

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.

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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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. 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, reuse 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. 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. □

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, 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 nonprofit 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~~ 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.’ 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~~ A 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.