



# Wisconsin TAX BULLETIN



**F**OCUS ON . . .

## Franchise tax on U.S. interest constitutional

see Supreme Court decision, page 20

## New Tax Laws to Be Addressed in Special Issue

The Governor introduced his Budget Bill for the 1999-2001 biennium on February 16, 1999. This bill includes several provisions affecting Wisconsin taxes. Additional bills which affect Wisconsin taxes have also been introduced.

The Wisconsin Legislature is scheduled to complete work on the 1999-2001 Budget Bill by June 30, 1999. If any provisions of the Budget Bill (or other bills) affecting Wisconsin taxes become law, a special issue of the *Wisconsin Tax Bulletin* explaining the new laws will be published later this summer. □

## Green Lake and Taylor Counties Adopt County Sales and Use Tax

Effective July 1, 1999, the county sales and use tax will be adopted by Green Lake and Taylor Counties. This brings to 53 the number of

counties that have adopted the ½% county tax.

Retailers will be notified about Green Lake and Taylor Counties' adoption of the county tax in the June 1999 *Sales and Use Tax Report*. For additional information about the county tax, see Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII, on pages 33 to 38. Publication 201 is available from any Department of Revenue office. □

## Did You Know?

- You may have a state use tax liability.
- The most frequent adjustments made in audits involve unreported use tax.

You may owe Wisconsin state use tax if you buy items and services that will be used, stored, or consumed in Wisconsin, without paying Wisconsin state sales tax.

A credit is allowed against Wisconsin state use tax for the state sales or use tax correctly paid to another state on the same items or services.

## Examples of use tax liabilities

- 1) You buy items from an out-of-state mail order company. The vendor ships the items to you in Wisconsin. The vendor does not charge you any sales or use tax.

You owe Wisconsin state use tax.

- 2) You buy items exempt from sales tax for the purpose of resale. Later you take an item out of inventory for use in your business. You owe Wisconsin state use tax.
- 3) You give taxable items as gifts to clients. If you did not pay sales or use tax on the purchase of the gifts, you owe Wisconsin state use tax. □

## Information or Inquiries?

This Bulletin includes a comprehensive listing of addresses and telephone numbers to use if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division. The listing appears on pages 33 to 36 and is arranged by the type of tax or credit involved. □

## Jail, Fines, Probation Ordered for Tax Fraud

Bruce R. Verdone, 39, of Phillips, was sentenced in Taylor County in December 1998, on three tax counts; failing to file a Wisconsin income tax return, filing a false claim for the earned income credit, and concealing property to evade collection of tax.

(See "Jail," page 5.)

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the governmental unit, identifying itself as the purchaser.

Federal and Wisconsin governmental units may apply for a CES number on Form S-103, *Application for Wisconsin Sales and Use Tax Certificate of Exempt Status*. Form S-103 and Form S-211 are available from any Department of Revenue office.

**Note:** Governmental units of states other than Wisconsin are not exempt from Wisconsin sales and use tax. □

### Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars in May. The seminars will include information on differences between the two states' laws. All of the seminars apply to general businesses.

You are invited to attend any of the following seminars, free of charge. All seminars are from 9:00 a.m. to 12:30 p.m. at the locations indicated. To register or for more information, call the Minnesota Department of Revenue at 1-800-888-6231.

May 4, 1999 – Duluth, MN  
Minnesota Department of Revenue  
Office

2711 West Superior Street  
\*\*\*\*\*

May 11, 1999 – Hudson, WI  
Hudson House  
1616 Crestview Drive

\*\*\*\*\*

May 18, 1999 – Onalaska, WI  
Onalaska Omni Center  
255 Rider Club Street □

### Sales to Federal and Wisconsin Governmental Units

Sales of tangible personal property and taxable services to federal and Wisconsin governmental units are

exempt from Wisconsin sales and use tax.

*Question:* What kind of records does a seller need to retain to show that a sale to such a governmental unit is exempt?

*Answer:* Any one of the following is satisfactory:

- A copy of the seller's invoice, with the governmental unit's certificate of exempt status (CES) number indicated on the invoice.
- A properly completed Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*, received from the governmental unit.
- A purchase order or similar written document received from

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## January 1999 Social Security Payment Not 1998 Income.

The January 1999 social security benefit payment, for recipients scheduled to receive their payments on the third of each month, was issued by the Social Security Administration in December 1998, since January 3 was a Sunday, January 2 was a Saturday, and January 1 was a holiday. Even if it was received in 1998, the January 1999 payment will not be considered income for 1998, for either income tax or homestead/farmland preservation credit purposes. The January 1999 payment will be considered to have been received in 1999, for all social security recipients.

Internal Revenue Code sec. 86(d)(5) provides that when a social security benefit payment is delivered before the end of a calendar month to which the benefit applies, the payment is deemed to have been received in the succeeding calendar month. The Department of Revenue has applied this same principle with respect to computing household income for homestead credit and farmland preservation credit purposes. The 1998 information returns, Form SSA-1099s, do not include the January 1999 payment. □

## Wisconsin to Host FTA Annual Meeting

The Wisconsin Department of Revenue will host the Federation of Tax Administrators (FTA) Annual Meeting on June 6 to 9, 1999. The conference will be held at the Milwaukee Hilton, located at 509 West Wisconsin Avenue in Milwaukee.

FTA is a member agency representing the tax and revenue agencies of each state, the District of Columbia,

and New York City. FTA is organized to promote understanding and cooperation in the administration of revenue laws, and to identify solutions to problems encountered in tax administration.

An annual conference is held to encourage training and sharing of information among the revenue employees in the participating states. Tax professionals from the private sector are also invited to participate.

If you are interested in receiving conference materials, please call the Department at (608) 266-1607 or email [ssellner@dor.state.wi.us](mailto:ssellner@dor.state.wi.us) □

## Question and Answer

**Q** I am a Minnesota-based construction contractor who frequently builds in Wisconsin. If I use materials in a Wisconsin building project, do I have any Wisconsin sales or use tax liability on those materials?

**A** Yes, construction materials which are stored, used, or consumed in Wisconsin are subject to Wisconsin sales or use tax. However, if you properly paid state sales or use tax on the materials in another state, you are allowed a credit up to the amount of Wisconsin state tax owed.

A credit against the 0.5% Wisconsin county or 0.1% Wisconsin stadium tax is also allowed for similar local taxes properly paid in another state.

Example: Contractor A buys \$50,000 of construction materials from a Minnesota vendor. The Minnesota vendor ships the construction materials to Contractor A by common carrier. Contractor A receives possession of the construction materials in St. Croix County (a Wisconsin county which has

adopted the 0.5% county sales and use tax). Contractor A uses the construction materials in constructing a building in St. Croix County.

The Minnesota vendor is not engaged in business in Wisconsin and does not charge any tax to Contractor A on the construction materials.

Contractor A's Wisconsin state and county use tax liability is as follows:

Purchase price of materials used in St. Croix County, Wisconsin	\$50,000
Wisconsin 5% use tax	\$2,500
St. Croix County 0.5% use tax	<u>\$250</u>
Wisconsin state and county use tax liability	<u>\$2,750</u> □

## Computer Exemption Guidelines-Personal Property Tax

*(Note: This article was submitted by the department's State and Local Finance Division.)*

The 1997-99 Wisconsin Legislature decided to exempt computers and computer equipment from the personal property tax. They did so in Wisconsin Act 237. This exemption begins with the January 1, 1999 assessment year and is described in sec. 70.11(39), Wis. Stats. (1997-98). Businesses, however, will continue to report the value of this equipment to their assessors.

Computer exemption guidelines relating to personal property tax for computers, software, and electronic peripheral equipment appear on pages 37 and 38 of this Bulletin. For additional information, contact John Rader, (608) 266-0939, Gene Miller, (608) 266-8131, or Greg Landretti, (608) 266-8202, all in Madison. □



## Do You Need a Speaker?

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

Department representatives are available to speak on a 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.
- Homestead credit.

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

## 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 39 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* 112 (January 1999), pages 71 to 98. It includes information for issues 1 to 111 (through 1998). □

## Appeals Process to Be Revised

The Department of Revenue (DOR) recently completed a reengineering project of the tax appeals process. The goals of the project included reducing the number of appeals and taxpayer complaints thereby increasing taxpayer satisfaction, and reducing the time for resolving appeals.

The reengineering team found that many appeals should and can be resolved much earlier in the process, with the taxpayer's assistance. Approximately 50% of the assessments appealed are related to substantia-

tion/documentation, or a lack of understanding of the adjustments. DOR can do a better job, with the taxpayer, earlier in the process.

The primary differences between the old appeals process and the new process include obtaining required information from taxpayers early in the process, forwarding appeals to the appropriate person or team, and resolving appeals as early as possible. The Office of Appeals is renamed the Resolution Unit, and Resolution Officers (formerly Conferees) will have independent authority to settle close to 100% of appeals.

In the new process, there will be five Appeals Resolution Teams (ART), based on tax type. These teams, usually two people, will screen appeals, route them appropriately or, in some cases, resolve them. Four Complex Appeals Teams (CAT), comprised of two Resolution Officers and one Attorney, will handle legal and policy related appeals.

In order to support the new process, organizational changes were recommended. The Resolution Unit will become a separate section within the Office of Legal Services, which will be renamed the Office of General Counsel. Staff Attorneys will continue to represent DOR in appeals filed with the Tax Appeals Commission and will give legal advice to Resolution Officers, as well as the other areas of DOR.

The implementation plan calls for kicking-off the new appeals process in late April 1999. For additional information contact Alex Prost at (608) 266-9209 or Paul Riehemann at (608) 266-0306. In addition, a complete summary of the Appeals Process Reengineering Project is available on DOR's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us), under "What's New." □

**Jail (continued from page 1)**

Judge Douglas T. Fox imposed a five-year probation on Verdone. As conditions of probation, Verdone was ordered to: serve 7 months in jail; pay \$11,907 restitution, \$5,000 cost of prosecution, and \$262 court costs; and file all income tax returns for the years 1992 through 1997, as well as all future years in a timely manner. As part of a plea agreement, charges of failure to file tax returns and concealing property were dismissed but were read into the record for purposes of sentencing and restitution.

According to the criminal complaint that was the basis for the charges, Verdone did not file a 1992 Wisconsin income tax return, despite numerous contacts from the Department of Revenue. Verdone replied to the Department of Revenue's request to file by questioning the authority of the department and making a claim based on the Uniform Commercial Code that he owed no taxes. He also claimed to be a "non-immigrant, nonresident, alien/stranger." The Department of Revenue sent Verdone a Notice of Amount Due for 1992 income tax of \$1,341. Verdone returned the assessment to the department with tax protester materials and threatened a "class action suit" and "pressing of criminal charges..." if the assessment was not vacated.

The false claim for earned income credit involved a 1996 tax return filed in the name of Bruce R. Verdone but with the social security number of Verdone's son, Bruce R.T. Verdone. The address on the return was Verdone's, not his son's. This return claimed an earned income credit of \$1,165, based on three other qualifying children. The mother of the children stated that Verdone has had no contact with any

of the four children since the court terminated his parental rights, at his request, in 1995.

The Form W-2 attached to the return was false. It had the social security number of Verdone's son. The employer denied that it employed Verdone or his son in 1996.

Evasion was charged because \$55,829 was negotiated through an account at a Hudson bank in the name of Overland Christian Association. Included were payroll checks Verdone received in 1995 and 1996. Verdone and his girlfriend, Lori Krueger, were the only signatories on the account. The social security number on the account was that of Krueger's daughter.

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A Menomonee Falls bookkeeper, Donna Lynn Blaeske, 44, was ordered in January 1999, to serve fine years probation for filing a fraudulent state income tax return.

Waukesha County Circuit Court Judge Joseph Wimmer also ordered Blaeske to serve 50 hours of community service, and to undergo alcohol and drug assessment. In addition, she is required to make restitution to the State of \$5,400.

The tax case evolved after a joint investigation by the Menomonee Falls Police Department and the Fraud Unit of the Wisconsin Department of Revenue during 1996. At that time Blaeske was suspected of having embezzled thousands of dollars from the North Hills Athletic Club, Menomonee Falls, where she worked as the bookkeeper from 1992 to 1994.

Blaeske was previously convicted of the embezzlement and served 120 days in jail related to this violation.

In addition to the embezzled funds, investigators also discovered that Blaeske evaded income taxes on \$17,058 in bookkeeping fees she received from North Hills Athletic Club during 1993, as well as on money she obtained from Riteway Bus Services, Inc., Richfield, Wisconsin, and Icon Industries, Inc., Shreveport, Louisiana, during 1994.

Filing a false or fraudulent income tax return in Wisconsin is a felony, that carries a penalty of up to five years in prison and fines up to \$10,000 for each count. In addition to the criminal penalties, Wisconsin law provides substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, penalties, and interest follows a conviction for criminal violations.

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Also in January 1999, Jerry L. Miller, 39, of Milwaukee, was charged for filing fraudulent Wisconsin homestead credit claims.

According to the complaint, an investigative officer with the Milwaukee Housing Authority referred the case to the Department of Revenue. The Housing Authority manages an apartment complex where a large number of claimants in whose name Miller filed false claims resided.

Miller filed false homestead credit claims for himself and others for 1995, 1996, and 1997. In each case he prepared a false rent certificate, claiming a false amount of rent, and forging the landlord's agent's signature. All of the claimants, except Miller, stated their homestead credit claims were not correct and would testify against Miller. □

## 1999 Estimated Tax Requirements for Individuals, Estates, and Trusts

Taxpayers who expect to owe \$200 or more of tax with their 1999 Wisconsin income tax return are required to pay 1999 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 1999 Form 1-ES, Wisconsin Estimated Tax Voucher, is filed with each estimated tax payment.

For calendar year taxpayers, the first estimated tax payment is due on April 15, 1999. Installment payments are also due on June 15, 1999, September 15, 1999, and January 18, 2000 (January 15 and 16 are weekend dates, and January 17 is a holiday). For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year.

Estates and grantor trusts which are funded on account of a decedent's death are only required to make estimated tax payments for taxable years which end two or more years after the decedent's death. For example, an individual died on March 25, 1998. A grantor trust which was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 25, 2000.

A trust which is subject to tax on unrelated business income is generally required to pay 1999 Wisconsin estimated tax if it expects to owe \$500 or more on a 1999 Wisconsin franchise or income tax return (Form 4T). A 1999 Form 4-ES, Wisconsin Corporation Estimated Tax Voucher, is filed with each estimated tax payment. Installment payments for

such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If a taxpayer does not make the estimated tax payments when required or underpays any installment, interest may be assessed. □

## Filing Wisconsin Fiduciary and Estate Income Tax Returns (Form 2)

### *Who Must File*

Every personal representative or special administrator of the estate of a Wisconsin decedent must file a Wisconsin fiduciary income tax return (Form 2) if the gross income of the estate is \$600 or more. Nonresident estates must file Wisconsin fiduciary returns if they have gross income of \$600 or more from Wisconsin sources.

Every trustee of a Wisconsin trust must file a Wisconsin fiduciary income tax return (Form 2) if the trust has:

1. any taxable income for the tax year, or
2. gross income of \$600 or more, regardless of the amount of taxable income.

A nonresident trust must file a Wisconsin fiduciary income tax return if the trust has:

1. any Wisconsin taxable income for the year, or
2. gross Wisconsin income of \$600 or more, regardless of the amount of taxable income.

Trusts must file on a calendar-year basis, and the due date is the following April 15. (Exception: a

limited number of charitable trusts may file on a fiscal-year basis.) Estates may choose any fiscal year, but the first return may not cover more than a 12-month period, and the taxable year must end on the last day of a month. The due date for fiduciary returns for estates is 3 1/2 months after the close of the fiscal year.

### *Qualified Funeral Trust (QFT)*

**New:** For taxable years beginning after August 5, 1997, if a qualified funeral trust makes the election under sec. 685 of the Internal Revenue Code (IRC) for federal income tax purposes, that election applies for Wisconsin income tax purposes. Treat each beneficiary's interest as a separate trust. Attach a copy of the federal Form 1041-QFT to the Form 2.

### *Electing Small Business Trust (ESBT)*

**New:** For taxable years beginning on or after January 1, 1997, electing small business trusts (ESBTs) may be S corporation shareholders. The portion of an ESBT that consists of stock of one or more S corporations is treated as a separate trust. The separate trust is subject to Wisconsin income tax at the highest rate under sec. 71.06(1) or (1m), Wis. Stats. (1997-98), as applicable.

### *Closing Certificates*

Every executor, administrator, personal representative, or trustee applying to a court in Wisconsin having jurisdiction for discharge may be required by the Court to obtain a Closing Certificate for Fiduciaries from the department. Before the certificate will be issued, all required income, gift, sales, use, and withholding tax returns and reports, with the exception of the final income tax return of the estate or trust, must be filed.

With the next-to-final fiduciary return, estates must submit a copy of the probate inventory and a copy of the decedent's will. Trustees must submit a statement as to why the trust is closing, copies of annual court accountings for the past three years, and a copy of the trust agreement (or will creating such trust) if not submitted with a prior return.

If an estate does not have enough income to require filing and needs a Closing Certificate for Fiduciaries, or if the estate will be filing only one fiduciary return when the estate is closed and needs the closing certificate before filing that return, use the following procedures:

1. Complete the top third of page 1 of Form 2.
2. Insert the appropriate statement at line 1:
  - a. "Gross income is less than \$600 and no 1041 is required." or
  - b. "A first and final return will be filed upon closing the estate."
3. Complete the "Information Required" section of page 2 of Form 2.
4. Sign and date the Form 2.
5. Attach copies of the inventory and will.

The department shall determine that all income, withholding, sales, use, gift, and delinquent taxes are paid. A Closing Certificate for Fiduciaries will then be issued.

For the fiscal year ending June 30, 1998, the department issued 10,542 Closing Certificates for Fiduciaries.

Receipt of the Closing Certificate for Fiduciaries does not relieve the executor, administrator, personal representative, or trustee from filing

the final fiduciary income tax return. If a probate final account is filed with the court, a copy must be attached to the final return. □

### Filing Wisconsin Estate Tax Returns (Form W706)

#### Filing Requirement

A Wisconsin estate is required to file a Wisconsin estate tax return (Form W706) if it is required to file a federal estate tax return. An estate is required to file a federal estate tax return (Form 706) if the gross estate at date of death plus gifts in excess of \$10,000 made to each donee per calendar year since December 31, 1976, exceeds:

\$ 600,000	1987 through 1997
625,000	1998
650,000	1999
675,000	2000 and 2001
700,000	2002 and 2003
850,000	2004
950,000	2005
1,000,000	2006

The Wisconsin estate tax is equal to the credit for state death taxes allowed on the federal estate tax return (Form 706). This credit is computed under sec. 2011 of the Internal Revenue Code (IRC). Estates owning property both within and outside Wisconsin owe a percentage of the credit to Wisconsin based on gross Wisconsin property divided by gross total property.

#### Due Date

The personal representative, special administrator, trustee, or distributee must file the Wisconsin estate tax return by the due date, which is 9 months after the date of death or the extended due date allowed by the Internal Revenue Service (IRS).

If the return is filed after the due date, there is a penalty equal to 5%

of the tax, with a minimum of \$25 and a maximum of \$500.

#### Payment of Tax

The tax is due 9 months after the decedent's date of death, even if an extension has been obtained to file the return.

If the tax is not paid within 9 months of the decedent's death, interest is imposed at 1% per month from the date of death.

#### Examples:

1. The decedent died February 15, 1998. An extension of time to file the federal estate tax return was obtained from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on December 31, 1998, which was within the extension period. Tax of \$1,200 was due. The total amount due is \$1,326, computed as follows:

Tax	\$1,200
Interest (1% x 10½ months)	126
Total amount due	<u>\$1,326</u>

2. The decedent died February 15, 1998 and did not obtain an extension to file from the IRS. The Wisconsin estate tax return was filed December 31, 1998, and showed no tax due. This estate owes the minimum penalty of \$25.

#### Installment Payments

Effective for deaths occurring on or after July 29, 1995, some estates may qualify to pay the Wisconsin estate tax in installments. If a percentage of the federal estate tax may be paid in installments under IRC sec. 6166, the same percentage of Wisconsin estate tax may be paid under the same installment schedule.



An election to pay in installments for federal estate tax purposes does not automatically constitute an election for Wisconsin purposes. **Written notice of the election to pay the Wisconsin estate tax in installments must be filed with the Wisconsin Department of Revenue within nine months after the decedent's death.** The provisions on acceleration of installment payments under IRC sec. 6166(g) also apply for Wisconsin purposes.

If an estate fails to make an installment payment of tax or interest under sec. 72.225, Wis. Stats. (1997-98), when it is due, the entire remaining balance of tax and interest due must be paid upon notice by the Department of Revenue.

Interest is computed at the rate of 12 percent per year from date of death.

Effective for deaths occurring after December 31, 1997, no estate tax or income tax deduction is allowed for interest paid on tax deferred under IRC sec. 6166. No estate tax administration expense deduction is allowed for any interest payable on any unpaid portion of the estate tax for the period during which an extension of time for payment of the tax is in effect under IRC sec. 6166. This provision eliminates the need to file supplemental estate tax returns and make complex computations to claim an estate tax deduction for interest paid. In addition, no income tax deduction is allowed for any interest payable on any unpaid portion of the estate tax for the period during which an extension of time for a payment of the tax is in effect under IRC sec. 6166.

Distributees of real estate must provide to the department a certified copy of a lien for unpaid taxes and interest on the property to secure payment, and record the lien in the office of the register of deeds of the

county in which the property is located. Distributees of personal property must provide either a lien or a financial guarantee bond equal to the estimated tax and interest, if the tax has not been determined. Upon determination of the tax, distributees of personal property must either provide a lien or a financial guarantee bond sufficient to secure payment of the tax and interest, or pay the excess over the amount of tax and interest secured by the bond.

Any distributee who fails to provide the security required or disposes of one-third or more of the property on which the tax is secured must pay the tax in full.

#### *Certificate Determining Estate Tax*

Upon receipt of the Wisconsin estate tax return and review for correctness, the department will issue a Certificate Determining Estate Tax. If the IRS increases or decreases the federal estate tax, the person entitled to the refund or liable for the additional tax is required to notify the department within 30 days.

(**Note:** Effective for deaths occurring on or after January 1, 1992, there is no longer a Wisconsin inheritance tax. It is replaced with the Wisconsin estate tax.) □

### **Tax Publications Available**

Listed below are more than 60 publications which are available, free of charge, from the Department of Revenue. Copies are available at any department office, or by mail, fax, or (in many cases) the Internet.

#### *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.

#### *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.

#### *Via the Internet*

Access the department's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us), and click on "Forms and Publications."

### **Income and Franchise Taxes**

- 102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/98)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (11/98)
- 104 Wisconsin Taxation of Military Personnel (10/98)
- 106 Wisconsin Tax Information for Retirees (10/98)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1998 (10/98)
- 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)
- 116 Income Tax Payments Are Due Throughout the Year (12/95)
- 119 Limited Liability Companies (LLCs) (12/98)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/98)
- 121 Reciprocity (12/97)



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| <p>200 Electrical Contractors - How Do Wisconsin Sales and Use Taxes Affect Your Business? (3/98)</p> <p>201 Wisconsin Sales and Use Tax Information (10/98)</p> <p>202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (9/98)</p> <p>203 Sales and Use Tax Information for Manufacturers (12/94)</p> <p>205 Use Tax Information for Individuals (1/99)</p> <p>206 Sales Tax Exemption for Nonprofit Organizations (9/90)</p> <p>207 Sales and Use Tax Information for Contractors (9/98)</p> <p>210 Sales and Use Tax Treatment of Landscaping (5/94)</p> <p>211 Cemetery Monument Dealers - How Do Wisconsin Sales and Use Taxes Affect You? (1/99)</p> <p>212 Businesses: Do You Owe Use Tax on Imported Goods? (1/99)</p> <p>213 Travelers: Don't Forget About Use Tax (2/97)</p> <p>214 Businesses: Do You Owe Use Tax? (2/97)</p> | <p><b>Other Taxes and Credits</b></p> <p>127 Wisconsin Homestead Credit Situations and Solutions (11/98)</p> <p>128 Wisconsin Farmland Preservation Credit Situations and Solutions (11/98)</p> <p>400 Wisconsin's Temporary Recycling Surcharge (12/98)</p> <p>403 Premier Resort Area Tax (2/98)</p> <p>410 Local Exposition Taxes (2/99)</p> <p>503 Wisconsin Farmland Preservation Credit (11/98)</p> <p>508 Wisconsin Tax Requirements Relating to Nonresident Entertainers (8/94)</p> <p>W-166 Wisconsin Employer's Withholding Tax Guide (3/96)</p>  | <p>111 How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (10/97)</p> <p>114 Wisconsin Taxpayer Bill of Rights (11/97)</p> <p>115 Handbook for Federal/State Electronic Filing (12/98)</p> <p>117 Guide to Wisconsin Information Returns (10/98)</p> <p>118 Electronic Funds Transfer Guide (4/96)</p> <p>124 Petition for Compromise of Delinquent Taxes (7/98)</p> <p>130 Fax A Form (12/98)</p> <p>401 Extensions of Time to File (1/99)</p> <p>500 Tax Guide for Wisconsin Political Organizations and Candidates (1/97)</p> <p>502 Directory of Wisconsin Tax Publications (6/98)</p> <p>504 Directory for Wisconsin Department of Revenue (11/98)</p> <p>509 Filing Wage Statements and Information Returns on Magnetic Media (3/94)</p> <p>700 Speakers Bureau presenting . . . (12/98) □</p> |

## Manufacturing & Telco Property Assessment Forms Available on Internet

(Note: This article was submitted by the department's State and Local Finance Division.)

Manufacturers and telephone companies can get copies of property tax self-reporting forms through the Internet. The Bureau of Manufacturing & Telco Assessment has provided the following forms and their microcomputer Excel spreadsheet versions on the Department's web site:

### Manufacturer's Forms and Microcomputer Versions:

Real estate form (M-R Form)  
Personal property form (M-P Form)

### Telephone Company Forms and Microcomputer Versions:

Real estate form (T-R Form)  
Personal property form (T-P Form)  
Outside plant form (T-O Form)  
State summary form (T-S Form)

Preparers can find the forms at the Department of Revenue's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us), under "Local Government Forms." □



## Farmers Get \$30 Million in Tax Relief

Approximately \$30.6 million in direct benefits was distributed to Wisconsin farmers in 1998, through the farmland preservation credit and farmland tax relief credit programs.

About 22,000 farmers claimed farmland preservation credits amounting to \$19.9 million, and 58,000 farmers received farmland tax relief credits totaling \$10.7 mil-

lion. The credits are paid through the state income tax, or as a cash refund if the credit exceeds income tax due.

### Farmland Preservation Credit

The goals of the farmland preservation credit program are twofold: to preserve Wisconsin farmland by means of local land use planning and soil conservation practices, and to provide property tax relief to farmland owners. To qualify for the credit, farmland must be 35 acres or more and zoned for exclusive agricultural use or be subject to a preservation agreement between the farmland owner and the state. About 82% of the claims are for land under zoning and 18% are for land covered by agreements. In addition, participants must comply with soil and water conservation standards set by the state Land Conservation Board.

Credits averaged \$907 per claimant, equal to 26% of claimants' average 1997 property tax bills. Approximately 38% of farm owners with 35 acres or more claimed farmland preservation credits in 1998.

### Farmland Tax Relief Credit

The farmland tax relief credit program provides direct benefits to virtually all farmland owners with 35 or more acres. These credits equal 10% of the first \$10,000 of property taxes on farmland and averaged \$183 in 1998. □

## 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 April 1, 1999, or at the stage in which action occurred dur-

ing the period from January 2 to April 1, 1999.

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).

To receive up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 39 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

### Scope Statement Published

(2/15/99)

- 11.05 Governmental units—A
- 11.51 Grocers' guidelist—A
- 11.66 Telecommunications and CATV services—A
- 11.87 Meals, food, food products and beverages—A
- 11.94 Wisconsin sales and taxable transportation charges—A

### Rules Sent to Legislative Council Rules Clearinghouse

- 1.12 Electronic funds transfer – NR
- 11.05 Governmental units—A
- 11.14 Exemption certificates, including resale certificates—A
- 11.26 Other taxes in taxable gross receipts and sales price—A
- 11.32 "Gross receipts" and "sales price" —A
- 11.33 Occasional sales—A
- 11.41 Exemption of property consumed or destroyed in manufacturing—A
- 11.53 Temporary events—A
- 11.83 Motor vehicles—A
- 11.87 Meals, food, food products and beverages—A

11.94 Wisconsin sales and taxable transportation charges—A

### Rules Sent to Revisor for Publication of Notice

11.14 Exemption certificates, including resale certificates—A

11.19 Printed material exemptions—A (published 2/15/99)

11.26 Other taxes in taxable gross receipts and sales price—A

11.32 “Gross receipts” and “sales price” —A

11.41 Exemption of property consumed or destroyed in manufacturing—A

11.53 Temporary events—A

11.70 Advertising agencies—A (published 2/15/99)

11.83 Motor vehicles—A

### Public Hearing Held (2/26/99)

11.19 Printed material exemptions—A

11.70 Advertising agencies—A

### Rules Sent for Legislative Committee Review

2.39 Apportionment method—A

2.395 Alternative method of apportionment – NR

11.09 Medicines—A

11.12 Farming, agriculture, horticulture and floriculture—A

11.19 Printed material exemptions—A

11.28 Gifts and other advertising specialties—A

11.68 Construction contractors—A

11.70 Advertising agencies—A

### Rules Being Reviewed Following Publication of Various Notices

1.13 Power of attorney—A

11.03 Elementary and secondary schools and related organizations—A

11.11 Industrial or governmental waste treatment facilities—A

### Rules Adopted but Not Yet Effective (anticipated effective date 6/1/99)

11.09 Medicines—A

11.12 Farming, agriculture, horticulture and floriculture—A

11.28 Gifts and other advertising specialties—A

11.68 Construction contractors—A

### Rules Adopted and in Effect

2.39 Apportionment method—A (effective 4/1/99)

2.395 Alternative method of apportionment – NR (effective 4/1/99)

11.56 Printing industry—A (effective 2/1/99)

### Emergency Rules in Effect (expire 4/27/99)

2.39 Apportionment method—A

2.395 Alternative method of apportionment – NR □

### Recently Adopted Rules Summarized

Summarized below is information regarding sec. Tax 11.56 (Printing industry), which was revised effective February 1, 1999. Also summarized is information regarding secs. Tax 2.39 (Apportionment method), revised effective April 1, 1999, and Tax 2.395 (Alternative method of apportionment), created effective April 1, 1999.

In addition to the summary of changes, some of the text is reproduced. In the amendments, material lined through (~~lined through~~) repre-

sents deleted text, and underscored (underscored) material represents new text.

To order up-to-date administrative rules of the Department, you can use the order blank on page 39 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

**Tax 11.56.** Subsection (1)(a) is repealed and the content is placed in new sub. (1)(b)1., and sub. (1)(b)2. created, to describe various traditional processes and machines and equipment used in manufacturing printed materials, and to reflect technological advances within the printing industry which are considered part of manufacturing printed materials.

Subsection (1)(b) and (c) are renumbered (c) and (a), to list the definitions in alphabetical order per Legislative Council Rules Clearinghouse (Clearinghouse) standards. Paragraph (c) is amended, to remove improper punctuation.

Subsection (2)(a) is amended, to replace “consumers” with “customers” in two instances.

Subsection (3)(a), (b)1. and 2., and (c) are renumbered (3)(a)(intro.), 1. and 2., and (b), and (3)(a)(intro.), 1. and 2. as renumbered are amended, to reflect correct terminology and grammatical standards.

Subsections (5) and (6)(a)2. are amended, to reflect correct statutory language and to set forth an example separately from the text, per Clearinghouse standards.

Subsection (6)(b)(intro.) is renumbered (6)(b) and amended, and subdivisions 1. and 2. are repealed, to remove the examples and set them forth separately, per Clearinghouse standards.

Subsections (6)(c) and (7)(b) are renumbered (7)(b) and (7)(c) and amended, to reflect the change in the taxability of raw materials which are processed, fabricated, or manufactured into printed materials which will be used solely outside Wisconsin, due to the repeal of sec. 77.51(18)(b) and creation of sec. 77.54(43), Wis. Stats., by 1997 Wisconsin Act 27.

The text of Tax 11.56(1)(b), (7)(b), and (7)(c) is as follows:

Tax 11.56(1)(b) "Manufacturing printed matter" includes either of the following processes by a manufacturer:

1. Initial typesetting and composition, producing a paste-up, combining photographs with words, making page makeups and taking pictures of them, making proofs and paper for editing, producing negatives which go to the stripping department for assembly of the flat and taking a picture, either positive or negative, of a flat which after it is finally proofed is known as plate-ready film, and producing an image carrier which is installed on a printing press, or using equivalent prepress technology to produce an image carrier, and the bindery/finishing stage.

2. Using computers, scanners, proofers, typesetters, photographic equipment, film processors and direct-to-plate equipment exclusively in performing any of the processes listed in subd. 1. "Manufacturing printed matter" does not include using the equipment described in this subdivision to design, write or compose an original document to be printed.

(7)(b) Wisconsin sales or use tax is not imposed on raw materials ~~that would otherwise be subject to use tax under s. 77.53(1), Stats., purchased by a publisher or printer of printed materials~~ if both of the following conditions are met:

1. The raw materials are processed, fabricated or manufactured into, attached to or incorporated into printed materials.

2. The resulting printed materials will be shipped ~~outside Wisconsin for use~~ transported and used solely outside Wisconsin.

(7)(c) The tax applies to purchases of artwork, single color or multicolor separations, negatives, flats and similar items if those purchases are used in the manufacture of tangible personal property not to be sold, other than items exempt under par. (a) or (b). A printer who does not supply paper used in printing tangible personal property is not selling tangible personal property but rather, is selling a service.

**Tax 2.39** Subsection (3)(a)(intro.) is amended, to exclude corporations that qualify for the use of an alternative apportionment method from the rule relating to the general apportionment method. A second note at the end of Tax 2.39(3) is created, to include a reference to Tax 2.395.

The text of Tax 2.39(3)(a)(intro.) is as follows:

Tax 2.39(3)(a)(intro.) For the reporting of income for the purposes of franchise or income taxation, all businesses except financial organizations and public utilities as defined in ss. 71.04(8) and 71.25(10), Stats., and corporations that are authorized to use an alternative method of apportionment under s. 71.25(14), Stats., shall use an apportionment fraction composed of a sales factor representing 50% of the fraction, a property factor representing 25% of the fraction and a payroll factor representing 25% of the fraction. Property, payroll or sales related to the production of nonapportionable income described in s. 71.04(1) and (4) or 71.25(5)(b), Stats., may not be included in either the numerator or the denominator of any of the apportionment factors. If one of these factors is omitted pursuant to s. 71.04(10) or 71.25(11), Stats., the percentages of the fraction represented by the remaining factors shall be adjusted as follows:

**Tax 2.395** Tax 2.395 is created, to address the use of an alternative apportionment method. This alterna-

tive method was created by 1997 Wisconsin Act 299, effective for taxable years beginning on January 1, 1998.

The text of Tax 2.395 is as follows:

**Tax 2.395 Alternative method of apportionment.** (1) DEFINITIONS. In this section:

(a) "Corporate restructuring" means the transfer by a corporation of part or all of its property and employees to one or more subsidiaries in exchange for 100% of the subsidiary's stock.

(b) "Corporation" means a corporation for profit that is incorporated under ch. 180, Stats., or under the law of another state, the District of Columbia or a foreign country and is subject to tax under s. 71.23(1) or (2), Stats.

(c) "Subsidiary" means a corporation that files an application under this section with a corporation that directly or indirectly owns 100 % of the total value or share of all classes of its stock outstanding.

(d) "Unfair representation of the degree of business activity in this state" means that the sum of the Wisconsin tax liability of the corporation and its subsidiaries calculated under s. 71.25(6), Stats., exceeds 200% of the Wisconsin tax liability that the corporation would have owed if corporate restructuring had not occurred and results in at least \$2 million of additional Wisconsin tax liability.

**Note:** This definition applies only for purposes of s. 71.25(14), Stats.

(e) "Wisconsin tax liability" means the gross tax computed under s. 71.23(1) or (2), Stats.

(2) WHO MAY FILE AN APPLICATION. A corporation together with its subsidiary may file an application on or before January 1, 2000 to use an alternative method of apportionment under this section if all of the following conditions are met:

(a) The corporation is not a financial organization as defined in s. 71.25(10)(a), Stats., a public utility as defined in s. 71.25(10)(b), Stats., or a tax-option corporation as defined in s. 71.34(2), Stats.

(b) The corporation is a party to a corporate restructuring that occurs after June 30, 1998 and before January 1, 2000.

(c) The corporation retains direct or indirect ownership of 100% of the subsidiary's stock and the subsidiary has not been engaged in business in or outside this state since the date of its incorporation.

(d) As a result of the corporate restructuring, the use of the allocation and separate accounting method or the apportionment method prescribed under s. 71.25(6), Stats., would result in an unfair representation of the degree of business activity in this state, given the same level of sales, payroll and property for the corporation and its subsidiaries.

(3) **CONTENT OF THE APPLICATION.** The application shall set forth a complete statement of the facts and reasons relating to the request to use an alternative method of apportioning income to Wisconsin, including the following:

(a) The full name, address and federal employer identification number of the corporation applying for the change in apportionment method.

(b) The full name, address and federal employer identification number of the subsidiaries that are a party to the corporate restructuring. If this information is not available when the application is filed, it shall be provided to the department as an amendment to the application at least 60 days before a return using an alternative apportionment method is filed.

(c) The corporation's and the subsidiaries' taxable year. The subsidiaries shall have the same taxable year as the corporation.

(d) The taxable year for which the corporation wishes the change to become effective.

(e) A detailed description of the corporate structure and business operations before the corporate restructuring.

(f) A detailed description of the corporate structure and business operations after the corporate restructuring.

(g) The present allocation or apportionment method used in Wisconsin.

(h) A description of the alternative apportionment method requested.

(i) A complete and precise statement of the reasons for the modification requested, including why the present method does not fairly represent the activities of the corporation and its subsidiaries in Wisconsin.

(j) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the present method of allocation or apportionment would result in an unfair representation of the degree of business activity in this state.

(k) Calculations using data from the most recently filed tax return prior to July 1, 1998, showing that the Wisconsin tax liability of the corporation and its subsidiaries using the proposed alternative method of apportionment does not result in less Wisconsin franchise or income tax than the corporation would be liable for without restructuring.

(L) Any other information relevant to the application the department requires or the corporation believes may have a bearing on the department's decision about whether to grant the apportionment method requested.

(m) Whether the corporation is being audited by the department at the time of the application.

**Note:** The application shall be mailed to the following address: Administrator of the Division of Income, Sales and Excise Taxes, Wisconsin De-

partment of Revenue, P.O. Box 8933, Madison, WI 53708-8933.

(4) **ALTERNATIVE METHODS OF APPORTIONMENT.** The department may authorize any one or a combination of the following alternative methods of apportionment:

(a) Excluding any one or more of the property, payroll and sales factors.

(b) Weighting the factors other than 50% sales, 25% property and 25% payroll.

(c) Allocating sales, other than sales of tangible personal property, to the state in which the corporation's customers are located for purposes of computing the numerator of the sales factor. For purposes of this paragraph:

1. A sale is allocated to the location where the customer receives the benefit of the service.

2. If the customer receives the benefit of the service in more than one state, the gross receipts are includable in the numerator of the apportionment factor in proportion to the extent the recipient receives the benefit of the service in each state.

(d) Including one or more additional factors which will fairly represent the corporation's or the subsidiaries' business activity in this state.

(e) Allowing one method for apportioning the business income of the corporation and another method for apportioning the business income of a subsidiary.

(f) Allowing the corporation and one or more subsidiaries to compute their Wisconsin tax liability by adding together their apportionable income and apportionment factors, eliminating any intercompany transactions, computing the Wisconsin tax liability as though the group were one taxpayer and dividing the combined Wisconsin tax liability among the corporations based on their share of the group's Wisconsin business income.

(g) Allowing any other apportionment method that will fairly represent the corporation's and the subsidiaries' business activity in this state.

(5) REVIEW OF THE APPLICATION. The department shall review the information submitted and follow the procedure specified in s. 71.25(14)(c), Stats., before issuing a written decision regarding the use of an alternative method of apportionment. The corporation shall receive written approval before using the alternative method.

(6) YEARS FOR WHICH USE OF ALTERNATIVE METHOD OF APPORTIONMENT APPLIES. (a) Except as provided in par. (b), once an alternative method of apportionment has been approved for a taxable year, the corporation shall use it for that taxable year and all subsequent taxable years, unless the department finds the use of the alternative apportionment method is no longer appropriate as determined under sub. (7)(b).

(b) Notwithstanding par. (a), the aggregate of the corporation's and the subsidiaries' Wisconsin tax liability shall be the greater of the Wisconsin tax liability calculated using the approved alternative apportionment or the Wisconsin tax liability calculated as if the corporate restructuring had not taken place.

(7) REVOCATION OF USE OF ALTERNATIVE METHOD OF APPORTIONMENT. (a) 1. If the department upon audit or review finds that the use of the apportionment

method prescribed in s. 71.25(6), Stats., does not result in an unfair representation of the degree of business activity in this state for the first taxable year for which an alternative method of apportionment was approved, the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25(6), Stats.

2. If the department upon audit or review finds that the use of the alternative apportionment method in subsequent taxable years is no longer appropriate as determined under par. (b), the corporation and its subsidiaries shall recalculate their Wisconsin tax liabilities under s. 71.25(6), Stats., for each of the subsequent taxable years.

(b) In determining whether a corporation may continue to use the alternative method of apportionment, the department shall look for a continued substantial amount of difference between the tax liability calculated pursuant to s. 71.25(6), Stats., and the tax liability had the restructuring not taken place. The department shall also consider any additional information the corporation has submitted pursuant to sub. (8).

(c) If the department finds for a period of at least three consecutive taxable years that a substantial difference in tax liability as determined in par. (b) no longer exists, the corporation may no longer use the approved alternative apportionment method.

(d) If the department terminates the approved alternative apportionment

method, in a subsequent taxable year the corporation may request a new alternative method of apportionment. The department shall submit the new proposed alternative method of apportionment to the co-chairpersons of the joint committee for review of administrative rules pursuant to s. 71.25(14)(c), Stats.

(8) FILING OF RETURN. For each taxable year, the corporation and its subsidiaries shall file with their Wisconsin corporate franchise or income tax returns schedules setting forth the calculations required under sub.(6), as well as a calculation of the tax liability of the corporation and its subsidiaries under s. 71.25(6), Stats. The corporation and its subsidiaries shall attach a copy of the department's approval to use an alternative apportionment method to the front of each return filed. The corporation may also include additional explanatory material relative to its business activity. The returns shall be filed with the department's audit bureau.

**Note:** The address for mailing the returns is: Audit Bureau, Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.

(9) CONFIDENTIALITY. All documents related to a request for an alternative method of apportionment shall be subject to the confidentiality provisions of s. 71.78, Stats.

**Note:** Section Tax 2.395 interprets s. 71.25(14), Stats. □