



# Wisconsin TAX BULLETIN

## New Tax Laws Pending

The Governor's 1999-2001 Budget Bill and other bills affecting Wisconsin taxes were still pending at the time this Bulletin went to press. If any of these bills become law, a special issue of the *Wisconsin Tax Bulletin* will be published to provide information about the tax law changes. □

## Focus on Publications: Veterinarians

What sales by a veterinarian are subject to Wisconsin sales tax? What items may a veterinarian purchase without paying Wisconsin sales and use tax?

Answers to these and other questions relating to veterinarians can be found in a new publication titled *Veterinarians - How Do Wisconsin Sales and Use Taxes Affect Your Business?* (Publication 224). This publication also includes examples of taxable and exempt sales and purchases made by veterinarians and other helpful information.

A copy of Publication 224 appears on pages 31 to 41 of this Bulletin. To obtain additional copies of this or other publications, see the article titled "Tax Publications Available" on page 7 of this Bulletin. □

## Power of Attorney Form Required

If your tax representative assists you in complying with Wisconsin tax laws and the tax representative performs any of the following functions on your behalf, you are required to have a power of attorney on file with the Wisconsin Department of Revenue:

- Receive tax forms, notices, assessments, determinations, redeterminations, billings, refunds, communications, and correspondence relating to your tax account.
- Inspect confidential information (e.g., tax returns and audit reports).
- Represent you at conferences.
- Execute a waiver to extend the statutory period for assessment or collection of tax.
- Execute any other waivers or agreements.

A copy of the Department of Revenue Power of Attorney and instructions (Form A-222) appears on pages 43 and 44 of this Bulletin. Copies are also available from any Department of Revenue office, or via the department's Internet web site, [www.dor.state.wi.us](http://www.dor.state.wi.us).

The department will accept an original, photocopy, or facsimile (fax) transmission of a power of attorney.

Use of Form A-222 is not required, but a substitute must reflect the information that would be provided on the Form A-222. □

## 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 57 of this Bulletin. □

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take into account Wisconsin tax withheld from wages.

If there is no response to an estimated assessment, the amount of the assessment is subject to delinquent interest of 1.5% per month, as well as a minimum \$35 collection fee. The \$35 fee will be cancelled if a tax return or information is subsequently furnished, and the tax return or information indicates that there is no filing requirement.

After a delinquent account has been established, collection action will be initiated, including, but not limited to, filing a tax lien, requiring an employer to withhold additional money from an employee's pay, and seizing assets such as bank accounts. The tax lien is public information, which creates a potential for credit agencies to obtain access to the information. This could adversely affect a taxpayer's credit rating.

These types of actions are the reason it is vital to respond to letters and notices from the Department of Revenue. There may not be a need for a tax return, and even if a return is due, the taxpayer may not owe Wisconsin tax. But the department will never know unless a response is received.

Each letter or notice requesting that a return be filed includes a telephone number to call with questions. Also, employees located in any of the department's offices throughout the state are available to provide assistance. □

## Your Money or Your License?

As part of post-amnesty legislation, 1997 Wisconsin Act 237 expanded the withholding of occupational licenses or credentials of taxpayers who owe delinquent Wisconsin

## Don't Ignore Department of Revenue Inquires

If a client receives a letter or notice from the Department of Revenue asking that they file a tax return, don't ignore that letter or notice. It is important to respond timely in order to avoid an estimated assessment and the possibility of a collection fee (minimum of \$35) and other collection actions.

If the Department of Revenue believes that a required tax return has not been filed, a letter is sent to the taxpayer requesting the missing return or an explanation of why no return is required. (**Note:** Businesses should notify the department when a Wisconsin seller's permit or Wisconsin employer identification number is no longer needed. As long as a seller's permit or employer identification number is considered active, sales tax returns or withholding tax deposit reports are required to be filed, even if there are no sales to report or withholding deposits to be made.)

If a timely response is not received, an estimated assessment is issued. Estimated assessments are generally much higher than the taxpayer's actual liability, because the estimates are based on incomplete information, and credits are not allowed. For example, in cases involving individual income tax, the estimate may not

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Madison, WI 53707-7840

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taxes. Effective January 1, 1999, the Department of Revenue (DOR) is authorized to certify tax delinquencies to additional Wisconsin agencies. The agencies must then deny initial or renewal applications, or suspend or revoke licenses or credentials.

The agencies included in the occupational license revocation program are as follows:

Administration  
Commerce  
Commissioner of Insurance  
Ethics Board  
Financial Institutions  
Health and Family Services  
Natural Resources  
Public Instruction  
Regulation and Licensing  
Revenue (SLF Division)  
Transportation  
Workforce Development

The above-listed agencies and examining boards, and affiliated credentialing boards, issue certain professional and occupational credentials. Most credentials renew yearly or every two years. Credential holders will be screened at initial issuance, renewal, or periodically to identify individuals and businesses with Wisconsin tax delinquencies. Those with delinquent tax liabilities will be notified and allowed ten days to pay the amounts due.

A person or business whose initial or renewal application has been denied, or whose credential has been suspended or revoked, is entitled to a hearing before DOR. This hearing is limited to questions of: a) mistaken identity of the credential holder; and b) whether the credential holder has paid the delinquent taxes for which he or she is liable.

If, after the hearing, DOR affirms its certification that the credential holder is liable for delinquent taxes,

the agency issuing the license must affirm its denial, suspension, or revocation of the credential holder's license. The credential holder or applicant may then seek judicial review in the Dane County Circuit Court.

The Act provides that if a credential holder's license is denied, revoked, or suspended because of delinquent taxes and the credential holder reapplies for the credential, the issuing agency must deny the reapplication until DOR sends the agency a clearance certificate, indicating the delinquent tax issue is resolved. If a license holder or applicant owes delinquent tax and cannot pay the balance in full, the department may accept installment payments on the balance. Before the license will be released, the license holder will have to provide financial information and make a down payment.

Persons wishing to resolve their delinquent tax account before applying for a credential, or who have not yet received notice that the credential will be withheld or revoked, should contact their nearest DOR office or the Madison office at (608) 264-7773. Persons who are unsure of who to contact, or who have received notice that their license will be withheld or revoked, should call (608) 261-6249 to discuss options to resolve the account and release the license. □

## Any Suggestions for 1999 Tax Forms?

Do you have suggestions for improving Wisconsin's tax forms or instructions? Can you think of ways the forms or instructions could be made easier to understand? If so, the department would like to hear from you.

Please take a few moments to put your ideas in writing, and mail them to Wisconsin Department of Revenue, Administration Technical Services, P.O. Box 8933, Madison, WI 53708-8933, or fax them to (608) 261-6240, or e-mail them to [treid@dor.state.wi.us](mailto:treid@dor.state.wi.us). Your suggestions could help make "tax time" easier for taxpayers and practitioners. □

## Sales and Use Tax Report Mailed

The June 1999 *Sales and Use Tax Report* (1-99) contains a number of articles regarding sales and use tax issues, including sales to governmental units, use tax, and direct pay. Also included is a listing of counties that have adopted the county tax (including Green Lake and Taylor Counties effective July 1, 1999).

The *Sales and Use Tax Report* was sent in late June and early July to all persons registered for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 45 to 48 of this Bulletin. □

## Student Arrested for Making Fake IDs

Wisconsin Department of Revenue Alcohol & Tobacco agents and Stevens Point police raided a UW – Stevens Point dorm room in March 1999, and arrested a student for manufacturing false identification (ID) documents. Chad Williams, 19, is accused of making false Wisconsin driver's licenses in his room. He may face felony charges with penalties of up to three years imprisonment and \$10,000 in fines.

The arrest was part of a statewide investigation into fake IDs, and part of an ongoing battle against underage drinking and alcohol related

crimes. The department's Alcohol & Tobacco Enforcement (A&T) unit and local police are conducting similar investigations in other Wisconsin cities. The A&T unit has headquarters in Madison and field offices throughout the state. Agents enforce the alcohol and tobacco laws and regulations in Wisconsin.

The Wisconsin Department of Transportation has developed a digitized driver's license that will make it harder to manufacture false IDs. It is hoped that the new design, plus increased enforcement, will make a big dent in the sale of fake IDs. These documents are not just used by young people trying to buy alcohol, but they are also used in crimes such as forgery and credit card fraud. □

### Automatic 4-Month Extension Expires August 16

If your 1998 Wisconsin and federal individual income tax returns were due April 15, 1999, but you filed an application for an automatic 4-month extension for filing your federal return with the Internal Revenue Service (IRS), both your federal and Wisconsin returns are due August 16, 1999 (August 15 is a Sunday). When you file your Wisconsin return, be sure to attach to it a copy of the federal extension application, Form 4868.

Any filing extension available under federal law may be used for Wisconsin purposes, even if you are not using that extension to file your federal return. If you did not file a federal extension application but needed a 4-month extension for Wisconsin only, your 1998 Wisconsin return, ordinarily due April 15, 1999, must be filed by August 16, 1999.

If you are extending the time to file your Wisconsin return only, attach one of the following items to the 1998 Wisconsin return you file:

- A statement indicating that you are filing under the federal automatic 4-month extension provision; or
- A copy of federal Form 4868 with only the name, address, and social security number completed.

**Note:** You were not required to pay your 1998 taxes by April 15, 1999, as a condition for receiving an extension of time to file your Wisconsin tax return. □

### Emergency Rule on Recycling Adopted

In February 1999 the Wisconsin Legislature's Joint Committee for Review of Administrative Rules directed the Department of Revenue to promulgate as an emergency rule its policies interpreting sec. 77.54(26m), Wis. Stats. (1997-98). Section 77.54(26m) provides a sales and use tax exemption relating to machinery and equipment used in waste reduction and recycling activities.

The emergency rule, which creates Tax 11.20, *Waste reduction and recycling*, was adopted effective March 27, 1999.

The department is in the process of promulgating a permanent rule, which will include the information in the emergency rule as well as information relating to sec. 77.54(5)(c), Wis. Stats. (1997-98). Section 77.54(5)(c) provides a sales and use tax exemption relating to motor vehicles used in waste treatment and recycling activities.

The text of the emergency rule is as follows:

**Tax 11.20 Waste reduction and recycling.** (1) STATUTORY EXEMPTION. Section 77.54(26m), Stats. exempts the gross receipts from the sale of and the storage, use or other consumption of "...waste reduction or recycling machinery and equipment, including parts therefor, exclusively and directly used for waste reduction or recycling activities which reduce the amount of solid waste generated, re-use solid waste, recycle solid waste, compost solid waste or recover energy from solid waste. The exemption applies even though an economically useful end product results from the use of the machinery and equipment. For the purposes of this subsection, "solid waste" means garbage, refuse, sludge or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semi-solid, liquid or contained gaseous materials or articles resulting from industrial, commercial, mining or agricultural operations or from domestic use or from public service activities."

(2) CONDITIONS FOR EXEMPTION. The exemption under sub. (1) shall apply if all of the following conditions are met:

(a) The item is a piece of machinery or equipment or a part for the machinery or equipment.

(b) The machinery or equipment is used exclusively in waste reduction or recycling activities.

(c) The machinery or equipment is used directly in waste reduction or recycling activities.

(d) The waste reduction or recycling activity does one or more of the following:

1. Reduces the amount of solid waste generated.
2. Reuses solid waste.
3. Recycles solid waste.
4. Composts solid waste.

5. Recovers energy from solid waste.

**Note:** Waste reduction and recycling activities do not include the collection, transportation or storage of the solid waste.

**Note:** In a decision dated June 25, 1992 in the case of *Wisconsin Department of Revenue vs. Parks-Pioneer Corporation* the Wisconsin Court of Appeals, District IV, held that lugger and roll-off boxes, tarps, bands, hoists, scales and hose used by Parks-Pioneer in its business of collecting, preparing, sorting, weighing and processing scrap were not used directly in waste reduction or recycling activities. The Court stated that "The scrap is recycled after it is collected and transported to the plant." Under this interpretation, machinery and equipment used in the collecting, transporting and weighing of recyclable materials do not qualify for exemption under s. 77.54(26m), Stats.

(3) **MACHINERY AND EQUIPMENT WHICH QUALIFY FOR EXEMPTION.** Machinery and equipment used exclusively and directly in waste reduction or recycling activities which qualify for the exemption under sub. (1) include the following:

(a) Equipment in a foundry used exclusively to clean sand so the sand can be reused.

(b) Furnaces designed and used exclusively to burn waste oil and heat a building.

(c) Machinery and equipment used exclusively to pulverize trees and brush into small pieces which remain on the ground to compost.

(d) Machinery and equipment used exclusively to chop up branches, bark, stumps and brush into small chips which will be reused.

(e) A road reclaimer/stabilizer used exclusively to cut and grind up asphalt roads so that the resulting materials can be used as a sub-base for a new road.

(4) **MACHINERY AND EQUIPMENT WHICH DO NOT QUALIFY FOR EXEMPTION.** Machinery and equipment which do

not qualify for the exemption under sub. (1) because they are not used exclusively and directly in waste reduction or recycling activities include the following:

(a) A can crusher which an individual uses to crush aluminum cans at the individual's personal residence.

(b) Dumpsters, bins and covers for dumpsters and bins which are used to collect and transport recyclable materials.

(c) Shelving in a bookstore that sells used books and other goods.

(d) Equipment used to recover freon, but not reuse it. □

### 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. □

### 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* 113 (April 1999), pages 33 to 36.

#### Madison — Main Office Area Code (608)

Appeals .....	266-0185
Audit of Returns: Corpora- tion, Individual, Homestead.....	266-2772
Beverage .....	266-6702
Cigarette, Tobacco Prod- ucts .....	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

□

### Delinquent Tax Compromises

A delinquent tax compromise is a process by which a person or business entity may settle a Wisconsin tax liability for an amount that is

less than the total obligation. Persons whose liability is so large in comparison to their assets and earning potential that they will never be able to repay their obligation are candidates for this process.

Publication 124, *Petition for Compromise of Delinquent Taxes*, contains information describing the compromise process. A *Petition for Compromise of Delinquent Taxes*, Form A-212, must be used to begin the compromise process. It should be completed in full and sent to one of the department offices listed on the back of the form.

If all of the relevant information is provided, the petitioner can expect to receive a decision from the department in 30 to 45 days.

Copies of Publication 124 and Form A-212 appear on pages 49 to 56 of this Bulletin. In addition, both the publication and the form can be downloaded from the department's Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Also available on the web site is a list of Frequently Asked Questions about compromises.

Revenue agents at any of the department's offices can assist and provide answers to any questions about tax compromises. Questions can also be e-mailed to the department at [delnqtax@dor.state.wi.us](mailto:delnqtax@dor.state.wi.us). □

## 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 informa-

tion for issues 1 to 111 (through 1998). □

## Tax Crime Crackdown Continues

Jerry L. Miller, 39, of Milwaukee, pled guilty in June 1999, to three counts of 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 the Highland Park Housing apartment complex, where a large number of the claimants resided.

Miller filed false homestead credit claims for himself and others for the years 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.

Sentencing is scheduled for August 23, 1999. Filing a fraudulent claim for homestead credit is a felony punishable by up to five years imprisonment and up to \$10,000 in fines. In addition, Miller faces substantial civil penalties, as well as assessment and collection of the taxes, penalties, and interest due.

Milwaukee businessman Wesley E. Bryant, 38, was found guilty in April 1999, on two counts of sales tax theft and two counts of failure to file Wisconsin individual income tax returns.

Milwaukee County Circuit Court Judge John Dimotto stayed a two year, nine month prison sentence on the sales tax charges and placed Bryant on two years probation. In

addition, he must pay restitution and costs. Judge Dimotto also sentenced Bryant to 120 days in the House of Correction for failing to file the income tax returns.

A review of business records revealed that Bryant, who operated a suspected auto "chop shop," had been collecting Wisconsin sales taxes during 1995 and 1996 but failed to remit the collected taxes to the Department of Revenue when due. He also failed to file 1995 and 1996 Wisconsin income tax returns, when his income exceeded \$65,000 in 1995 and \$76,000 in 1996.

Thomas B. Brufach, 47, of Wales, Wisconsin, was charged in April 1999 with two counts of failure to file timely Wisconsin income tax returns. The charges resulted from an investigation by the Department of Revenue's Fraud Unit.

The criminal complaint alleges that Brufach failed to file timely 1995 and 1996 income tax returns, when he had gross receipts of \$33,663 and \$483,650, respectively. Brufach allegedly owes state income taxes of \$18,581 for the years 1990 to 1996.

If convicted on both counts, Brufach faces up to 18 months in jail and up to \$20,000 in fines. Failure to file a Wisconsin income tax return is a crime punishable by up to nine months imprisonment and up to \$10,000 in fines. In addition, Wisconsin law provides for substantial civil penalties, and assessment and collection of the taxes, penalty, and interest due follows the conviction for criminal violation.

Susan M. Heffele, 49, was charged in April 1999 with three counts of filing fraudulent income tax returns

and four counts each of fraudulent writings and theft, for stealing more than \$218,000 over a three-year period. She is charged with stealing the money from Environmental Specialists, Inc., a Milwaukee environmental clean-up business for which she was office manager and bookkeeper from 1992 to 1997.

The criminal complaint alleges that between January 1994 and April 1997, Heffele wrote numerous company checks to either pay her personal expenses or make deposits in her personal bank account. She concealed the theft by recording false entries in the business check register. She and her husband filed fraudulent joint Wisconsin income tax returns for 1994, 1995, and 1996, failing to report \$191,972 of taxable income for those years.

Also in April, chiropractor Michael H. Fritz, Stevens Point, was charged with two counts of failure to file Wisconsin income tax returns for 1995 and 1997.

According to the criminal complaint, Fritz reported that he received income of over \$30,000 in 1995 for rendering chiropractic services at Healing Arts Center, Stevens Point. The Center made deposits of \$99,431 in 1995. In addition, he received wages reported on wage statements from three different employers for 1997 sufficient to establish a filing requirement.

In addition to criminal and civil penalties and assessment and collection of taxes, penalty, and interest, Wisconsin law requires that the Department of Regulation and Licensing deny renewal of occupational licenses of persons liable for delinquent taxes. □

## 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 (5/99)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 1998 (10/98)
- 123 Business Tax Credits for 1998 (12/98)
- 125 Credit for Tax Paid to Another State (11/98)
- 126 How Your Retirement Benefits Are Taxed (9/98)
- 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? (3/98)
- 201 Wisconsin Sales and Use Tax Information (10/98)
- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (9/98)
- 203 Sales and Use Tax Information for Manufacturers (12/94)
- 205 Use Tax Information for Individuals (1/99)
- 206 Sales Tax Exemption for Non-profit Organizations (9/90)
- 207 Sales and Use Tax Information for Contractors (9/98)
- 210 Sales and Use Tax Treatment of Landscaping (5/94)
- 211 Cemetery Monument Dealers - How Do Wisconsin Sales and Use Taxes Affect You? (1/99)
- 212 Businesses: Do You Owe Use Tax on Imported Goods? (1/99)



- 213 Travelers: Don't Forget About Use Tax (4/99)
- 214 Businesses: Do You Owe Use Tax? (4/99)
- 216 Filing Claims for Refund of Sales or Use Tax (3/99)
- 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? (4/99)
- 220 Grocers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/98)
- 221 Farm Suppliers and Farmers - How Do Wisconsin Sales and Use Taxes Affect Sales to Farmers? (4/97)
- 222 Motor Vehicle Fuel Users: Do You Owe Use Tax? (4/98)
- 223 Bakeries – How Do Wisconsin Sales and Use Taxes Affect Your Business? (2/98)
- 224 Veterinarians - How Do Wisconsin Sales and Use Taxes Affect Your Business? (6/99)

#### Other Taxes and Credits

- 127 Wisconsin Homestead Credit Situations and Solutions (11/98)
- 128 Wisconsin Farmland Preservation Credit Situations and Solutions (11/98)
- 400 Wisconsin's Temporary Recycling Surcharge (12/98)
- 403 Premier Resort Area Tax (2/98)
- 410 Local Exposition Taxes (2/99)
- 503 Wisconsin Farmland Preservation Credit (11/98)
- 508 Wisconsin Tax Requirements Relating to Nonresident Entertainers (8/94)
- W-166 Wisconsin Employer's Withholding Tax Guide (3/96)

#### Audits and Appeals

- 501 Field Audit of Wisconsin Tax Returns (2/96)
- 505 Taxpayers' Appeal Rights of Office Audit Adjustments (6/96)
- 506 Taxpayers' Appeal Rights of Field Audit Adjustments (3/98)
- 507 How to Appeal to the Tax Appeals Commission (7/98)

#### 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)
- 115 Handbook for Federal/State Electronic Filing (12/98)
- 117 Guide to Wisconsin Information Returns (10/98)
- 118 Electronic Funds Transfer Guide (4/96)
- 124 Petition for Compromise of Delinquent Taxes (7/98)
- 130 Fax A Form (12/98)
- 401 Extensions of Time to File (1/99)
- 500 Tax Guide for Wisconsin Political Organizations and Candidates (1/97)
- 502 Directory of Wisconsin Tax Publications (6/98)
- 504 Directory for Wisconsin Department of Revenue (11/98)
- 509 Filing Wage Statements and Information Returns on Magnetic Media (3/94)
- 700 Speakers Bureau presenting . . . (12/98) □

### 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 July 1, 1999, or at the stage in which action occurred during the period from April 2 to July 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). Dates or rules followed by an asterisk list anticipated actions.

To receive up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 57 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

#### Scope Statement Published

- 11.20 Waste reduction and recycling–NR (published 4/30/99)
- 11.34 Occasional sales exemption for sale of a business or business assets–A (published 6/30/99\*)
- 11.35 Occasional sales by non-profit organizations–A (published 6/30/99\*)
- 11.39 Manufacturing–A (published 6/30/99\*)
- 11.535 Operators of a swap meet, flea market, craft fair or similar event–A (published 6/30/99\*)
- 11.64 Background music–R&R (published 5/31/99)
- 11.67 Service enterprises–A (published 6/15/99)
- 11.79 Leases of highway vehicles and equipment–A (published 6/30/99\*)
- 11.96 Delivery of ordinance; county and premier resort area taxes–NR (published 6/30/99\*)



**Rules Sent to Legislative Council Rules Clearinghouse**

- 11.51 Grocers' guidelist–A
- 11.64 Background music–R&R
- 11.66 Telecommunications and CATV services–A

**Rules Sent to Revisor for Publication of Notice**

- 1.12 Electronic funds transfer–NR (published 5/15/99)
- 11.03 Elementary and secondary schools and related organizations–A (published 6/15/99)
- 11.05 Governmental units–A (published 5/15/99)
- 11.11 Industrial or governmental waste treatment facilities–A (published 6/15/99)
- 11.14 Exemption certificates, including resale certificates–A (published 4/30/99)
- 11.26 Other taxes in taxable gross receipts and sales price–A (published 4/30/99)
- 11.32 "Gross receipts" and "sales price"–A (published 4/30/99)
- 11.33 Occasional sales–A (published 4/30/99)
- 11.41 Exemption of property consumed or destroyed in manufacturing–A (published 4/30/99)
- 11.51 Grocers' guidelist–A (published 6/15/99)
- 11.53 Temporary events–A (published 4/30/99)
- 11.83 Motor vehicles–A (published 4/30/99)
- 11.87 Meals, food, food products and beverages–A (published 5/15/99)

- 11.94 Wisconsin sales and taxable transportation charges–A (published 5/15/99)

**Rules Sent for Legislative Committee Review**

- 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

**Rules Being Reviewed Following Publication of Various Notices**

- 1.13 Power of attorney–A

**Rules Adopted and in Effect**

- 11.09 Medicines–A (effective 6/1/99)
- 11.12 Farming, agriculture, horticulture and floriculture–A (effective 6/1/99)
- 11.19 Printed material exemptions–A (effective 7/1/99\*)
- 11.28 Gifts and other advertising specialties–A (effective 6/1/99)
- 11.68 Construction contractors–A (effective 7/1/99\*)
- 11.70 Advertising agencies–A (effective 7/1/99\*)

**Emergency Rules Adopted** (effective 3/27/99)

- 11.20 Waste reduction and recycling–NR □

**Recently Adopted Rules Summarized**

Summarized below is information regarding six recently revised sales and use tax rules. Included is information relating to Tax 11.09, 11.12, and 11.28, all amended effective June 1, 1999, and Tax 11.19, 11.68, and 11.70, all amended effective July 1, 1999. In addition, an emergency rule on recycling was adopted effective March 27, 1999. See page 4 of this Bulletin for information about that rule.

In addition to the summary of changes, some of the text is reproduced. In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

To order up-to-date administrative rules of the department, you can use the order blank on page 57 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

**Tax 11.09 Medicines.** Subsections (1), (2)(title), and (4)(e) are amended, to conform language to Legislative Council Rules Clearinghouse ("Clearinghouse") standards.

Subsection (4)(f) is created and (6) is repealed, to reflect the exemption for certain medicines per the creation of sec. 77.54(14)(f), Wis. Stats., by 1997 Wisconsin Act 27. The text of Tax 11.09(4)(f) is as follows:

Tax 11.09(4)(f) Furnished without charge to a physician, surgeon, nurse anesthetist, advanced practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

**Tax 11.12 Farming, agriculture, horticulture and floriculture.** Subsection (1) is amended, to conform language to Clearinghouse standards.

Subsections (2)(d), (2)(e), and (2)(f) are renumbered (2)(f), (2)(d), and (2)(e), to alphabetize the definitions per Clearinghouse standards. Paragraph (e) as renumbered is amended, to clarify that “farm work stock” includes horses used exclusively in farming to check on or herd livestock but does not include horses used for racing, pleasure riding, or show. Paragraph (f) as renumbered is amended, to reflect a change in department position to now include raising earthworms as farming.

Subsection (3) is amended, to reflect the discontinuance of the use of the farmer’s exemption certificate (Form S-206), replaced with a multipurpose exemption certificate (Form S-211).

Subsection (4) is revised as follows:

- (a)(intro.) is amended, to correct a direct statutory quote.
- (a)5.c is repealed, to remove misleading information regarding machines installed into real estate.
- (a)7.c is amended, to delete feed carts and non-powered gravity flow feeders from the list of taxable items because they are not taxable, and to conform language to Clearinghouse standards.
- (b)(intro.) is amended, to update a direct statutory quote.
- (b)1 is amended, to conform language to Clearinghouse standards.
- (b)6.(title) and a are amended, to include feeders, feed carts, and plastic bags, sleeves, and sheeting as exempt containers for grain under certain circumstances. This change reflects the

repeal and recreation of sec. 77.54(3m), Wis. Stats., by 1997 Wisconsin Act 27, which clarified the department’s position.

- (b)6.b, c, and e are amended, to reflect the multipurpose exemption certificate.

Subsection (5) is amended, to clarify various farm-related exempt and taxable services.

Subsection (6)(b)1 is amended, to clarify a taxable service and to reflect the multipurpose exemption certificate.

Subsection (7)(b) is amended, to clarify that taxable sales by farmers include sales of horses for use in pleasure riding.

The text of Tax 11.12(2)(e), (4)(b)6.(title) and a, (5), (6)(b)1, and (7)(b) is as follows:

Tax 11.12(2)(e) “Farm work stock” means animals, such as draft horses and mules, which are used exclusively in farming. The phrase includes horses used exclusively in farming to check on or herd livestock. The phrase does not include dogs, ~~riding horses, racing horses~~ used for racing, pleasure riding or show or laboratory animals. The food for animals which are not farm work stock is taxable unless the animals are livestock as defined in par. (j).

(4)(b)6.(title) ‘Containers for fruits, vegetables, grain, hay, silage and animal wastes and plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage.’

a. “Containers for fruits, vegetables, grain, hay, silage and animal wastes and plastic bags, plastic sleeves and plastic sheeting used to store or cover hay or silage” includes any kind of personal property which is purchased exclusively for holding or storing fruit, vegetables, grains, hay, silage or animal wastes. The phrase does not include includes feeders and feed carts designed if used to hold various green and dry feeds hay, silage or feed which contains grain.

(5) SERVICES FURNISHED TO FARMERS. (a) The repair, service,

alteration, fitting, cleaning, painting, coating, towing, inspection or maintenance of tangible personal property which farmers may purchase without tax under s. 77.54(3) and (3m), Stats., are also exempt from the sales and use tax under s. 77.52(2)(a)10., Stats. Thus, farmers may claim an exemption on the repair services for their tractors and other farm machines, but not on their furnaces, office machines or electric drills. Similarly, they may claim an exemption when having draft horses or horses used exclusively in farming for breeding or to check on or herd livestock shod, but not when having riding horses ridden for pleasure shod.

(b) Breeding fees, Fees for breeding farm livestock or farm work stock and charges for artificial insemination of animals and veterinarians’ services farm livestock or farm work stock and medical and hospitalization services furnished by veterinarians are not taxable.

(c) The exemptions under s. 77.54(3), Stats., do not apply to farmers’ purchases of other services which are taxable under s. 77.52(2)(a), Stats., including telephone, laundry, dry cleaning ~~and~~, photographic services ~~and breeding or artificial insemination of animals other than farm livestock or farm work stock.~~

(6)(b)1. ‘Boarding animals<sup>2</sup>.’ The boarding of dogs, cats, ~~riding horses, ponies~~ used for racing, pleasure riding or show or other recreational animals. The entire boarding charge is taxable, but the retailer may purchase the feed for the animals without tax by supplying a properly completed resale exemption certificate claiming an exemption for resale.

(7)(b) Horses for use in racing, pleasure riding or show.

### **Tax 11.19 Printed material exemptions.**

Subsections (2)(d), (2)(f), (5)(intro.), and (5)(b) are amended, to provide a sales tax exemption for raw materials of printed materials transported and used solely outside of Wisconsin. This reflects the amendments of sec. 77.51(18) and (22)(a) and creation of sec. 77.54(43), Wis. Stats., by 1997 Wisconsin Act 27.

Subsection (6) is amended, to clarify that the governmental exemption applies only to federal and Wisconsin governmental units, and to reflect that certificate of exempt status numbers are given to governmental units.

The text of Tax 11.19(2)(f) and (5)(intro.) and (b) is as follows:

Tax 11.19(2)(f) Section 77.51(18) and (22) 77.54(43), Stats., provides that storage and use for purposes of imposing Wisconsin use tax does not include the keeping, retaining or exercising any right or power over a sales and use tax exemption for raw materials for used for the processing, fabricating or manufacturing into, attachment of, attaching to or incorporation into incorporating into, printed materials to be that are transported outside Wisconsin and thereafter used solely outside Wisconsin.

(5)(intro.) Wisconsin sales and 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:

(b) The resulting printed materials will be shipped outside Wisconsin for use transported and used solely outside Wisconsin.

**Tax 11.28 Gifts and other advertising specialties.** Subsections (2)(b), (2)(f), (3)(c)1.b, and (4)(c) are amended, to clarify that sales and use tax on property given away need not be measured by its cost (e.g., the tax may be measured by its market value if the requirements of sec. 77.57, Wis. Stats., are met).

Subsection (2)(c) is amended, to reflect that a retailer incurs a sales tax liability when a gift certificate is redeemed for taxable services.

Subsection (4)(b) is amended, to reflect the department's position that sales of coupon books and voucher books are not taxable because they are sales of intangible rights.

Subsection (7) is created, to reflect the exemption for certain medicines per the creation of sec. 77.54(14)(f), Wis. Stats., by 1997 Wisconsin Act 27.

The text of Tax 11.28(2)(c) and (f), (4)(b), and (7) is as follows:

Tax 11.28(2)(c) *Gift certificates.* The gross receipts from the sale of a gift certificate are not taxable because the certificate represents an intangible right. When a gift certificate is redeemed for taxable tangible personal property or taxable services, the transaction is completed and the retailer's tax liability accrues at that time.

(f) *Gifts originally purchased for resale.* When a person purchases property for resale or for other another exempt purpose or under a valid exemption certificate but uses the property for a purpose other than for resale or other another exempt purpose and does not donate the property to an entity described in s. 77.54(9a), Stats., the purchaser shall be liable for use tax based on the purchaser's cost of the new merchandise or ingredients property.

**Note:** The amount subject to tax is the sales price as described in s. Tax 11.32, except that the fair market value may be used if the requirements of s. 77.57, Stats., are met.

(4)(b) The sales promotional agency's receipts from sales of coupon or voucher books are not taxable, because the agency is providing an advertising service selling intangible rights. These intangible rights entitle the purchaser of the coupon or voucher book to receive tangible personal property or taxable services at a reduced price or for no charge. However, any receipts received by participating retailers from the sales promotional agency are subject to the sales tax, if taxable property or services are furnished to the person using the coupon or voucher. Any additional receipts received by the retailer from the person using the coupons or vouchers also are taxable.

(7) **CERTAIN MEDICINES FURNISHED WITHOUT CHARGE.** No sales or use tax is owed on medicines furnished without charge to a physician, surgeon, nurse anesthetist, advanced

practice nurse, osteopath, dentist licensed under ch. 447, Stats., podiatrist licensed under ch. 448, Stats., or optometrist licensed under ch. 449, Stats., if the medicine may not be dispensed without a prescription.

**Tax 11.68 Construction contractors.** Subsections (1) to (12) are renumbered (2) to (13) and new subsection (1) is created, to provide a definition of "real property construction activities," and subsection (2)(c) is repealed. These amendments reflect the amendment of sec. 77.51(2), Wis. Stats., by 1997 Wisconsin Act 27; as a result of that amendment, only those activities that take place at a site where tangible personal property is affixed to real property are included in the definition.

Subsection (2)(b)1 is amended, to clarify that a contractor is a retailer of certain property that it installs.

Subsection (4)(b)2 is created and (7)(b) and (9)(b) are amended, to reflect the department's position that taxable services may be resold by a construction contractor, such as a landscaper.

Subsection (4)(f) is amended, to restore dropped text and to conform punctuation to Clearinghouse standards.

Subsection (7)(a)6 is amended, to reflect proper terminology relating to bowling centers. Paragraph (a)9 is amended, to clarify language per Clearinghouse standards.

Subsection (11)(c) is amended, to correct a direct statutory quote.

Subsections (13)(title), (13)(a), (13)(c), (13)(d), and (13)(e) are amended, to reflect the creation of the stadium tax by 1995 Wisconsin Act 56.

The text of Tax 11.68(1) and (4)(b)2 is as follows:

Tax 11.68(1) **DEFINITION.** In this section, “real property construction activities” means activities that occur at a site where tangible personal property that is applied or adapted to the use or purpose to which real property is devoted is affixed to that real property, if the intent of the person who affixes that property is to make a permanent accession to the real property. “Real property construction activities” do not include affixing to real property tangible per-

sonal property that remains tangible personal property after it is affixed.

(4)(b)2. Taxable services which a construction contractor will resell may be purchased without tax for resale.

### **Tax 11.70 Advertising agencies.**

Subsection (3)(m) is created, to reflect the amendments of sec. 77.51(18) and (22)(a) and creation of sec. 77.54(43), Wis. Stats., by 1997 Wisconsin Act 27. The text of Tax 11.70 (3)(m) is as follows:

Tax 11.70(3)(m) Raw materials processed, fabricated or manufactured into, attached to or incorporated into printed materials that are transported and used solely outside Wisconsin.

**Example:** Company A, located in Wisconsin, publishes catalogs it gives away to potential customers. Company A purchases paper from a company who delivers it to a Wisconsin printer that prints the catalogs for Company A. The catalogs are transported and used solely outside Wisconsin.

The paper purchased by Company A for the catalogs is exempt from Wisconsin sales or use tax. □



## 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**

Assessments - estimated  
*Susan Boon (p. 12)*

Marital property income - notification  
Marital property income - tax liability  
*Jeffrey E. Davis (p. 13)*

Nonresident alien - taxable income  
*Tian Zhang (p. 13)*

### **Corporation Franchise and Income Taxes**

Business loss carryforward - reorganization  
*Caterpillar Inc. (p. 14)*

Dividend received deduction  
*First Wisconsin National Bank of Milwaukee (p. 15)*

### **Sales and Use Taxes**

Boats, vessels and barges - nonresident purchases  
*Charles K. Harder (p. 15)*

Officer liability  
*Joseph A. Balistreri (p. 16)*

Services subject to the tax - producing, fabricating, and processing  
*Hammersly Stone Company, Inc. (p. 16)*

The taxpayer filed a 1996 “Wisconsin Income Tax” Form 1. She entered zeros on each line of the Form 1 except the lines for income tax withheld, total credits against income tax due, and amount of refund. On those three lines she entered “3,857.03.”

Two wage statements attached to the return showed income totaling \$65,342 and state income tax withheld totaling \$3,857.03. The federal Form 1040 copy attached to the Form 1 also had all zeros except for the withholding, total payments, amount overpaid, and refund lines.

The taxpayer’s basic argument before the Commission was that neither the Wisconsin statutes nor federal laws are worded properly to require her to pay a tax on her income. She argued that because Article VIII, Section 1 of the Wisconsin Constitution authorizes the imposition of taxes on “incomes” and sec. 71.02(1), Wis. Stats., imposes a tax on “net incomes of individuals,” no Wisconsin statute

## **INDIVIDUAL INCOME TAXES**

**Assessments – estimated.**  
*Susan Boon vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 8,

1999). The issue in this case is whether Wisconsin statutes properly impose a tax on “incomes” as authorized by Article VIII, Section 1 of Wisconsin’s Constitution.

properly imposes a tax on “incomes.”

The Commission concluded that Wisconsin’s statutes and the federal laws which the state statutes adopt clearly impose Wisconsin’s income tax on the taxpayer’s wages which are reflected on her two 1996 Forms W-2. In addition, the department properly issued an estimated assessment under sec. 71.74(3), Wis. Stats., because the taxpayer did not file a complete and proper Wisconsin income tax return for 1996.

The Commission further assessed the taxpayer an additional \$500, pursuant to sec. 73.01(4)(am), Wis. Stats., on the basis that her position is frivolous and groundless.

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

**■ Marital property income – notification; Marital property income – tax liability.** *Jeffrey E. Davis vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 30, 1999). The issues in this case are:

- A. Whether the taxpayer failed to notify his then-spouse about the amount and nature of marital property income he did not report to the department, so that the department may not apply the income-splitting provisions of ch. 766, Wis. Stats., in assessing him on the income for 1992 and 1993.
- B. What is the taxpayer’s liability to the department for 1992 and 1993 Wisconsin income taxes under the terms of his divorce from his former wife?

The taxpayer and Deborah Zy-dowicz (“Deborah”) were married and resided together during 1992 and 1993, the period under review.

All of their income for that period was marital property income.

The taxpayer and Deborah did not timely file Wisconsin income tax returns for 1992 and 1993. The taxpayer filed his 1992 and 1993 returns in November 1995, using “married filing separate return” filing status. Deborah filed her 1992 and 1993 returns in November 1996.

During both years the taxpayer’s principal business was furniture refinishing/woodwork repair, a sole proprietorship in his name. Deborah assisted him in maintaining the business books and records, except for December 1993. Deborah did not work outside the home in 1992; in 1993 she earned adjusted gross income of \$2,534.

The taxpayer and Deborah separated in January 1994. She remained in the marital residence, where most of the business records were kept, until April 1994, when she moved out and the taxpayer returned. Deborah took some of the parties’ financial records with her, which were returned to the taxpayer in May 1995. The parties were divorced in November 1994.

The taxpayer’s divorce judgment provided that each party shall be solely responsible for his or her own individual tax liabilities.

The Commission concluded as follows:

- A. Notification was not required for 1992, because the parties were married as of April 15, 1993, the due date of the 1992 tax return, and both parties were aware of the income. The department may assess the taxpayer for taxes on only one-half of the marital property income for 1992.

Notification was required for 1993, because Deborah did not have complete information as to income for 1993 as of April 15, 1994, the due date of the 1993 tax return. The taxpayer failed to notify Deborah about the amount and nature of marital property income for 1993 before the filing deadline. The department therefore properly assessed him for all of the 1993 Schedule C income.

- B. Even though the taxpayer’s divorce decree provides that he is liable for one-half of his and Deborah’s total tax liabilities for 1992 and 1993, the department is bound by sec. 71.10(6m), Wis. Stats., not the divorce decree. The taxpayer’s liability is therefore as provided in conclusion A.

Neither the taxpayer nor the department have appealed this decision. □

**■ Nonresident alien – taxable income.** *Tian Zhang vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 8, 1999). The issue in this case is whether the taxpayer is entitled to exemption from Wisconsin income tax for 1992 and 1993, under the U.S./China Treaty.

The taxpayer applied for and received an F-1 Visa and entered the United States in July 1990. The Form I-20 shows that she entered the United States for the sole purpose of pursuing her educational studies in computer sciences.

During the years at issue, 1992 and 1993, the taxpayer was a resident of the People’s Republic of China. As part of her doctorate program, she was required to take courses and to student teach. She was granted a

change of visa status from F-1 to an H-1B Visa for the period September 8, 1992 to June 7, 1993. This change was needed before she could teach at the University of Wisconsin-Oshkosh. She was a temporary lecturer there for the fall semester of 1992 through the spring semester of 1993.

The taxpayer filed nonresident income tax returns, Forms 1NPR, for 1992 and 1993. On those returns she deducted her wage income of \$20,078 and \$25,989, respectively. On both returns she stated that she believed the income was not subject to tax under Article 19 of the Agreement between the United States government and the government of the People's Republic of China ("the Treaty").

The department determined that the taxpayer did not qualify for exemption under Article 19 of the Treaty and in September 1996 issued a Notice of Amount Due.

The Commission concluded that the income received by the taxpayer in 1992 and 1993 for teaching may not be excluded from income.

The taxpayer has not appealed this decision. ☐

## CORPORATION FRANCHISE AND INCOME TAXES

**Business loss carryforward – reorganization.** *Caterpillar Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 25, 1999). The issues in this case are:

A. Whether the Wisconsin net business losses for tax years 1982 through 1984 sustained by Caterpillar Tractor Co. prior to its merger into the taxpayer on May 8, 1986, may be carried forward to offset Wisconsin net

business income for tax year 1986, pursuant to sec. 71.06(1), Wis. Stats.(1985-86).

B. Whether those same losses may be carried forward to offset Wisconsin net business income for tax years 1987 through 1990, pursuant to sec. 71.26(3)(n) and (4), Wis. Stats. (1987-88).

The taxpayer, a Delaware corporation, is engaged in the business of designing, manufacturing, and marketing, in Wisconsin and elsewhere, earthmoving, construction, and materials-handling machinery and related parts and equipment, as well as engines for that machinery and other applications.

Caterpillar Tractor Co. was incorporated in California in the 1920s. In 1986 the company changed its name to remove the reference to a single product and better reflect the scope of the company's business operations. It incorporated a new entity, Caterpillar Inc. ("the taxpayer") in Delaware as a wholly owned subsidiary of the existing entity, which immediately merged into the taxpayer effective May 8, 1986.

The change in the state of incorporation was made to obtain the benefits of Delaware corporate law, specifically with respect to anti-takeover provisions. The reorganization had no effect on the substance of the trade or business transacted by the taxpayer. There was no change in ownership, and all shares of common stock were converted to shares of the taxpayer's common stock. Certificates representing shares of Caterpillar Tractor Co. stock were deemed for all purposes to represent shares of the taxpayer's stock.

The officers and directors remained the same for both corporations, and the bylaws continued in effect for

the taxpayer. No distribution of any property was made by reason of the reorganization. The taxpayer succeeded to all rights, privileges, powers, and property of Caterpillar Tractor Co., and the taxpayer assumed all its assets and liabilities. The taxpayer continued to compare its operations and financial performance to Caterpillar Tractor Co.'s historical performance and maintained its federal identification number.

For federal income tax purposes, the reorganization constituted a nontaxable reorganization under Internal Revenue Code (IRC) sec. 368(a)(1)(F), and the taxpayer succeeded to and took into account the tax attributes of Caterpillar Tractor Co., pursuant to IRC sec. 381.

Caterpillar Tractor Co. sustained Wisconsin net business losses in 1982, 1983, and 1984. It carried forward and used part of the loss in 1985 and carried forward the balance to 1986.

The taxpayer used part of the losses carried forward from 1982 to 1984 on each of its 1986 through 1990 Wisconsin corporate franchise tax returns. The department disallowed the business losses carried forward for the portion of 1986 after the reorganization, and for all of 1987 through 1990.

The Commission concluded as follows:

A. The taxpayer is not entitled to deduct losses incurred by Caterpillar Co. with respect to that portion of 1986 following the May 8, 1986, corporate reorganization, because the taxpayer is not the corporation that incurred the losses. This was a requirement under Wisconsin law for 1986, the year before the federalization of Wisconsin's

corporate and franchise tax took effect.

- B. The taxpayer may deduct losses incurred by Caterpillar Tractor Co. with respect to 1987 through 1990, because the federalization of IRC sec. 381 is not limited to corporate reorganizations occurring after January 1, 1987, as contended by the department.

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

**Dividend received deduction.** *First Wisconsin National Bank of Milwaukee vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 12, 1999). The issue in this case is whether the department properly disallowed the taxpayer's deduction of dividends received from the Federal Reserve Bank.

In May 1992 the taxpayer filed a claim for refund relating to distributions it contends should be excluded from Wisconsin taxable income pursuant to the decision in *NCR Corporation v. Wisconsin Department of Revenue*, CCH # 203-301 (WTAC February 10, 1992). In June 1992 the department notified the taxpayer of adjustments to its taxable income for tax years 1983 to 1986. The department, as part of that notice, denied the claims for refund for those years, as well as the claim that increases the taxpayer's net operating loss for 1987. The period under review is therefore tax years 1983 to 1987.

The taxpayer filed a petition for redetermination in August 1992 for all tax years under review. In response, the department allowed a deduction for dividends received from the ownership of stock in companies other than governmental entities. The department disallowed deductions for distributions from the

Federal Reserve Bank ("FRB"), the Federal National Mortgage Association ("Fannie Mae"), and the Student Loan Marketing Association ("Sallie Mae"). The department subsequently withdrew its disallowance of deductions for distributions received from Fannie Maes and Sallie Maes. Thus, the only issue remaining is the disallowance of deductions for distributions received from the FRB.

The taxpayer timely filed a petition for review with the Commission. The taxpayer challenged the department's action under the dividend deduction statute as barred by the constitutional doctrine of intergovernmental tax immunity. The taxpayer also contended that the denial of a deduction for dividends received from the FRB amounts to a state taxation of a federal obligation, which is prohibited under 31 U.S.C. sec. 3124(a).

The Commission concluded that the department properly denied the taxpayer's deductions for Federal Reserve Bank dividends received, because the FRB does not meet all the valid requirements of the dividend received statute, sec. 71.04(4), Wis. Stats. (1985-86) and sec. 71.26(3)(j), Wis. Stats. (1987-88). These statutes were not entirely invalidated by the decision in *NCR v. Department of Revenue*, but are severable pursuant to sec. 990.001(11), Wis. Stats. The department's action is not barred by the doctrine of intergovernmental tax immunity or by 31 U.S.C. sec. 3124(a).

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

## SALES AND USE TAXES

### Boats, vessels and barges - nonresident purchases.

*Charles K. Harder vs. Wisconsin Department of Revenue* (Circuit

Court for Dane County, March 18, 1999). The Wisconsin Tax Appeals Commission issued a decision on August 19, 1998, which was appealed to the Circuit Court. See *Wisconsin Tax Bulletin* 112 (January 1999), page 23, for a summary of the Commission's decision. The issue in this case is whether the Commission correctly held that the purchase of a sailboat occurred in Minnesota, within the meaning of sec. 77.51(14r), Wis. Stats.

The taxpayer, a Minnesota resident, purchased a sailboat. The taxpayer and the sellers met in Minnesota to close on the sale. At closing, the taxpayer and the sellers executed a Bill of Sale that transferred the sellers' "right, title, and interest" in the sailboat to the taxpayer. The taxpayer took physical possession of the sailboat several weeks later in Wisconsin. The sailboat continued to be berthed and used in Wisconsin. The taxpayer's purchase of the sailboat was an exempt occasional sale under the laws of Minnesota.

The Commission determined that the taxpayer's purchase of the sailboat was exempt under sec. 77.53(17m), Wis. Stats., which provides a use tax exemption for "... a boat purchased in a state contiguous to this state by a person domiciled in that state if the boat is berthed in this state's boundary waters adjacent to the state of the domicile of the purchaser and if the transaction was an exempt occasional sale under the laws of the state in which the purchase was made."

The Circuit Court reversed the Commission's decision and concluded that the purchase of the sailboat did not occur in Minnesota. Section 77.51(14r), Wis. Stats., provides that "A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place



when and where possession is transferred by the seller . . . to the purchaser . . .” The Circuit Court determined that sec. 77.51(14r), Wis. Stats., refers to when and where physical possession is transferred by the seller.

The taxpayer has not appealed this decision. □

**Officer liability.** *Joseph A. Balestrieri vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, December 3, 1998). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated June 2, 1998. See *Wisconsin Tax Bulletin* 111 (October 1998), page 19, for a summary of the Commission’s decision. The issue in this case is whether the Commission correctly held that the taxpayer is a responsible person under sec. 77.60(9), Wis. Stats., and thus liable for the unpaid sales taxes of Riverside Theatre (“the corporation”).

The Circuit Court affirmed the Commission’s decision and concluded that the taxpayer had the **authority** to pay the sales taxes, he had the **duty** to pay the sales taxes, and he **intentionally breached his duty** in his failure to pay these taxes.

The taxpayer was president of the corporation with signature **authority** on its three checking accounts. He signed checks for the corporation and entered into an agreement with the department acknowledging the sales tax delinquency and agreeing to pay it; therefore, the taxpayer had the **authority** to pay the taxes. As the president, director, and operational manager of the corporation, the taxpayer had a **duty** to pay the sales tax. The taxpayer **intentionally breached that duty** by making the decision to use corporate funds to pay other creditors with the knowledge of sales tax being due.

The taxpayer has not appealed this decision. □

**Services subject to the tax – producing, fabricating, and processing.** *Hammersley Stone Company, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, December 21, 1998). The Wisconsin Tax Appeals Commission issued a decision on August 17, 1998, which was appealed to the Circuit Court. See *Wisconsin Tax Bulletin* 112 (January 1999), page 27, for a summary of the Commission’s decision.

The department filed a motion to dismiss the petition for judicial review, on the grounds that service was not properly made.

The Circuit Court granted the department’s motion to dismiss.

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

**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*.

#### Sales and Use Taxes

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# 1 Admissions to Amusement, Athletic, Entertainment, or Recreational Events or Places

**Introduction:** This tax release explains who is responsible for remitting Wisconsin tax on sales of admissions to amusement, athletic, entertainment, or recreational events and places, and when and where the sales of admissions take place.

**Statutes:** Sections 77.51(13), (13g), and (14)(intro.), 77.52(2)(a)2, and 77.53(3), Wis. Stats. (1997-98)

**Wis. Adm. Code:** Sections Tax 11.65, Wis. Adm. Code (June 1991 Register) and Tax 11.97, Wis. Adm. Code (October 1997 Register)

**Background:** Section 77.51(13g), Wis. Stats. (1997-98), provides in part that a “retailer engaged in business in this state” includes any retailer owning any real property in this state, renting out any tangible personal property located in this state, maintaining, occupying, or using, permanently or temporarily, directly or indirectly, or through a subsidiary or agent, an office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business in this state. It also includes any retailer who has any representative, agent, salesperson, canvasser, or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering, or taking orders for tangible personal property or taxable services.

Section 77.51(14)(intro.), Wis. Stats. (1997-98), provides that the definition of “sale,” “retail sale” and “sale at retail” includes the transfer of the ownership of, title to, possession of, or enjoyment of tangible personal property or services for use or consumption, but not for resale.

Section 77.52(2)(a)2, Wis. Stats. (1997-98), imposes Wisconsin sales tax on the “...sale of admissions to amusement, athletic, entertainment or recreational events or places...”

Section 77.53(3), Wis. Stats. (1997-98), imposes Wisconsin use tax on every retailer engaged in business in Wisconsin who makes sales of tangible personal property or taxable services with knowledge, directly or indirectly, that the property or service is intended for storage, use, or other consumption in Wisconsin.

“Event” and “place” as used in this tax release mean an amusement, athletic, entertainment, or recreational event or place.

## Who is the Retailer?

Generally, the retailer responsible for remitting Wisconsin sales tax on sales of admissions is the person engaged in the business of selling admissions to the “consumer.” A “consumer” is a person who purchases an admission from a retailer. A “consumer” will generally use that admission to obtain admittance to the event. A “consumer” does not include a person who purchases an admission and then resells the admission in the regular course of the person’s business. Therefore, a retailer of admissions may include not only the person who sponsors the event, but also ticket brokers, travel agents, and other persons engaged in the business of selling admissions to consumers.

**Example:** Football Team A is scheduled to play a football game in Madison, Wisconsin at XYZ Stadium. Football Team A sells admissions to the game for \$25 at its ticket window outside XYZ Stadium. The admissions are sold to individuals, ticket brokers, and travel agents and are paid for at the

ticket window. The individuals who purchase the admissions from Football Team A do not resell the admissions, but use them to enter the game. Football Team A receives the proceeds from the sales of the admissions to such persons and controls the admittance of persons to the game.

The ticket brokers and travel agents are engaged in the business of selling admissions to consumers and provide Football Team A with exemption certificates claiming the resale exemption for the admissions they purchase. The ticket brokers and travel agents then resell the admissions to consumers.

Sales by Football Team A: Football Team A is the retailer responsible for remitting Wisconsin sales tax on its sales of admissions to individuals (i.e., consumers). Football Team A is not responsible for remitting Wisconsin sales tax on its sales of admissions to ticket brokers and travel agents engaged in the business of selling admissions, because Football Team A received properly completed exemption certificates from the ticket brokers and travel agents.

Sales by Ticket Brokers and Travel Agents: The ticket brokers and travel agents are the retailers responsible for remitting sales tax on their sales of admissions to consumers.

## When and Where Do Sales of Admissions Take Place?

### When does the sale take place?

The sale of an admission takes place at the time the retailer agrees to sell the admission to the consumer. Examples 1 to 15 illustrate when the retailer agrees to sell the admission to the consumer.

**Where does the sale take place?**

The location of the sale of an admission is the location of the retailer at the time the retailer agrees to sell the admission to the consumer. (**Note:** Admissions to events or places located outside of Wisconsin are not subject to Wisconsin sales tax.)

**Example:** Football Team A is scheduled to play a football game in Madison, Wisconsin at XYZ Stadium. Football Team A sells admissions to the game for \$25 at its ticket window outside XYZ Stadium. The admissions are sold to individuals, ticket brokers, and travel agents and are paid for at the ticket window. The individuals do not resell the admissions purchased from Football Team A, but use them to enter the game. Football Team A receives the proceeds from the sales of these admissions and controls the admittance of persons to the game.

The ticket brokers and travel agents are engaged in the business of selling admissions to consumers and provide Football Team A with ex-

emption certificates claiming the resale exemption for the admissions they purchase. The ticket brokers and travel agents resell the admissions they purchased from Football Team A. The admissions are sold to various individuals (i.e., consumers) from the ticket brokers' and travel agents' locations in Milwaukee, Wisconsin.

**Sales by Football Team A:** Football Team A is the retailer responsible for remitting sales tax on its sales of admissions to individuals (i.e., consumers). These sales take place at the ticket window outside XYZ Stadium at the time Football Team A agrees to sell the admissions to the individuals.

**Sales by Ticket Brokers and Travel Agents:** The ticket brokers and travel agents are the retailers responsible for remitting the Wisconsin sales tax on their sales of admissions to consumers. These sales take place in Milwaukee at each ticket broker's or travel agent's location at the time the ticket broker or travel agent agrees to sell the admission.

**What Amount is Taxable?**

Tax is owed on the "retailer's" selling price of the admission to the consumer.

**Example:** Football Team A sells an admission for \$25 to Ticket Broker B. Ticket Broker B gives Football Team A an exemption certificate claiming the resale exemption on its purchase of the admission. Ticket Broker B resells the admission for \$40 to Individual C.

Football Team A is not responsible for remitting Wisconsin sales tax on its sale of the admission to Ticket Broker B for \$25, since Ticket Broker B provided Football Team A with an exemption certificate. Ticket Broker B is the retailer and is responsible for remitting sales tax to the Department of Revenue on the \$40 sale of the admission to Individual C.

**Examples of Sales of Admissions.**

The following examples illustrate (1) who is the retailer responsible for remitting the Wisconsin sales and use tax on sales of admissions; (2) when the sale takes place; (3) where the sale takes place; and (4) the amount subject to Wisconsin sales or use tax. (**Note:** In each of the following examples, if the retailer does not charge the proper Wisconsin sales tax to the purchaser, the purchaser is liable for remitting the applicable Wisconsin use tax to the Department of Revenue.)

"Ticket," as used throughout the following examples, means the piece of paper which is generally given to a person by the retailer of the admission as evidence that the person has purchased an admission (e.g., right to enter), for the event.

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#### **Example 1 – Sale of Ticket by Event Provider at Ticket Window**

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.
- Individual A goes to the ticket window in Milwaukee.
- At the ticket window, Baseball Team B accepts the \$20 payment from Individual A and hands Individual A a ticket to the game.
- On the day of the game, Individual A gives the ticket to Baseball Team B in Milwaukee to obtain admittance to the game.

<b>Who is the retailer?</b>	Baseball Team B
<b>When does sale take place?</b>	At the time Baseball Team B accepts \$20 payment from Individual A
<b>Where does sale take place?</b>	Ticket window in Milwaukee
<b>What amount is taxable?</b>	\$20

**Note:** In the above example, the answers would still be the same if the ticket is mailed to Individual A or Individual A obtains the ticket at a later date.

#### **Example 2 – Telephone Call to Event Provider to Order Ticket**

- Individual A wants to attend a rock concert in Madison, Wisconsin.
- Individual A calls Concert Provider B in Milwaukee and orders a ticket to the concert for \$20.
- In Milwaukee, Concert Provider B charges the ticket to Individual A's credit card account and tells Individual A to go to the "Will Call" window in Madison to pick up the ticket.
- On the day of the concert, Individual A picks up the ticket at the "Will Call" window and gives the ticket to Concert Provider B in Madison to obtain admittance to the concert.

<b>Who is the retailer?</b>	Concert Provider B
<b>When does sales take place?</b>	At the time Concert Provider B charges the \$20 to Individual A's credit card account
<b>Where does sale take place?</b>	Concert Provider B's location in Milwaukee
<b>What amount is taxable?</b>	\$20

**Note:** In the above example, the answers would still be the same if the ticket is mailed to Individual A.

### Example 3 – Order Blank for Tickets Sent to Event Provider

- Individual A wants to attend a football game in Madison, Wisconsin.
- Individual A, who lives in Madison, fills out an order blank to purchase a \$20 ticket to the game and mails the order blank to Football Team B in Waukesha.
- The order blank includes Individual A's credit card account number and signature authorizing the ticket to be billed to his credit card account.
- In Waukesha, Football Team B reviews the order blank, charges the \$20 ticket to Individual A's credit card account, and mails the ticket to Individual A in Madison.
- On the day of the game, Individual A gives the ticket to Football Team B in Madison to obtain admittance to the game.

<b>Who is the retailer?</b>	Football Team B
<b>When does sale take place?</b>	At the time Football Team B charges the \$20 to Individual A's credit card account
<b>Where does sale take place?</b>	Football Team B's location in Waukesha
<b>What amount is taxable?</b>	\$20

**Note:** In the above example, the answers would still be the same if Individual A obtains the ticket at a later date, such as at the "Will Call" window on the day of the game.

### Example 4 – Person Purchases Ticket to Game, But Does Not Attend Game (No-shows)

- Individual A wants to attend a football game in Madison, Wisconsin.
- Individual A, who lives in Madison, fills out an order blank to purchase a \$20 ticket to the game and mails the order blank to Football Team B in Waukesha.
- The order blank includes Individual A's credit card account number and signature authorizing the ticket to be billed to his credit card account.
- In Waukesha, Football Team B reviews the order blank, charges the \$20 ticket to Individual A's credit card account, and mails the ticket to Individual A in Madison.
- Individual A is sick and cannot attend the game.

<b>Who is the retailer?</b>	Football Team B
<b>When does sale take place?</b>	At the time Football Team B charges the \$20 to Individual A's credit card account
<b>Where does sale take place?</b>	Football Team B's location in Waukesha
<b>What amount is taxable?</b>	\$20

**Note:** Even though Individual A did not attend the game, the sale of the admission is still subject to Wisconsin sales tax.

**Example 5 – Sale by Person Who is Not Event Provider**

- Individual A wants to attend a soccer game in Milwaukee, Wisconsin.
- Ticket Broker B in Janesville, Wisconsin is engaged in the business of buying and selling tickets.
- Ticket Broker B goes to Soccer Team C in Milwaukee, pays \$25 to Soccer Team C, provides Soccer Team C with a properly completed exemption certificate claiming the resale exemption, and is handed a ticket to the game.
- Individual A goes to Ticket Broker B in Janesville, pays \$50 to Ticket Broker B, and is handed a ticket to the game.
- On the day of the game, Individual A gives the ticket to Soccer Team C in Milwaukee to obtain admittance to the game.

In this example, there are 2 separate transactions to consider: (1) the sale from Soccer Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

**Transaction 1 – Sale from Soccer Team C to Ticket Broker B**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	

**Transaction 2 – Sale from Ticket Broker B to Individual A**

<b>Who is the retailer?</b>	Ticket Broker B
<b>When does sale take place?</b>	At the time Ticket Broker B accepts the \$50 payment from Individual A
<b>Where does sale take place?</b>	Ticket Broker B's location in Janesville
<b>What amount is taxable?</b>	\$50

**Note:** In the above example, the answers would still be the same if the ticket is mailed to Individual A, or Individual A obtains the ticket at a later date.

**Example 6 – Sale by Person Not Engaged in Business in Wisconsin**

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.
- Ticket Broker B in Chicago, Illinois is engaged in the business of buying and selling tickets, but **is not** engaged in business in Wisconsin (i.e., does not have nexus in Wisconsin for sales and use taxes).
- Ticket Broker B goes to Baseball Team C in Milwaukee, pays \$25 to Baseball Team C, provides Baseball Team C with a properly completed exemption certificate claiming the resale exemption, and is handed a ticket to the game.
- At Ticket Broker B's location in Chicago, Individual A pays \$50 to Ticket Broker B and is handed a ticket to the game.
- On the day of the game, Individual A gives the ticket to Baseball Team C in Milwaukee to obtain admittance to the game.

In this example, there are 2 separate transactions to consider: (1) the sale from Baseball Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

**Transaction 1 – Sale from Baseball Team C to Ticket Broker B**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	

**Transaction 2 – Sale from Ticket Broker B to Individual A**

<b>Who is the retailer?</b>	Ticket Broker B *
<b>When does sale take place?</b>	At the time Ticket Broker B accepts the \$50 payment from Individual A.
<b>Where does sale take place?</b>	Ticket Broker B's location in Chicago, Illinois
<b>What amount is taxable?</b>	\$50 *

- \* Since Ticket Broker B **is not** engaged in business in Wisconsin, Ticket Broker B would not be required to remit Wisconsin sales or use tax on the sale to Individual A. Individual A owes Wisconsin use tax on the \$50 because Individual A used the ticket in Wisconsin to obtain admittance to the game. Credit would be allowed for Illinois tax properly paid on the sale from Ticket Broker B to Individual A.

**Note:** In the above example, the answers would still be the same if the ticket is mailed to Individual A, or Individual A obtains the ticket at a later date.

**Example 7 – Sale by Person Engaged in Business in Wisconsin, But at Out-of-State Location**

- Individual A wants to attend a soccer game in Milwaukee, Wisconsin.
- Ticket Broker B in Chicago, Illinois is engaged in the business of buying and selling tickets.
- Ticket Broker B **is** engaged in business in Wisconsin (i.e., has nexus in Wisconsin for sales and use taxes).
- At Soccer Team C's location in Milwaukee, Ticket Broker B pays \$25 to Soccer Team C, provides Soccer Team C with a properly completed exemption certificate, claiming the resale exemption, and is handed a ticket to the game.
- At Ticket Broker B's location in Chicago, Individual A pays \$50 to Ticket Broker B and is handed the ticket.
- On the day of the game, Individual A gives the ticket to Soccer Team C in Milwaukee to obtain admittance to the game.

In this example, there are 2 separate transactions to consider: (1) the sale from Soccer Team C to Ticket Broker B and (2) the sale from Ticket Broker B to Individual A.

**Transaction 1 – Sale from Soccer Team C to Ticket Broker B**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	



**Transaction 2 – Sale from Ticket Broker B to Individual A**

<b>Who is the retailer?</b>	Ticket Broker B *
<b>When does sale take place?</b>	At the time Ticket Broker B accepts the \$50 payment from Individual A.
<b>Where does sale take place?</b>	Ticket Broker B's location in Chicago, Illinois
<b>What amount is taxable?</b>	\$50 *

- \* Since Ticket Broker B is engaged in business in Wisconsin and the game takes place in Wisconsin, Ticket Broker B would be required to remit **Wisconsin** tax on the sale to Individual A.

**Note:** In the above example, the answers would still be the same if the ticket is mailed to Individual A or Individual A obtains the ticket at a later date.

**Example 8 - Event Provider Sells Ticket to Individual Who is Not Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Different Individual**

- Individual A wants to attend a football game which will be played in Green Bay, Wisconsin.
- Individual A goes to Football Team B's ticket window in Green Bay and pays \$25 for the ticket.
- Football Team B accepts the \$25 payment and mails the ticket to Individual A in Waukesha, Wisconsin.
- Individual A later determines she cannot attend the game.
- Individual A, who is not engaged in any trade or business requiring the holding of a seller's permit, sells her ticket to Ticket Broker C for \$40 at Ticket Broker C's headquarters in Milwaukee.
- Ticket Broker C is engaged in the business of buying and selling tickets.
- Ticket Broker C receives a telephone call in Milwaukee from Individual D requesting a ticket to the game and agrees to sell the ticket to Individual D for \$75.
- In Milwaukee, Ticket Broker C charges the \$75 ticket to Individual D's credit card account and mails the ticket to Individual D in Milwaukee.

In this example, there are 3 separate transactions to consider: (1) the sale from Football Team B to Individual A for \$25; (2) the sale from Individual A to Ticket Broker C for \$40; and (3) the sale from Ticket Broker C to Individual D for \$75.

**Transaction 1 - Sale from Football Team B to Individual A**

<b>Who is the retailer?</b>	Football Team B*
<b>When does sale take place?</b>	At the time Football Team B accepts the \$25 payment from Individual A
<b>Where does sale take place?</b>	Football Team B's ticket window in Green Bay
<b>What amount is taxable?</b>	\$25

- \* Football Team B is required to impose sales tax on the sale of the ticket to Individual A because there is no exemption which Individual A could claim on Individual A's purchase of the admission from Football Team B.

**Transaction 2 - Sale from Individual A to Ticket Broker C**

This sale is exempt from Wisconsin sales and use tax because Individual A is not engaged in a trade or business requiring the holding of a seller's permit. The sale qualifies as an exempt occasional sale.

**Transaction 3 - Sale from Ticket Broker C to Individual D**

<b>Who is the retailer?</b>	Ticket Broker C
<b>When does sale take place?</b>	At the time Ticket Broker C charges the \$75 to Individual D's credit card account
<b>Where does sale take place?</b>	Ticket Broker C's location in Milwaukee
<b>What amount is taxable?</b>	\$75

**Example 9 - Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Ticket Broker, Who Sells Ticket to Individual**

- A football game will be played in Green Bay, Wisconsin.
- Company A goes to Football Team B's ticket window in Green Bay, pays \$25 for the ticket, and provides Football Team B with a properly completed exemption certificate claiming the resale exemption.
- Football Team B accepts the \$25 payment and mails the ticket to Company A in Waukesha, Wisconsin.
- Company A, who is engaged in a trade or business requiring the holding of a seller's permit, sells its ticket to Ticket Broker C for \$40 at Ticket Broker C's headquarters in Milwaukee.
- Ticket Broker C is engaged in the business of buying and selling tickets and provides Company A with a properly completed exemption certificate claiming the resale exemption.
- Ticket Broker C receives a telephone call in Milwaukee from Individual D requesting a ticket to the game and agrees to sell the ticket to Individual D for \$75.
- In Milwaukee, Ticket Broker C charges the \$75 ticket to Individual D's credit card account and mails the ticket to Individual D in Milwaukee.

In this example, there are 3 separate transactions to consider: (1) the sale from Football Team B to Company A for \$25; (2) the sale from Company A to Ticket Broker C for \$40; and (3) the sale from Ticket Broker C to Individual D for \$75.

**Transaction 1 - Sale from Football Team B to Company A**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	

**Transaction 2 - Sale from Company A to Ticket Broker C**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	

**Transaction 3 - Sale from Ticket Broker C to Individual D**

<b>Who is the retailer?</b>	Ticket Broker C
<b>When does sale take place?</b>	At the time Ticket Broker C charges the \$75 to Individual D's credit card account
<b>Where does sale take place?</b>	Ticket Broker C's location in Milwaukee
<b>What amount is taxable?</b>	\$75

**Example 10 - Event Provider Sells Ticket to Company Engaged in a Business Requiring the Holding of a Seller's Permit, Who Sells Ticket to Individual**

- A football game will be played in Green Bay, Wisconsin.
- Company A goes to Football Team B's ticket window in Green Bay, pays \$25 for the ticket, and provides Football Team B with a properly completed exemption certificate claiming the resale exemption.
- Football Team B accepts the \$25 payment and mails the ticket to Company A in Waukesha, Wisconsin.
- Company A, who is engaged in a trade or business requiring the holding of a seller's permit, sells its ticket to Individual C for \$40 at Company A's headquarters in Waukesha.

In this example, there are 2 separate transactions to consider: (1) the sale from Football Team B to Company A for \$25 and (2) the sale from Company A to Individual C for \$40.

**Transaction 1 - Sale from Football Team B to Company A**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	

**Transaction 2 - Sale from Company A to Individual C**

<b>Who is the retailer?</b>	Company A *
<b>When does sale take place?</b>	At the time Company A accepts the \$40 payment from Individual C.
<b>Where does sale take place?</b>	Company A's location in Waukesha
<b>What amount is taxable?</b>	\$40 *

- \* Since Company A is engaged in a trade or business requiring the holding of a seller's permit at the time Company A sells the ticket to Individual C, Company A is required to remit Wisconsin sales tax on the \$40 sale of the ticket.

**Example 11 - Event Provider Sells Ticket to Ticket Broker, Who Sells Ticket to Different Ticket Broker, Who Sells to Individual**

- Concert Provider B is selling tickets for a concert which will be held in La Crosse, Wisconsin.
- Ticket Broker A is in the business of buying and selling tickets.
- At Concert Provider B's location in La Crosse, Ticket Broker A pays \$30 to Concert Provider B, provides Concert Provider B with a properly completed exemption certificate claiming the resale exemption, and is handed a ticket for the concert.
- In Madison, Wisconsin, Ticket Broker C pays \$50 to Ticket Broker A, provides Ticket Broker A with a properly completed exemption certificate claiming the resale exemption, and is handed the ticket for the concert.
- Ticket Broker C is also engaged in the business of buying and selling tickets.
- In Milwaukee, Individual D pays \$150 to Ticket Broker C. Ticket Broker C accepts the \$150 payment and mails the ticket to Individual D in Madison.
- On the day of the game, Individual D gives the ticket to Concert Provider B in La Crosse to obtain admittance to the concert.

In this example, there are 3 separate transactions to consider: (1) the sale from Concert Provider B to Ticket Broker A for \$30; (2) the sale from Ticket Broker A to Ticket Broker C for \$50; and (3) the sale from Ticket Broker C to Individual D for \$150.

**Transaction 1 - Sale from Concert Provider B to Ticket Broker A**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	

**Transaction 2 - Sale from Ticket Broker A to Ticket Broker C**

<b>Who is the retailer?</b>	This sale is not a retail sale subject to tax. It is a sale for resale.
<b>When does sale take place?</b>	
<b>Where does sale take place?</b>	
<b>What amount is taxable?</b>	

**Transaction 3 - Sale from Ticket Broker C to Individual D**

<b>Who is the retailer?</b>	Ticket Broker C
<b>When does sale take place?</b>	At the time Ticket Broker C accepts the \$150 payment from Individual D
<b>Where does sale take place?</b>	Ticket Broker C's location in Milwaukee
<b>What amount is taxable?</b>	\$150

**Example 12 - Individual Calls Event Provider's Toll-Free Number and Places Order With Operator (Who May or May Not be in Wisconsin) for the Ticket**

- Individual A wants to attend a concert in Madison, Wisconsin.
- Individual A calls a toll-free number of Concert Provider B, which is received by an employee of Concert Provider B, to purchase a ticket to the concert in Madison.
- The operator who receives the telephone call may be located anywhere in the United States.
- Concert Provider B is engaged in business in Wisconsin.
- The operator has authority to accept the order and bind Concert Provider B to selling the \$50 ticket to the concert to Individual A.
- The operator charges the \$50 ticket to Individual A's credit card account and mails the ticket to Individual A in Madison.
- On the day of the concert, Individual A gives the ticket to Concert Provider B in Madison to obtain admittance to the concert.

<b>Who is the retailer?</b>	Concert Provider B *
<b>When does sale take place?</b>	At the time Concert Provider B charges \$50 to Individual A's credit card account
<b>Where does sale take place?</b>	Location of operator at time operator agrees to sell ticket to Individual A
<b>What amount is taxable?</b>	\$50

- \* Since Concert Provider B is engaged in business in Wisconsin and the concert takes place in Wisconsin, Concert Provider B would be required to remit **Wisconsin** tax on the sale to Individual A, regardless of the location of the operator.

### Example 13 - Individual Logs Onto Event Provider's Website and Provides Credit Card Number Via the Internet

- Individual A wants to attend a baseball game in Milwaukee, Wisconsin.
- Individual A logs onto the Internet homepage of Baseball Team B, orders a \$20 ticket to the game via the Internet, and provides his credit card account number.
- Individual A is notified via e-mail from Baseball Team B located in Milwaukee that his order has been received, the \$20 has been charged to his credit card account, and the ticket is to be picked up at the "Will Call" window in Milwaukee on the day of the game.
- On the day of the game, Individual A picks up the ticket at the "Will Call" window and uses the ticket to obtain admittance to the game in Milwaukee.

<b>Who is the retailer?</b>	Baseball Team B
<b>When does sale take place?</b>	At the time Baseball Team B charges \$20 to Individual A's credit card account
<b>Where does sale take place?</b>	Location of Baseball Team B in Milwaukee
<b>What amount is taxable?</b>	\$20

### Example 14 – Event Takes Place Outside of Wisconsin

- Individual A wants to attend a football game in San Diego, California.
- Individual A contacts Ticket Broker B in Milwaukee, Wisconsin, to obtain a ticket to the game.
- Ticket Broker B is engaged in the business of buying and selling tickets.
- Ticket Broker B calls Football Team C in California, who agrees to sell the ticket to the game to Ticket Broker B for \$50.
- Ticket Broker B provides Football Team C in California with its credit card account number, and Football Team C charges the \$50 ticket to the account and mails the ticket to Ticket Broker B in Milwaukee.
- Individual A goes to Ticket Broker B's location in Milwaukee, gives Ticket Broker B \$100, and Ticket Broker B hands Individual A a ticket to the game.

Since the game takes place outside of Wisconsin, neither of the sales of the ticket to the game is subject to Wisconsin sales or use tax.

### Example 15 – Sale of a "Package Deal" Which Includes Lodging, Meals, Ticket to Event, and Transportation

- Individual A wants to attend a football game in Green Bay, Wisconsin.
- Individual A contacts Travel Agent B, located in Wisconsin, who is offering a "game day package" for \$400.
- The "game day package" includes one ticket to the game, meals at a restaurant, one night of lodging at a hotel, and transportation from the hotel to the game.
- Travel Agent B purchases the ticket to the game from Football Team C for \$75, the meals from Restaurant E for \$50, the lodging from Hotel D for \$50, and the transportation to the game from Transporter F for \$25.

- Travel Agent B provides Football Team C, Restaurant E, and Hotel D with a properly completed exemption certificate claiming the resale exemption.

#### Allocation of Selling Price Among Items Included in Package

The \$400 selling price of the complete package should be allocated among the four items being sold as part of the package (i.e., the ticket to the game, lodging, meals, and transportation to the game).

One method of allocating the \$400 selling price is to determine the percentage cost of each of the components offered in the package to the total cost of all the components offered in the package and multiply that percentage times the \$400 package selling price.

Based on the facts in the above example, the percentage cost of each of the components in the package and the amount allocated to the selling price of the package would be as follows:

Item in Package	Cost of Item (A)	Total Cost of All Items in Package (B)	Percentage of Total Cost (A)/(B)	Amount of Selling Price of Package (\$400) Allocated to This Item
Ticket	\$75	\$200	37.5%	\$150
Meals	\$50	\$200	25%	\$100
Lodging	\$50	\$200	25%	\$100
Transportation	\$25	\$200	12.5%	\$50

That portion of the \$400 selling price of the package to Individual A which is allocated to the meals (\$100), lodging (\$100), and ticket (\$150) is subject to Wisconsin sales tax by Ticket Broker A. That portion of the \$400 selling price which is allocated to transportation to the game (\$50) is not subject to Wisconsin sales tax.

In the above example, Travel Agent B would be required to charge Wisconsin sales or use tax on \$350 of the \$400 selling price of the game day package (i.e., \$100 lodging + \$150 ticket + \$100 meals). Travel Agent B may purchase the admission, meals, and lodging for resale and therefore is not required to pay the sales tax to the suppliers of these items. No sales or use tax would be due on the purchase or sale of the transportation service.

**Note:** If you have any questions about (1) who is the retailer; (2) when a sale takes place; (3) where a sale takes place; or (4) what amount is subject to tax with respect to a specific transaction, send a letter which includes the facts relating to the transaction and your question to:

Attn: Administration Technical Services  
Wisconsin Department of Revenue  
P.O. Box 8933  
Madison, WI 53708-8933

□

## 2 Fuel and Electricity Consumed in Industrial Waste Treatment Facilities

**Statutes:** Section 77.54(26), Wis. Stats. (1997-98)

**Wis. Adm. Code:** Section Tax 11.11(2)(b), Wis. Adm. Code (June 1991 Register)

This tax release supersedes the tax release published in *Wisconsin Tax Bulletin 65* (January 1990) titled “Electricity Used in Industrial Waste Treatment Facility” and applies to all periods open under the statute of limitations.

**Background:** Section 77.54(26), Wis. Stats. (1997-98), provides that when an industrial waste treatment facility qualifies for the property tax exemption under sec. 70.11(21)(a), Wis. Stats. (1997-98), the gross receipts from the sales of and the storage, use, or other consumption of tangible personal property which become a component part of the waste treatment facility are exempt from Wisconsin sales and use tax. In addition, the exemption also includes chemicals and supplies used or consumed in operating the waste treatment facility.

**Question:** Are natural gas and electricity exempt from Wisconsin sales and use tax under sec. 77.54(26), Wis. Stats. (1997-98), if they are consumed in operating an industrial waste treatment facility which is exempt from property tax under sec. 70.11(21)(a), Wis. Stats. (1997-98)?

**Answer:** Yes. The natural gas and electricity are exempt from Wisconsin sales and use tax under sec. 77.54(26), Wis. Stats. (1997-98), because they are “supplies” used or consumed in operating the waste treatment facility. □