Circuit Court concluded as follows:

- A. The Commission correctly interpreted and applied sec. 77.52(2)(a)1, Wis. Stats. The sales of these units are subject to Wisconsin sales tax. All the required elements of sec. 77.52(2)(a)1, Wis. Stats., are met in order for sales tax to be imposed:
  1. The units were available for sale to the general public.

2. The taxpayer furnished rooms or lodging through the sales of time-share property, and the use of the rooms or lodging was not fixed at the time of sale as to the starting day.
3. The sale of the time-share units at issue was to transients as defined in this statute, because the occupancies sold were for periods of only a week at a time.

B. Section 77.52(2)(a)1, Wis. Stats., withstands the taxpayer's challenge to its constitutionality. The Equal Protection Clause was not violated by the statute because the sales tax is imposed on **all** time-share units in Wisconsin that do not have a fixed starting date, and, therefore, the taxpayer alone is not injured by this statute. The Uniformity of Taxation Clause provides that direct taxes on property shall be uniform; the sales tax on a time-share unit is not a direct tax on property and is thus not subject to the uniformity clause.

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

## SALES TAXES AND WITHHOLDING TAXES

**— Officer liability.** *David J. Ruppel vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 12, 1997). The issue in this case is whether the taxpayer is a responsible person under sec. 71.83(1)(b)2, Wis. Stats. and sec. 77.60(9), Wis. Stats.

The taxpayer was a full-time employe of Truck Equipment and Service Co., Inc. of Waukesha, Wisconsin from 1980 until mid-April 1994. The taxpayer was vice president and general manager of the company for the periods under re-

view. Although he was not treasurer of the company, he did have full check-signing authority; and his name was one of only two names on the signature cards for three separate business checking accounts that the company had with a Waukesha bank. The only other name on the signature cards was the president of the company, who listed his residence as Florida. The company treasurer had no check-signing authority for the three business checking accounts.

The taxpayer was responsible for day-to-day operations of the company. He signed payroll checks, checks for other creditors, and checks for tax obligations, as well as tax returns and tax forms.

Although the company incurred several months of liabilities for sales taxes and withholding taxes in 1992 and 1994, reported some of these liabilities to the department, and was notified by the department of one of the liabilities, the company continued to issue dozens of checks on its business accounts. These checks were issued to officers, employees, and creditors of the company. The taxpayer personally signed at least some of these checks. The company reported business losses; however, its business checking accounts received substantial deposits of money during the period under review. The company failed to extinguish its growing liability to the department with these deposits or the other money in its accounts.

The Commission concluded the taxpayer was a responsible person under both sec. 71.83(1)(b)2, Wis. Stats. and sec. 77.60(9), Wis. Stats. The taxpayer had the authority and the duty to pay the company's withholding and sales tax liabilities, but he intentionally breached his duty.

As vice president and general manager of the company, empowered to write checks and determine payment of bills, the taxpayer had the **authority** to oversee and discharge the company's tax liabilities. As a company officer and the person in charge of day-to-day operations, he had the **duty** to pay the company's taxes. The taxpayer filed sales and withholding tax reports with his signature, and he signed at least one check to the Wisconsin Department of Revenue.

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

## WITHHOLDING TAXES

**— Officer liability.** *Michael A. Pharo vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 9, 1997). The issue in this case is whether the taxpayer is a responsible person under sec. 71.83(1)(b)2, Wis. Stats.

The taxpayer was the secretary of Protective Services, Inc. ("the corporation") and a member of its Board of Directors, with authority to sign corporate checks. He signed payroll checks and other corporate checks to creditors during the period under review (1991-1993). The taxpayer was also the corporation's registered agent. He supervised corporate employees in 1991, and he knew that the corporation was required to remit withholding taxes to the Wisconsin Department of Revenue ("the department") during the period under review.

The corporation did not timely file its withholding tax reports (Form WT-7) for the years ending 1991, 1992, and 1993. The taxpayer filed the corporation's WT-7 forms for 1991 and 1992 on April 10, 1994,

when he held the office of vice president.

The taxpayer claims he had no responsibility for the filing and payment of withholding taxes and that the responsibility for filing and payment was with the individual who was president and treasurer during the period under review.

The Commission concluded the taxpayer was a responsible person under sec. 71.83(1)(b)2, Wis. Stats., and was personally liable for the unpaid withholding taxes. The taxpayer had the **authority** and the **duty** to pay the corporation's withholding taxes, and the taxpayer **intentionally breached that duty**.

The taxpayer was a corporate officer and director with check-signing *authority* during the entire period under review. He also had constructive knowledge with its attendant *duty* because of his ongoing role as an officer with knowledge of the corporation's financial affairs. The taxpayer knew that the corporation had a withholding tax obligation because it had employees who were paid wages. He wrote payroll checks, which put him on notice that withheld taxes should be remitted to the department. He knew this and failed to inquire further to determine if the withholding taxes had been paid.

As an officer and director of the corporation who signed payroll and other checks to creditors, the taxpayer was duty-bound to determine whether the taxes were being paid and, if not, to see that they were or immediately resign to avoid being held personally liable thereafter. He did neither.

Consistent interpretations of both state and federal officer liability statutes have held that all that is

necessary to prove *intentional breach of duty* is to show that there was a decision to use corporate funds to pay other creditors with knowledge of taxes being due. The taxpayer paid several other creditors, including wages to employees, with knowledge that withholding taxes were due.

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

## FUEL TAXES

**— Officer liability.** *Jeffrey P. Mach, Sr. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 17, 1997). The issue in this case is whether the taxpayer is a responsible person under sec. 78.70(6), Wis. Stats.

The taxpayer owned 49% of Mach's Truck Stop, Inc. ("the corporation"), while his father owned the remaining 51%. The taxpayer apparently never received a certificate for his shares of stock. He was the corporation's vice president and one of its directors. The taxpayer held these positions when he signed the

Wisconsin Corporation Annual Report for 1990-91 as vice president. He never took any steps to resign either as an officer or as a director, and was listed as holding both positions for 1991-92 on the Wisconsin Corporation Annual Report for that year.

The taxpayer was authorized to sign checks drawn on bank accounts of the corporation. He was also responsible for hiring and supervising the corporation's general manager. The taxpayer was aware of the corporation's financial difficulties, its inability to make special fuel tax payments, and the fact that some creditors were being paid while the department was not.

The taxpayer argued that he had never had an active role in the corporation and that he never assumed actual ownership or executed authority in the corporation, thus he could not be held personally liable as a responsible person within the meaning of the statute.

The Commission concluded that the taxpayer was a responsible person under sec. 78.70(6), Wis. Stats., and was personally liable for the unpaid

special fuel taxes. The taxpayer had the **authority** and the **duty** to pay the company's special fuel tax payments.

As an officer and director of the corporation, the taxpayer was *authorized* to disburse corporate funds during the period under review. In addition he had *authority* over those whom he hired to write checks and file the special fuel tax reports.

As a corporate officer with the requisite *authority* and knowledge that the taxes were unpaid, the taxpayer was *duty-bound* to see to it that they were paid. This he failed to do. The taxpayer cannot be absolved of this *duty* simply because he delegated check-writing and tax filing duties to his employees.

Even had the taxpayer not been an owner, as he claimed, he would still be liable for the taxes as an officer with the **authority** and **duty** to pay the special fuel taxes. Ownership is not required for personal liability to attach.

The taxpayer has not appealed this decision. ☐





## 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:

### Sales and Use Taxes

1. Color Copiers Used in Art Departments (p. 25)
2. Fuel and Electricity Consumed in the Manufacture of Shoppers Guides, Newspapers, and Periodicals (p. 25)
3. Prepackaged Combinations of Food, Food Products, and Beverages Constitute Meals - Effective August 1, 1997 (p. 26)

### SALES AND USE TAXES

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

## 1 Color Copiers Used in Art Departments

**Statutes:** Section 77.54(6)(a), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.39(2)(b) (October 1997 Register)

**Background:** Section 77.54(6)(a), Wis. Stats. (1995-96), provides an exemption from Wisconsin sales and use tax for "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property and safety attachments for those machines and equipment."

### Facts:

- Company A is in the business of screen-printing and embroidering on sportswear apparel (shirts, caps, sweatshirts, etc.).
- Company A purchased a color copier to be used in its art department.
- The color copier is to be used for the following:
  - a) as a scanning device, to scan pictures and enter them into the computer so that additional work can be done on the designs.
  - b) as a printer, where sketches and designs created on the computer can be sent to the color copier.

**Question:** Does the purchase of the color copier qualify for the manufacturing exemption under sec. 77.54(6)(a), Wis. Stats. (1995-96)?

**Answer:** No. The machinery or equipment must be used exclusively and directly by a manufacturer in manufacturing tangible personal property. Because the color copier is used in the development of designs, it is not used exclusively and directly in manufacturing, and it thus does not qualify for exemption. □

## 2 Fuel and Electricity Consumed in the Manufacture of Shoppers Guides, Newspapers, and Periodicals

**Statutes:** Section 77.54(2m), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.56 (April 1994 Register)

**Background:** Section 77.54(2m), Wis. Stats. (1995-96), provides an exemption from Wisconsin sales and use tax for "The gross receipts from the sales of and the storage, use or other consumption of tangible personal property or services that become an ingredient or component of shoppers guides, newspapers or periodicals or that are consumed or lose their identity in the manufacture of shoppers guides, newspapers or periodicals, whether or not the shoppers guides, newspapers or periodicals are transferred without charge to the recipient..."

**Question:** Are fuel and electricity consumed in the manufacture of shoppers guides, newspapers, and periodicals subject to Wisconsin sales and use tax?

**Answer:** No. The fuel and electricity are exempt from Wisconsin sales and use tax under sec. 77.54(2m), Wis. Stats. (1995-96), because they are consumed in manufacturing shoppers guides, newspapers, and periodicals. □

### 3 Prepackaged Combinations of Food, Food Products, and Beverages Constitute Meals — Effective August 1, 1997

**Note:** This tax release supersedes the tax release in *Wisconsin Tax Bulletin* 102 (July 1997), page 20. The only change is that this tax release applies only to sales of the prepackaged combinations described below, if the sale occurs on or after August 1, 1997. Sales and use tax does not apply to sales of such prepackaged combinations if the sale occurred before August 1, 1997.

**Statutes:** Section 77.54(20), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.51(2)(c)5, (December 1996 Register)

**Background:** Section 77.54(20), Wis. Stats. (1995-96), provides an exemption from Wisconsin sales and use tax for the gross receipts from sales of, and the storage, use or other consumption of certain food, food products, and beverages for human consumption.

An exception to this exemption is found in sec. 77.54(20)(c)2.a, Wis. Stats. (1995-96), which provides that sales of meals and sandwiches are subject to Wisconsin sales or use tax.

The Wisconsin Statutes do not define the terms “meal” or “sandwich.” However, sec. Tax 11.51(2)(c)5, Wis. Adm. Code, December 1996 Register, provides some guidance as to what constitutes a meal. This section provides in part that “A meal usually consists of a diversified selection of foods which are not susceptible of consumption in the absence of at least some articles of tableware and which are not conveniently consumed while one is standing or walking.”

#### Facts 1

- ABC Company offers for sale a combination of meat, cheese, and crackers in one package.
- Each packaged combination contains 6-8 crackers, 6-8 slices of cheese, and 6-8 slices of meat.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

#### Facts 2

- DEF Company offers for sale a combination of meat, cheese, crackers, a fruit drink, and a small candy bar in one package.
- Each packaged combination contains 6-8 crackers, 6-8 slices of cheese, 6-8 slices of meat, a fruit drink, and a small candy bar.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

#### Facts 3

- GHI Company offers for sale a combination of pizza crusts, shredded cheese, sliced pepperoni, a small package of pizza

sauce, a fruit drink, and a small candy bar in one package.

- Each packaged combination contains 3-4 mini pizza crusts, shredded cheese, several slices of pepperoni, a small packet of sauce along with a plastic utensil for spreading the sauce, a fruit drink, and a small candy bar.
- The packaged combination may be eaten heated or unheated.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

#### Facts 4

- JKL Company offers for sale a combination of a sandwich, a bag of pretzels or potato chips, and cookies in one package.
- The packaged combination is advertised as constituting a meal and is sold for a single price.

**Question:** Are sales of any of the packaged combinations described in Facts 1 through 4 above subject to Wisconsin sales or use tax?

**Answer:** Yes. Sales of all of the above described packaged combinations are subject to Wisconsin sales or use tax under sec. 77.54(20)(c)2.a, Wis. Stats. (1995-96), as meals if the sale occurs on or after August 1, 1997. □



## Private Letter Rulings

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

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

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

The following private letter rulings are included:

### Sales and Use Taxes

Exemptions — admissions — educational events

W9728005 (p. 27)

Exemptions — web site designs

W9745007 (p. 28)

✱ **W9728005**, April 17, 1997

**Type Tax:** Sales and Use

**Issue:** Exemptions — admissions — educational events

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

This letter responds to your request for a private letter ruling, concerning whether Wisconsin sales tax applies to receipts of GHI Organization (GHI) from the sale of admission tickets to its three-dimensional IMAX dome theater.

### Facts

GHI is a not-for-profit organization jointly owned by two income-tax-exempt museums: Museum J and Museum K. GHI is also exempt from income tax under Internal Revenue Code Section 501(c)(3) and has received a Certificate of Exempt Status from the Wisconsin Department of Revenue.

In Article III of the Articles of Incorporation of GHI it states, "The Corporation is organized and shall be operated on a not-for-profit basis exclusively for charitable, religious, educational and scientific purposes under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended."

GHI manages a three-dimensional IMAX dome theater, which exclusively shows educational films. All of the films shown have a topic of history, natural history, or science. Some examples of the films shown

include *Africa - The Serengeti*, *Graphic Films Space Library*, *Search for the Great Sharks*, and *To Be An Astronaut*. GHI sells admission tickets for its IMAX theater to the visiting public.

GHI's application for recognition of exemption under Section 501(c)(3) of the Internal Revenue Code states that the motion pictures must be in furtherance of the charitable, scientific, and educational purposes of Museum K and Museum J, as well as of GHI.

A majority of the attendees of GHI's IMAX theater are children attending as students. Each film is accompanied by a teacher's guide and suggested activities for students, teachers, and parents.

### Request

You requested a ruling of whether GHI's gross receipts from the sale of admission tickets to its IMAX theater are subject to Wisconsin sales and use tax.

### Ruling

GHI's gross receipts from the sale of admission tickets to its IMAX theater are not subject to Wisconsin sales and use tax.

### Analysis

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

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 of sec. 77.52(2)(a)2, Wis. Stats. (1995-96), applies to GHI’s admission ticket sales as follows:

- The facts indicate that GHI’s primary objective for showing the films is to educate its audience. All of the films shown have a topic of history, natural history, or science, and each film is accompanied by a teacher’s guide and suggested activities for students, teachers, and parents. Although the persons attending GHI’s IMAX theater would most likely find the films entertaining, as well as educational, the primary objective of showing the films is educational in nature.
- GHI’s sales of admission tickets to its IMAX theater are not subject to Wisconsin sales and use tax because the admissions are not primarily for amusement, athletic, entertainment, or recreational purposes. □

✱ **W9745007**, August 18, 1997

**Type Tax:** Sales and Use

**Issue:** Exemptions — web site designs

**Statutes:** Section 77.52(1) and (2)(a), Wis. Stats. (1995-96)

**Wis. Adm. Code:** Section Tax 11.70 (April 1993 Register)

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

### Facts

ABC Corporation (ABC) is a full service advertising/marketing agency. In the past year, ABC has designed and produced web sites for a few of its clients. ABC has charged sales tax on the sale of the web site designs in the same manner as it charges sales tax on sales of finished artwork.

The design of a web site and transfer to a customer or the customer’s agent can best be described by the following examples:

**Example 1:** Customers supply ABC with information that is transformed into a point and click interface that allows others to access the information from a home page or Web site and print out the information desired. Specifically, a customer tells the ABC designer the information it wishes to appear on the Internet. A computer is used to create the words and graphics. The design created on the computer is transmitted by ABC electronically from its computer to a server and can be accessed through the Internet.

**Example 2:** A customer tells the ABC designer the information it wishes to appear on the Internet.

ABC provides this design work to the customer in some tangible form (e.g., paper copy, photograph, etc.). The customer gives the design work to Company C, an Internet service provider. Company C transforms the design work into a point and click interface that is transferred to its server and can be accessed through the Internet.

### Request

You ask the following questions:

1. Is the charge by ABC for the web site design it provides to a customer, as illustrated in Examples 1 and 2 above, subject to Wisconsin sales tax?
2. Is the charge by ABC for other designs it provides to a customer by electronic transmission via modem from its computer to the computer of the customer or the customer’s agent (i.e., no tangible form of the design is provided to the customer or its agent) subject to Wisconsin sales tax?

### Ruling

1. The charge by ABC for the web site design it provides to a customer, as illustrated in Example 1, is not subject to Wisconsin sales tax. However, the charge by ABC for the web site design it provides to a customer, as illustrated in Example 2, is subject to Wisconsin sales tax.
2. The charge by ABC for designs, other than web site designs, transmitted electronically via modem from its computer to a computer of the customer or the customer’s agent (i.e., no hard copy of the design is provided to the customer or its agent) is not subject to Wisconsin sales tax.

## Analysis

1. Section 77.52(1), Wis. Stats. (1995-96), imposes a Wisconsin sales tax on the sale of tangible personal property in Wisconsin. Section 77.52(2)(a), Wis. Stats. (1995-96), provides that the sale of certain services is subject to Wisconsin sales tax.

In Example 1, no tangible personal property is sold to the customer. ABC is transferring data that is not in a tangible form when it is transferred electronically via a modem from its computer to another computer. In addition, designing a web site is

not one of the services subject to tax under sec. 77.52(2)(a), Wis. Stats. (1995-96).

Section Tax 11.70(2)(a), Wis. Adm. Code (April 1993 Register), provides that charges for finished art are subject to Wisconsin sales tax because finished art is tangible personal property.

“Finished art” is defined in sec. Tax 11.70(1)(a), Wis. Adm. Code, to mean the final art used for actual reproduction by photomechanical or other processes, or for display purposes and is usually in the form of drawings, paintings, designs,

photographs, lettering, paste-ups, mechanicals or assemblies, charts, graphs, and illustrative material not reproduced.

In Example 2, ABC transfers finished art in a tangible form (paper, photograph, etc.). The transfer of that finished art is subject to Wisconsin sales tax under sec. 77.52(1), Wis. Stats. (1995-96).

2. Same as 1. There is no basis for sales and use tax purposes to distinguish between design of a web site and design of other information performed in the same manner. □