

Wisconsin TAX BULLETIN


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Tax Bills Pending in the Legislature


Several bills containing provisions that affect Wisconsin taxes have been introduced in the Wisconsin Legislature. None of these bills have been enacted into law as of the date this *Wisconsin Tax Bulletin* went to press.

The Wisconsin Legislature was scheduled to conclude its current session by the end of March. Later sessions may also be scheduled. New laws which affect Wisconsin taxes will be explained in a future issue of the *Wisconsin Tax Bulletin*. 




Sales and Use Tax Report Mailed

The March 2000 *Sales and Use Tax Report* (1-00) was sent in late March and early April to all persons registered for Wisconsin sales and use tax purposes. The *Sales and Use Tax Report* contains articles about the taxability of food and beverage sales for on-premises consumption, entering use tax information on Form ST-12, new federal government bankcards, and new or revised sales and use tax informational publications.

A copy of the Report appears on pages 31 and 32 of this Bulletin. 

Information or Inquiries?

This issue of the *Wisconsin Tax Bulletin* includes a comprehensive listing of addresses and telephone numbers to use if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division.

The listing appears on pages 33 to 36 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. 




Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars in May. The seminars will include information on differences between the two states' laws. The seminars in May are for general businesses (seminars for contractors were held in February and March).

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

May 2, 2000 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

May 9, 2000 – Hudson, Wisconsin
Hudson House
1616 Crestview Drive

May 16, 2000 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Street 


Electronic Filing – It's Not Just a Fad Any More

Well into the 2000 tax filing season, it is clear that the popularity of electronic filing ("e-filing") continues to grow. The numbers speak for themselves. All three types of e-filing – Federal/State filing (where returns are prepared by a tax professional), online filing (using web-based or "off-the-shelf" software), and TeleFile (where tax returns are filed by telephone) – show marked increases. Last year as of late March, about 364,000 Wisconsin taxpayers had chosen to e-file. This year, nearly 466,000 had e-filed by that time. That represents a 27.9% increase in volume. At that rate, the number of Wisconsin taxpayers electronically filing could reach

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one million in tax season 2000 or 2001. That's roughly one third of all the individual income taxpayers in Wisconsin!

TeleFile is an e-file option that is available only to taxpayers invited by the Department of Revenue to file in that manner. However, the other two programs, Federal/State filing and online filing, have very few limitations for the filer. Both the department and the IRS currently have a few exclusions to their e-filing program, and both are dedicated to finding ways of including all forms and schedules in the e-filing process.

More and more taxpayers want the convenience that e-filing offers. To learn more about all the electronic filing options available to Wisconsin taxpayers, visit the department's Internet web site at www.dor.state.wi.us/html/efiling.html. For information about becoming an Electronic Return Originator, tax practitioners should visit the department's Internet web site at www.dor.state.wi.us/html/e-pro.html. 

Report on the Sales Tax Rebate

After much discussion and debate over how to manage Wisconsin's billion-dollar surplus, by the Wisconsin Legislature and citizens alike, the sales tax rebate was enacted into law on November 16, 1999. On that date 1999 Wisconsin Act 10 was signed by the Governor. It was to be the largest tax rebate in Wisconsin history: 2.5 million checks totaling \$700 million.

The sales tax rebate program was crafted so most recipients would get their rebates automatically, though others could receive a rebate by filing an application. Application forms were created for both residents and nonresidents, and the forms were posted on the Internet, distributed to senior citizens, and made available everywhere tax forms are available.

The amount of the sales tax rebate ranged from \$184 to \$267 for single Wisconsin residents and from \$360 to \$534 for Wisconsin couples. Rebates for nonresidents - were 30.4% of non-business Wisconsin state sales tax they paid in 1998 and were able to verify.

Full-year and part-year Wisconsin residents who filed a 1998 Wisconsin income tax return or homestead credit claim by October 15, 1999, were to receive their sales tax rebates automatically. The rebate amount was calculated by the Department of Revenue, based on information on the tax return or homestead credit claim.

Nonresidents could also receive a sales tax rebate, but only by filing an application, Form NSTR. Their application had to be filed by December 20, 1999, and their rebate was based on non-business Wisconsin state sales tax paid in 1998. About 1200 Form NSTR applications were received, but only 933 filers were eligible for a sales tax rebate. Nonresidents' rebates averaged about \$100.

Full-year and part-year Wisconsin residents who did not file a 1998 Wisconsin income tax return or homestead credit claim (or filed after October 15) can receive a

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Income Sales and Excise Tax Division
PO Box 8933
Madison WI 53708-8933

Subscriptions available from:

Wisconsin Department of Administration
Document Sales
PO Box 7840
Madison WI 53707-7840

Annual cost \$7.00

sales tax rebate by filing an application, Form STR, unless they are not eligible. By March 1, 2000, about 120,000 Form STR applications had been filed. Persons who have not yet submitted an application may file one any time on or before June 30, 2000 (see the following article titled “Sales Tax Rebate – It’s Not Too Late,” regarding eligibility and other information).

In December 1999 the department received about 15,000 phone calls regarding the sales tax rebate. A call center with a toll-free number opened on January 4, 2000. On January 6, after media announcements that the first checks had been mailed, 18,734 calls were received. On January 31, the day taxpayers had been advised to contact the department if they hadn’t received their rebate, 13,442 calls were received. As of March 1 the call center had logged more than a quarter-million calls inquiring about the sales tax rebate!

Rebate checks began appearing in mailboxes on January 6, 2000, and before the end of the month nearly all of the “automatic” rebates had been delivered. Additional checks have been mailed since then, including rebates for those who filed applications. Rebates will continue to be processed until after the last of the applications have been filed on June 30.

As of March 1, 2000, sales tax rebate amounts have averaged \$277. Over 2.4 million recipients have received sales tax rebates totaling over \$682 million. About \$17 million of that amount was used to satisfy delinquent tax obligations and debts to other state agencies, such as child support and unemployment insurance overpayments. By the time all sales tax rebates have been processed, the original target of \$700 million and 2.5 million recipients will be very close to being realized.



Sales Tax Rebate – It’s Not Too Late

If you “missed out” on the sales tax rebate, you can still get one, if you qualify. The rebate amount is \$184 for persons who were single as of the end of 1998, and \$360 for couples who were married as of the end of 1998.

To receive a rebate you must file an application form with the Department of Revenue. The form, Form STR, *Application for Sales Tax Rebate*, must be filed with the department by June 30, 2000 (if it is mailed it must be postmarked by June 30, 2000).

Qualifications


To qualify for a sales tax rebate:

- ❖ You must have been a full-year or a part-year resident of Wisconsin for 1998 (nonresidents qualified but had to file an application by December 20, 1999);
- ❖ You cannot have been claimed as a dependent on someone else’s 1998 federal income tax return **unless** you had \$5,000 or more of Wisconsin adjusted gross income **and** you paid 1998 Wisconsin income tax (any amount); and
- ❖ You cannot have been incarcerated in a state or federal prison at any time during 1998.

Questions?

To obtain a copy of the application Form STR, or for more information about the sales tax rebate, you can contact the department by stopping in at any of the department’s offices, or by mail, phone, fax, e-mail, or Internet.

- ❖ Mail –
Wisconsin Department of Revenue, Sales Tax Rebate, P.O. Box 8937, Madison, WI 53708-8937
- ❖ Phone –
(608) 266-2772 or (608) 267-9420, or TTY at (608) 267-1049 in Madison or (414) 227-4147 in Milwaukee
- ❖ Fax –
(608) 267-0834
- ❖ E-Mail –
rebate@dor.state.wi.us
- ❖ Internet –
www.dor.state.wi.us, and click on “Sales Tax Rebate”

The Internet web site includes the application form, Form STR, a fill-in form, additional information about the sales tax rebate, and a list of frequently asked questions, and the answers. 

2000 Estimated Tax Requirements for Individuals, Estates, and Trusts

Individuals and fiduciaries that expect to owe \$200 or more of tax (including recycling surcharge) with their 2000 Wisconsin income tax return are required to pay 2000 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 2000 Form 1-ES, Wisconsin Estimated Tax Voucher, is filed with each estimated tax payment.

For calendar year taxpayers, the first estimated tax payment is due on April 17, 2000 (April 15 and 16 are weekend dates). Installment payments are also due on June 15, 2000, September 15, 2000, and January 16, 2001 (January 15 is a holiday). For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year.

Estates and grantor trusts which are funded on account of a decedent's death are only required to make esti-

mated tax payments for taxable years which end two or more years after the decedent's death. For example, an individual died on March 28, 1999. A grantor trust which was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 28, 2001.

A trust which is subject to tax on unrelated business income is generally required to pay 2000 Wisconsin estimated tax if it expects to owe \$500 or more (including recycling surcharge) on a 2000 Wisconsin franchise or income tax return (Form 4T). A 2000 Form 4-ES, Wisconsin Corporation Estimated Tax Voucher, is filed with each estimated tax payment. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If a taxpayer does not make the estimated tax payments when required or underpays any installment, interest may be assessed. [!\[\]\(05be7c7a8995decd503647c99211f7c2_img.jpg\)](#)



Focus on Publications: Golf Courses

How do Wisconsin sales and use taxes affect golf course operations? When must a golf course pay tax on purchases of golf carts and other items? What food sales are taxable and exempt?

Answers to these and other questions relating to golf courses can be found in a new publication, Publication 226, *Golf Courses – How Do Wisconsin Sales and Use*

Taxes Affect Your Operations? Publication 226 also includes other helpful information, such as recordkeeping tips.

A copy of Publication 226 appears on pages 37 to 53 of this Bulletin. Additional copies, as well as more than 60 other publications published by the department, can be obtained at any Department of Revenue office, by mail, e-mail, or fax, or via the Internet. See the article titled "Tax Publications Available" on page 5 of this Bulletin for details. [!\[\]\(a8f9309f944226d1420f5fed22e2b6e6_img.jpg\)](#)

Do You Owe Use Tax on Internet Purchases?

If you buy items via the Internet from companies that do not charge Wisconsin sales or use tax, you may owe Wisconsin use tax.

Office supplies, computer equipment, computer software (except custom computer software), paper, and furniture are common examples of Internet purchases that result in the buyer owing use tax.

The "Internet Tax Freedom Act," signed by President Clinton in October 1998, does not prohibit Wisconsin from imposing a sales or use tax on sales of tangible personal property made via the Internet. The Internet Tax

Freedom Act does impose a moratorium on the imposition of sales or use tax on sales of Internet access for those states that were not taxing the access at the time the Act was passed. In addition, the Act prohibits imposition of sales or use tax on sales made via the Internet if there is multiple taxation or the tax is discriminatory.

The imposition of Wisconsin sales or use tax on tangible personal property or taxable services sold via the Internet is not considered to be discriminatory or to result in multiple taxation because:

- Tangible personal property and taxable services sold over the Internet in Wisconsin are taxed in the same manner as property or services sold by mail order or "over-the-counter."

- Wisconsin allows a credit against Wisconsin sales or use tax for taxes properly paid to another state.

Therefore, use tax applies on purchases made via the Internet. The use tax may be reported as follows:

- **Seller's permit, use tax certificate, and consumer's use tax certificate holders:**

Report use tax owed on your sales and use tax return, Form ST-12.

• **Others:**

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



Tax Publications Available

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

By Mail

Write to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8951, Madison, WI 53708-8951; call (608) 266-1961; or fax a request to (608) 261-6239.

By E-Mail

You may e-mail your request to forms@dor.state.wi.us.

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 Internet web site at www.dor.state.wi.us, and click on "Publications."

New: The numbers of some publications are followed by an asterisk. These are publications that are new or have been revised since the last issue of the *Wisconsin Tax Bulletin*.

Income and Franchise Taxes

- 102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/99)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (11/99)
- 104 Wisconsin Taxation of Military Personnel (11/99)
- 106 Wisconsin Tax Information for Retirees (10/99)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1999 (11/99)

- 112 Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (1/99)
- 113* Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (2/00)
- 116 Income Tax Payments Are Due Throughout the Year (12/95)
- 119 Limited Liability Companies (LLCs) (12/99)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/99)
- 121 Reciprocity (5/99)
- 122 Tax Information for Part-Year Residents and Non-residents of Wisconsin for 1999 (11/99)
- 123 Business Tax Credits for 1999 (12/99)
- 125 Credit for Tax Paid to Another State (11/99)
- 126 How Your Retirement Benefits Are Taxed (11/99)
- 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 (12/99)
- 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 Nonprofit Organizations (9/90)

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| <p>207 Sales and Use Tax Information for Contractors (9/98)</p> <p>210 Sales and Use Tax Treatment of Landscaping (12/99)</p> <p>211 Cemetery Monument Dealers - How Do Wisconsin Sales and Use Taxes Affect You? (1/99)</p> <p>212 Businesses: Do You Owe Use Tax on Imported Goods? (1/99)</p> <p>213 Travelers: Don't Forget About Use Tax (4/99)</p> <p>214 Businesses: Do You Owe Use Tax? (4/99)</p> <p>216 Filing Claims for Refund of Sales or Use Tax (3/99)</p> <p>217 Auctioneers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)</p> <p>219 Hotels, Motels, and Other Lodging Providers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (4/99)</p> <p>220 Grocers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/98)</p> <p>221 Farm Suppliers and Farmers - How Do Wisconsin Sales and Use Taxes Affect Sales to Farmers? (4/97)</p> <p>222* Motor Vehicle Fuel Users: Do You Owe Use Tax? (3/00)</p> <p>223 Bakeries – How Do Wisconsin Sales and Use Taxes Affect Your Business? (2/98)</p> <p>224 Veterinarians - How Do Wisconsin Sales and Use Taxes Affect Your Business? (6/99)</p> <p>225 Barber and Beauty Shops – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (12/99)</p> <p>226* Golf Courses - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (3/00)</p> | <p>403 Premier Resort Area Tax (2/98)</p> <p>410 Local Exposition Taxes (2/99)</p> <p>503 Wisconsin Farmland Preservation Credit (11/99)</p> <p>508 Wisconsin Tax Requirements Relating to Nonresident Entertainers (8/94)</p> <p>W-166 Wisconsin Employer's Withholding Tax Guide (3/96)</p> |
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- Audits and Appeals**
- | | |
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| <p>217 Auctioneers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)</p> | <p>501 Field Audit of Wisconsin Tax Returns (9/99)</p> <p>505 Taxpayers' Appeal Rights of Office Audit Adjustments (12/99)</p> <p>506 Taxpayers' Appeal Rights of Field Audit Adjustments (9/99)</p> <p>507 How to Appeal to the Tax Appeals Commission (7/98)</p> |
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- Other Topics**
- | | |
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| <div style="text-align: center; border: 1px solid black; padding: 2px; margin: 10px 0;"> Other Taxes and Credits </div> <p>127 Wisconsin Homestead Credit Situations and Solutions (11/99)</p> <p>128 Wisconsin Farmland Preservation Credit Situations and Solutions (11/99)</p> <p>400 Wisconsin's Temporary Recycling Surcharge (12/98)</p> | <p>111* How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (2/00)</p> <p>114* Your Wisconsin Taxpayer Bill of Rights (2/00)</p> <p>115 Handbook for Federal/State Electronic Filing (12/99)</p> <p>117 Guide to Wisconsin Information Returns (10/99)</p> <p>118 Electronic Funds Transfer Guide (4/96)</p> <p>124 Petition for Compromise of Delinquent Taxes (7/98)</p> <p>130 Fax A Form (9/99)</p> <p>401 Extensions of Time to File (1/99)</p> <p>500* Tax Guide for Wisconsin Political Organizations and Candidates (2/00)</p> <p>502 Directory of Wisconsin Tax Publications (6/98)</p> <p>504* Directory for Wisconsin Department of Revenue (2/00)</p> <p>509* Filing Wage Statements and Information Returns on Magnetic Media (3/00)</p> <p>700 Speakers Bureau presenting . . . (12/98) 🔗</p> |
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Electronic Commerce Proposals Abound

Note: This article appeared in the November 1999 issue of "Tax Administrators News," the newsletter of the Federation of Tax Administrators. Bracketed material has been added for this Bulletin.

Since its inception earlier in the year [1999], the Advisory Commission on Electronic Commerce has held two meetings (in June and September) and has been flooded with proposals to advise the Commission on its mission to study various aspects of the taxation of electronic commerce as well as other comparable intrastate, interstate and international sales activities. The Commission is to issue a report to Congress by April 2000, and its recommendations (which must receive two-thirds approval of the membership) are to promote "tax and technological neutrality among all forms of remote commerce."

In advance of its December 14-15 [1999] meeting in San Francisco, the Commission has received some 35 proposals examining various aspects of electronic commerce. A synopsis and link to each major proposal is available on Tax Exchange. The proposals represent a wide range of options and are broken down here into several categories. They include:

- **Restrictive proposals** that would impose greater restrictions than current law on the ability of state and local governments to impose tax or tax collection duties on electronic commerce and other businesses. These include proposals that would prohibit state and local governments from imposing sales and use tax on goods and services sold using electronic commerce; would prohibit imposition of sales and use tax on business-to-consumer sales that use electronic commerce; would provide "4-R-like" protections for inter-state telecommunications property; and would establish in federal law a nexus standard of "substantial physical presence" for imposition of a business activity tax or a use tax collection duty.
- **Simplification proposals** that generally suggest or require that state and local governments adopt certain simplifications of the state and local sales tax—e.g., single tax rate per state, uniform tax base or uniform definitions, central or single-point filing, single audits—before consideration would be given to requiring remote sellers to collect tax. Certain proposals specify that the simplification would be part of a package that would include an expanded duty to collect tax. Others either explicitly reject a

mandatory collection obligation or are vague about whether the proposal envisions a collection duty on the part of sellers.

- **Technology solutions** that generally propose that advanced software be applied to the determination of taxability and tax rates and would use current credit card and electronic payment processes to facilitate tax collection and routing of tax funds directly to state and local governments. Among the proposals in this category are the NGA [National Governors' Association] "zero burden" proposal supported by other state and local governments (discussed later in this piece), a state tax clearinghouse, "adaptive technology," a "zip code tax," and several others. Some of the proposals are more comprehensive (i.e., address all areas of sales tax administration) than others.
- **Origin state proposals** that would source sales to the state of the seller, thus simplifying sales tax administration for the remote seller. One proposal suggests this approach for all remote sales, while another suggests using this method only for sales of digital products.
- **Telecommunications proposals**, submitted primarily by various telecommunications companies, that call for a concerted government-industry effort to simplify state and local telecommunications taxes and remove certain discriminatory features from the current system.
- **Other proposals** that suggest doing away with all sales taxes and converting the system to an add-on to the income tax based on consumption (i.e., total income less additions to savings) or that propose a method for subsidizing access to the Internet.

Chairman's Proposal. Commission Chairman Gov. Gilmore of Virginia submitted his own proposal that would establish federal law restrictions on state and local taxation of electronic commerce. His "no Internet tax" proposal would:

- Prohibit imposition of state and local sales and use taxes on "business-to-consumer" sales of goods and services facilitated by the Internet, regardless of nexus;
- Establish a federal law nexus standard for all taxes consisting of "substantial physical presence";
- Prohibit state and local taxes on Internet access;


- Eliminate the federal telecommunications excise tax and use part of it temporarily to offset certain state and local revenue losses;
- Oppose international taxes and tariffs on U.S. electronic commerce; and
- Permit states to use federal welfare dollars to purchase computers and Internet access for needy families to abolish the “digital divide.”

Zero Burden Proposal. As noted, the National Governors’ Association, with support from most other state and local government organizations, has put forth a proposal commonly referred to as the “Zero Burden Proposal.” Much of this proposal was developed at two meetings that included tax administrators from more than 30 states [including Wisconsin]. The general approach of the streamlined sales tax system is to reduce the costs and burden of sales tax compliance for participating sellers to as close as possible to zero through a combination of:

- Shifting sales tax administration to a technology-oriented business model in which primary responsibility for calculating, collecting, reporting, and

paying the tax is lodged with “trusted third parties” (TTPs) instead of the seller.

- Simplifying sales and use tax laws and administrative practices in key areas to enable the technology and new business model to operate properly.
- Having states assume responsibility for the costs of the system by reimbursing TTPs for the costs of integrating their systems with those of participating sellers sufficiently to allow the seller to participate in the system. A participating seller would not be charged for participation in the streamlined collection system.

Availability of Information. Appropriately enough, the Commission readily makes its material available through the Internet. Commission meetings have been “webcast” and some subcommittee meetings have been “audio-cast.” In addition, transcripts of subcommittee meetings are generally posted within 24 hours of the session. Access to the webcasts and transcripts can be obtained through the Commission web site at www.ecommercecommission.org. All proposals submitted to the Commission can be downloaded from this site. The Commission has recently added a “library” to its site that contains downloadable or viewable versions of many documents submitted. 


Question and Answer



Q I know the state tax rates went down for 2000, but my state withholding didn’t change. Should I file a new “Withholding Exemption Certificate”?

A No. New withholding tax rates will go into effect on July 1, 2000. Employers will be receiving new withholding tax tables several weeks prior to the July 1 effective date.

Q I filed my tax return electronically via the Internet this year. Now I need to file an amended return because there are additional business expenses to deduct. How do I electronically file my amended Wisconsin tax return?

A You may not electronically file an amended income tax return. Complete a Form 1X and mail it to the address shown at the bottom of the Form 1X. 

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 55 of this Bulletin. 




Do You Need a Speaker?

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

Department representatives are available to speak on a variety of topics that can be targeted to 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.


- Homestead credit.
- Audit and appeal procedures.
- Common errors discovered in audits.
- Recordkeeping requirements.
- Tax delinquencies and petitions for compromise.
- Manufacturing property assessment.

To arrange for a speaker, you may write to Wisconsin Department of Revenue, Speakers Bureau, P.O. Box 8933, Madison, WI 53708-8933, fax your request to (608) 261-6240, call (608) 266-1911, or fill out the on-line request form by accessing the department's Internet web site at www.dor.state.wi.us, and clicking on "Events/Training." 

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* 118 (January 2000), pages 51 to 79. It includes information for issues 1 to 115 (through October 1999). 

Four Years in Prison for Filing 91 Fraudulent Homestead Claims

Susanna R. Kittleson, of Milwaukee, was sentenced in February 2000, to four years in state prison for misappropriation of identity and filing fraudulent homestead credit claims. Milwaukee County Circuit Court Judge Elsa C. Lamelas also imposed an additional ten years of prison time but stayed that time and ordered Kittleson to serve five years of probation. In addition, she was ordered to pay \$4,220 to the Department of Revenue as restitution for its costs in investigating her.

Kittleson used the identities of 30 elderly, mentally infirm people to file 91 fraudulent homestead credit claims between January 1997 and June 1998. The claims requested homestead credits totaling \$88,756. Controls in place at the Department of Revenue, along with information provided by a tipster, prevented the department from issuing checks for 87 of the bogus claims. Kittleson was also prevented from cashing any of the four checks she did obtain.

Kittleson obtained information about her victims through her work as a home caregiver and as a supervisor for three organizations that worked with the elderly and infirm. She filed false homestead credit claims using these persons' names and addresses where they had never lived, and based on rent paid to fictitious landlords. In some cases Kittleson even responded to Department of

Revenue inquiries, posing as a landlord and falsely claiming that rent had been paid by the elderly victims.

Filing a fraudulent homestead credit claim is a felony punishable by up to five years' imprisonment and up to \$10,000 in fines. Wisconsin law also provides for substantial civil penalties on the civil tax liability.

Thomas B. Brufach, 48, a Waukesha businessman from Wales, Wisconsin, was ordered in January 2000, to serve jail time for failure to file Wisconsin income tax returns. Waukesha County Circuit Court Judge Mac Davis imposed a six-month jail term but stayed the time and placed Brufach on probation for two years, provided he spend 60 days in jail. Another condition was that Brufach could be released to electronic monitoring after serving 15 days in jail if he complies with all the conditions of his sentence.

The sentence was imposed after Brufach pled no contest to failure to file a 1995 income tax return. As part of a plea agreement, a second count, for failure to file a 1996 return, was dismissed.

The criminal complaint stated that Brufach owed \$5,838 in state income taxes for 1995 and 1996, and that he had a history of filing income tax returns late or not filing returns at all. After he was charged with failure to file

the returns, he paid the state income taxes for 1995 and 1996. He also filed his 1997 and 1998 income tax returns and paid the taxes for those years.

Failure to timely file Wisconsin income tax returns is a crime punishable by up to nine months' imprisonment and up to \$10,000 in fines on each count. In addition to the criminal penalties Wisconsin law provides for substantial civil penalties on the tax liability. Assessment and collection of the taxes, penalties, and interest due follows a conviction for criminal violations.

In February 2000, Michael H. Fritz, 43, of Stevens Point, was found guilty in Dane County Circuit Court, of two counts of failure to file Wisconsin income tax returns for 1995 and 1997. Circuit Court Judge Steven D. Ebert presided over the trial in which the jury reached a guilty verdict after less than 30 minutes of deliberation. The trial followed an investigation by the Wisconsin Department of Revenue's Fraud Unit.

Fritz practiced as a licensed chiropractor under the name "The Healing Arts Center" until March 1997. He was charged with failing to file 1995 and 1997 Wisconsin income tax returns. The business had checking account deposits of over \$99,000 in 1995, and in 1997 Fritz reported receipts on his sales tax return for the first quarter of 1997, and he received wages from three employers.

The department testified that Fritz filed legitimate Wisconsin income tax returns for 1987 through 1990. Beginning with the 1991 tax return and continuing through the 1997 tax year, he altered the signature oath and reported no tax liability. He also attached materials claiming he was not subject to the tax laws.

As a result of the conviction, Fritz faces a maximum penalty of 18 months' imprisonment and fines of \$20,000. Assessment and collection of the taxes and interest due, as well as substantial civil penalties, follows the criminal conviction. In addition, the Wisconsin Department of Regulation and Licensing is required to deny renewal of occupational licenses to persons liable for delinquent taxes. [§ 71.01](#)

Filing Wisconsin Fiduciary Income Tax Returns (Form 2) - Estates and Trusts

Who Must File

Estates:

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

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

Trusts:

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

1. any taxable income for the tax year, or

2. gross income of \$600 or more, regardless of the amount of taxable income.

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

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

Trusts must file on a calendar-year basis, and the due date is the following April 15 (April 17 in 2000, since April 15 and 16 are weekend dates). (Exception: a limited number of charitable trusts may file on a fiscal-year basis.)

Qualified Funeral Trust (QFT)

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

Electing Small Business Trust (ESBT)

For taxable years beginning on or after January 1, 1997, electing small business trusts (ESBTs) may be S corporation shareholders. The portion of an ESBT that consists of stock of one or more S corporations is treated as a separate trust. The separate trust is subject to Wisconsin income tax at the highest rate under sec. 71.06(1) or (1m), Wis. Stats. (1997-98), or sec. 71.06(1n) or (1p), Wis. Stats., as created by 1999 Wisconsin Act 9, as applicable.

Closing Certificates

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

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

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

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

Only after department determines that all income, withholding, sales, use, gift, and delinquent taxes are paid will a Closing Certificate for Fiduciaries be issued.

Receipt of the Closing Certificate for Fiduciaries does not relieve the executor, administrator, personal representative, or trustee from filing the final fiduciary income tax return. If a probate final account is filed with the court, a copy must be attached to the final return.

For the fiscal year ending June 30, 1999, the department issued 10,675 Closing Certificates for Fiduciaries. [\[Link\]](#)

Filing Wisconsin Estate Tax Returns (Form W706)

Filing Requirement

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

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

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

Due Date

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

If the return is filed after the due date, there is a penalty equal to 5% of the tax, with a minimum of \$25 and a maximum of \$500.

Payment of Tax

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

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

Examples:

1. The decedent died February 15, 1999. An extension of time to file the federal estate tax return was obtained from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on December 31, 1999, which was within the extension period. Tax of \$1,200 was due. The total amount due is \$1,326, computed as follows:

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

2. The decedent died February 15, 1999 and did not obtain an extension to file from the IRS. The Wisconsin estate tax return was filed December 31, 1999, and showed no tax due. This estate owes the minimum penalty of \$25.

Installment Payments

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

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

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

interest due must be paid upon notice by the Department of Revenue.

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


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

Distributees of real estate must provide to the department a certified copy of a lien for unpaid taxes and interest on the property to secure payment, and record the lien in the office of the register of deeds of the county in which the property is located. Distributees of personal property must provide either a lien or a financial guarantee bond equal to the estimated tax and interest, if the tax has not been determined. Upon determination of the tax, distributees of personal property must either provide a lien or a financial guarantee bond sufficient to secure payment of the tax and interest, or pay the excess over the amount of tax and interest secured by the bond.

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

Certificate Determining Estate Tax

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

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

Farmers Receive \$29 Million in Farmland Credits

Direct benefits of approximately \$29 million were distributed to Wisconsin farmers in 1999, for the 1998 tax year, through the farmland preservation credit program and the farmland tax relief credit program. These credits are paid as a reduction in Wisconsin income tax or as a cash refund if no income tax is due.

Farmland Preservation Credit Program

About 22,000 farmers, including about 500 corporations, claimed farmland preservation credits totaling \$17.8 million for the 1998 tax year. The credit averaged \$810 per claimant, and about 38% of farm owners with 35 or more acres claimed the credit.

The goals of the farmland preservation credit program are twofold –

- To preserve Wisconsin farmland by means of local land use planning and soil conservation practices. To qualify for the credit, farmland must either be zoned for exclusive agricultural use or be subject to a

farmland preservation agreement between the farmland owner and the state.

- To provide property tax relief to farmland owners. Farmland preservation credits equaled about 22% of claimants' average 1998 property tax bills.

Farmland Tax Relief Credit Program

About 57,600 farmers, including about 800 corporations, claimed farmland tax relief credits totaling \$11.2 million for the 1998 tax year, for an average credit of \$194. The credit for 1998 equaled 10% of the first \$10,000 of property taxes on farmland. Farmland owners were required to have at least 35 acres of farmland to qualify for farmland tax relief credit.

Beginning with the 1999 tax year, the Department of Revenue is required to determine the percentage of the first \$10,000 of property taxes on farmland necessary to distribute \$15 million annually through the program. For the 1999 tax year (credits claimed in 2000), the credit is equal to 13% of the first \$10,000 of property taxes. [↗](#)

Administrative Rules in Process

Listed below are proposed new administrative rules and changes to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of April 1, 2000, or at the stage in which action occurred during the period from January 2 to April 1, 2000.

The listing includes rule numbers and names, and whether a rule is amended (A), repealed and recreated (R&R), or a new rule (NR).

To receive up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 55 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Scope Statement Published (1/15/00)

2.32 Recycling surcharge - gross receipts defined-NR

Rules Sent to Legislative Council Rules Clearinghouse

2.32 Recycling surcharge - gross receipts defined-NR
 14.01 Administrative provisions-A
 14.02 Qualification for credit-A
 14.03 Household income and income-A
 14.04 Property taxes accrued-A
 14.05 Gross rent and rent constituting property taxes accrued-A
 14.06 Marriage, separation, or divorce during a claim year-A

Rules Sent to Revisor for Publication of Notice (including Notice publication date)

2.32 Recycling surcharge - gross receipts defined-NR (3/31/00)
 14.01 Administrative provisions-A (3/15/00)
 14.02 Qualification for credit-A (3/15/00)

- 14.03 Household income and income-A (3/15/00)
- 14.04 Property taxes accrued-A (3/15/00)
- 14.05 Gross rent and rent constituting property taxes accrued-A (3/15/00)
- 14.06 Marriage, separation, or divorce during a claim year-A (3/15/00)

Rules Being Reviewed Following Publication of Various Notices

- 1.13 Power of attorney-A
- 11.20 Waste reduction and recycling-NR
- 11.34 Occasional sales exemption for sale of a business or business assets-A

- 11.35 Occasional sales by nonprofit organizations-A
- 11.39 Manufacturing-A
- 11.535 Operators of a swap meet, flea market, craft fair or similar event-A
- 11.64 Background music-R&R
- 11.66 Telecommunications and CATV services-A
- 11.79 Leases of highway vehicles and equipment-A

Rules Adopted but Not Yet Effective (anticipated effective date 5/1/00)

- 11.67 Service enterprises-A
- 11.96 Delivery of ordinance; county and premier resort area taxes-NR. [!\[\]\(f2fdbbba686c1099e6b2b8779766e2d3_img.jpg\)](#)



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

Native Americans – reservation of another tribe	
<i>Joan La Rock</i>	15
Refunds, claims for – statute of limitations	
<i>Kurt H. Van Engel</i>	16
Tax Appeals Commission – jurisdiction – late claim for refund	
Tax Appeals Commission – appeal procedure – premature appeal	
<i>Cyril and Carole Kohlbeck</i>	16

Individual and Fiduciary Income Taxes

Claims for refund – basis	
<i>Judy Hagner and STRJDS Trust, Judy Hagner, Trustee</i>	17

Corporation Franchise and Income Taxes

Accounting – change in method	
<i>Babcock & Wilcox Company (The)</i>	17

Sales and Use Taxes

Amusement devices – leased or used by vendor?	
<i>Amusement Devices, Inc.</i>	18
Boats, vessels and barges – nonresident purchases	
<i>Raymond and Patricia Wehrs</i>	19
Exemptions – waste reduction or recycling machinery and equipment	
<i>Browning – Ferris Industries of Wisconsin, Inc.</i>	20
Officer liability	
<i>John D. Ceille and Charlene Ceille</i>	21
Services subject to the tax – towing	
<i>City of Milwaukee</i>	22

INDIVIDUAL INCOME TAXES

Native Americans – reservation of another tribe. *Joan La Rock vs. Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission* (Court of Appeals, District III, December 28, 1999). This is an appeal from a February 11,

1999, judgment of the Circuit Court for Brown County, which affirmed a May 11, 1998, decision of the Wisconsin Tax Appeals Commission (“Commission”). The issue is whether the taxpayer, a Menominee Indian living on and deriving income from sources on the Oneida Indian reservation, is exempt from Wisconsin income tax. The Commission and the Circuit Court held that she is not exempt.

The taxpayer, a member of the Menominee Indian tribe of Wisconsin, resides in Wisconsin, on land that is part of the Oneida reservation. She is employed by the Oneida tribe on the Oneida reservation. She married an Oneida Indian, with whom she had four children, two of whom still reside with her. She is divorced from her Oneida husband. Her children are enrolled members of the Oneida tribe, but she is not.

In 1994, the taxpayer filed a Wisconsin tax return on which she claimed a deduction for her income, based on her Native American status. The department disallowed the deduction on the basis that she was not living and working on her own tribe’s reservation. She appealed to the Commission, which affirmed the department, and she appealed that decision to the Circuit Court, which affirmed the Commission.

The taxpayer contended that she is exempt from Wisconsin income tax on the basis of her status as an Indian living in and deriving income from sources in Indian country. She contended that Wisconsin’s exercise of tax jurisdiction is preempted by: (1) treaties and federal statutes; (2) prohibition against taxing reservation Indians residing on and deriving income from the reservation as a result of the U.S. Supreme Court’s decision in *McClanahan v. Arizona* (1973); and (3) the federal and tribal interests implicated.

The Court of Appeals concluded that the treaties and federal laws on which the taxpayer relied neither expressly preempt nor authorize Wisconsin to impose an income tax on the taxpayer. The Court further concluded that that *McClanahan* exempts only Indians who reside on and derive income from their own tribe’s land. Finally, the Court concluded that federal and tribal interests are not implicated in such a manner as to require preemption. In summary, the Court of Appeals concluded that no act of Congress, treaty, state statute, or agreement with any tribe impairs Wisconsin’s right to

impose an income tax on enrolled members of a federally recognized Indian tribe that live and work on a reservation of another tribe. The taxpayer has appealed this decision to the Wisconsin Supreme Court.

The taxpayer has appealed this decision to the Wisconsin Supreme Court. [🔗](#)

Refunds, claims for – statute of limitations.

Wisconsin Department of Revenue vs. Kurt H. Van Engel (Circuit Court for Milwaukee County, February 20, 2000). This matter was remanded to the Circuit Court by the Court of Appeals on December 29, 1999, after the Wisconsin Supreme Court denied the taxpayer's petition for review of the September 29, 1999, Court of Appeals Decision. See *Wisconsin Tax*

Bulletin 118 (January 2000), page 27, for a summary of the Court of Appeals decision.

On remand, the Circuit Court reversed the April 24, 1997, Wisconsin Tax Appeals Commission decision, for the reasons stated in the Court of Appeals decision. The Circuit Court then remanded the case to the Commission. The case is pending at the Commission. [🔗](#)

Tax Appeals Commission – jurisdiction – late claim for refund; Tax Appeals Commission – appeal procedure – premature appeal.

Cyril and Carole Kohlbeck vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 1, 1999). The issue in this case is whether the Wisconsin Tax Appeals Commission ("Commission") has jurisdiction over the matters in the taxpayers' appeal. The department moved for dismissal on the basis that (1) the taxpayers failed to file a claim for refund for 1993 within the four-year statutory time provided by sec. 71.75(2), Wis. Stats., and (2) the taxpayers filed with the Commission a request for a reduction in their tax liability for 1994 through 1997, before the department has acted on a claim for refund for those years.

In April 1997, the taxpayers were issued an assessment covering tax years 1993, 1994, and 1995. The 1993 adjustment involved disallowance of a bad debt loss and conversion of net operating losses to capital losses. The taxpayers appealed the assessment, the department reduced the amount due, and the taxpayers paid it in November 1997.

In November 1998, the taxpayers submitted a claim for refund for 1993, pertaining to the tax treatment of an Individual Retirement Account. The department denied the claim for refund because it was filed later than the statutory period of four years from the unextended due date of the 1993 return, as provided in sec. 71.75(2), Wis. Stats.

The taxpayers wrote to the department, requesting "forms and conditions" needed to appeal the denial. The

department considered the request a "petition for redetermination" under sec. 71.88(1)(a), Wis. Stats. The department denied the petition for redetermination in July 1999.

The taxpayers filed a petition for review with the Commission in August 1999, and in addition they requested that the Commission order a reduction of their income taxes for 1994 through 1997. They have filed a claim for refund with the department covering tax years 1994 through 1997, and action on that claim is pending in the department's Resolution Unit.

The Commission concluded that it had no jurisdiction over the 1993 claim for refund because it was filed later than four years after the unextended due date of the 1993 tax return. The time limit is provided in sec. 71.75(2), Wis. Stats. The taxpayers may not file a claim under sec. 71.75(5), Wis. Stats., which permits a refund claim for four years after a tax assessment, because they appealed the assessment.

The Commission also concluded that it does not have the authority to consider the request to reduce the taxpayers' income taxes for 1994 through 1997. The taxpayers must file their claim for refund with the department (which they have done). If they are aggrieved by the department's action on the claim for refund, they may file with the department a petition for redetermination, and it is only the department's action on that petition that may be appealed to the Commission.

The taxpayers have not appealed this decision. [🔗](#)

INDIVIDUAL AND FIDUCIARY INCOME TAXES



Claims for refund – basis. *Judy Hagner and STRJDS Trust, Judy Hagner, Trustee vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 4, 2000). The issue in this case is whether 1998 income tax returns filed by Judy Hagner (“Hagner”) and STRJDS Trust (“the Trust”) are correct as filed. The department, Hagner, and the Trust have all filed motions for summary judgment.

Individual income tax

Hagner filed a 1998 Wisconsin individual income tax return on which she claimed estimated tax payments and a refund in the amount of \$5,691,736, with no tax liability. The department denied the request for refund, stating that its records did not show any record of estimated tax payments or credits from Hagner’s 1997 tax return.

Hagner filed a petition for redetermination, stating that her 1998 return was correct “based on Victims Civil Tort Claims Against Government.” The department denied the petition for redetermination “because there is no basis for paying the claimed refund.”

Hagner filed a timely petition for review with the Commission with no filing fee, declaring herself indigent. In her unsworn document she called herself an “innocent victim,” states that she filed bankruptcy in 1993 and that all of her debts were cancelled, alleges that the “government” is at fault for violating the bankruptcy laws and her constitutional rights, and asserts that her claim is valid.

Fiduciary Income Tax

The Trust filed a 1998 fiduciary income tax return, reporting credits against tax due and a refund in the amount of \$5,691,736, with no tax liability. Attached to the trust return was a Schedule WD, *Capital Gains and*

Losses, indicating a long-term capital loss of \$5,691,736 for a “Bankruptcy Estate” acquired in “1994 thru 1997 No liability,” and listing the date sold as “Transferred 1998.” The department denied the request for refund, stating that the “Trust has made no tax payments to the Wisconsin Department of Revenue in current year or prior years. The trust has not made and is not eligible to make any claims for credits.”

The Trust filed a petition for redetermination, stating that the 1998 return was a valid claim for refund based on “Valid Claims From Civil Tort Claim Transferred Payment By Courts to STRJDS Trust Trustee – Case Already Filed In Courts – Courts Awarded Valid Claim For Refund to Victim.” The Trust also stated that the refund claim “Is Out Of Court Money Settlement On Civil Tort Claim Against Government.” The department denied the petition for redetermination.

The Trust filed a timely petition for review with the Commission with no filing fee, declaring itself indigent. The Trust stated it would not appear at any hearing, requested a telephone conference “For Victim,” and asserted that the refund claim is valid based on documents submitted with the tax return.

Conclusion

The Commission concluded that Hagner and the Trust provided no basis for their claims for refund. They provided no evidence that their returns are correct, and their filings are confusing, illogical, and incoherent. They provided no facts to support their alleged claims for refund of almost \$6 million each, and no sworn affidavit supports their motion for summary judgment as required by statute.

The Commission granted the department’s motion for summary judgment and denied Hagner’s and the Trust’s motions for summary judgment.

Hagner and the Trust have appealed this decision to the Circuit Court . [↗](#)

CORPORATION FRANCHISE AND INCOME TAXES



Accounting – change in method. *Babcock & Wilcox Company (The) vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, December 16, 1999). The issue in this case is whether the taxpayer properly changed its method of accounting when it filed

amended tax returns for taxable years ending in 1981, 1982, and 1983, thereby assigning to the taxpayer’s predecessor a portion of \$600 million in deferred income of the predecessor. The taxpayer appealed a June 16, 1999, decision of the Wisconsin Tax Appeals Commission (“Commission”). See Wisconsin Tax Bulletin 115 (October 1999), page 23, for a summary of that decision.

The taxpayer is a successor by merger to a corporation of the same name. In 1977, McDermott, Incorporated (“McDermott”) began to acquire the stock of a New Jersey corporation then called Babcock & Wilcox (“Old B&W”). After acquiring all of Old B&W’s stock, McDermott created a wholly owned subsidiary, into which Old B&W was merged effective March 31, 1978. The new subsidiary was renamed “The Babcock & Wilcox Company” (“the taxpayer”), and at that time Old B&W ceased to exist. As a result of the merger, the taxpayer acquired all of the assets and liabilities of Old B&W and began carrying on its business under the laws of Delaware rather than New Jersey.

The nature of the manufacturing business of Old B&W and the taxpayer required them to enter into long-term contracts covering several years. This required both corporations to use special rules and procedures to account for the income generated by these contracts. The methods used were “percentage of completion” accounting for financial reporting purposes, and “completed contract” accounting for tax reporting purposes.

The use of completed contract accounting for tax purposes by Old B&W meant that, at any given time, there was a substantial amount of income generated that was not contemporaneously recognized for income tax purposes. The reporting of the income was deferred until the


completion of the entire contract. At the time of the merger in 1978 there was approximately \$600 million of deferred income earned but not reported. All of the deferred income was reported by the taxpayer in the years following the merger, consistent with the completed contract method of accounting used by Old B&W.

Old B&W’s unused tax credits and business loss carryovers were also claimed by the taxpayer but were later disallowed by the department. The taxpayer then attempted to amend its tax returns for tax years ending in 1981 to 1983, omitting the deferred income. The Commission denied the claim for refund, finding that the taxpayer had impermissibly changed its accounting method to percentage of completion. The Commission held that the taxpayer’s interpretation of sec. Tax 2.15 of the Wisconsin Administrative Code was incorrect, and that the department may but is not required to prescribe a different method of accounting if the method employed does not clearly reflect the income.

The Circuit Court concluded that the Commission’s interpretation of the Wisconsin Tax Code in coming to its decision was reasonable, and that the taxpayer’s change in accounting method was improper.

The taxpayer has appealed this decision to the Court of Appeals. [☞](#)

SALES AND USE TAXES

 **Amusement devices – leased or used by vendor?** *Amusement Devices, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 15, 1999). The issues in this case are:

- A. Whether the taxpayer’s purchases of amusement devices were subject to the Wisconsin sales or use tax.
- B. Whether the department properly imposed the negligence penalty for the taxpayer’s filing of an incorrect return due to neglect.

The taxpayer is a Wisconsin corporation engaged in the business of placing various coin-operated amusement devices in business establishments such as hotels, motels, taverns, bowling alleys, restaurants, convenience stores, and schools. The taxpayer paid sales tax on the majority of amusement devices and their related parts and accessories purchased from Wisconsin vendors, but

did not pay sales or use tax on those purchased from out-of-state vendors.

The taxpayer negotiated oral or written agreements with the owners of the establishments where its devices were placed. Each agreement specified which amusement devices were to be initially placed in the establishment by the taxpayer and what percentage of gross receipts from the devices was to be paid to the location owner “(f) or and in consideration of the use of the space in Location Owner’s premises.” The taxpayer agreed to maintain the devices in good working condition and to provide the parts and supplies needed to play them. Under each agreement, title to the devices remained in the taxpayer’s name at all times.

The taxpayer had exclusive keyed access to the devices’ coin boxes. Receipts were routinely removed from the devices by the taxpayer, usually in the presence of an employe of the establishment. The receipts were then counted, sales taxes were calculated and subtracted, and the amount due to the location owner was calculated and

paid, sometimes later by check. The taxpayer subsequently remitted the sales tax to the department.

The establishments exercised very limited control over the taxpayer's amusement devices, including where they were placed and when their patrons had access. The taxpayer ultimately controlled the type and number of devices and charges for playing them, except that the taxpayer would remove objectionable devices at the establishment's request.


The Commission concluded:

A. The taxpayer's purchases of amusement devices were subject to the sales and use tax. The taxpayer

sold its device-dispensed amusement services at retail to those who paid to play. The taxpayer's purchases of the amusement devices were taxable because they were used or consumed in the taxpayer's business of furnishing and selling amusement services.

B. The taxpayer failed to show its failure to file a correct return was "due to good cause and not to neglect." The department properly imposed the negligence penalty.

The taxpayer has appealed this decision to the Circuit Court. [☞](#)

 **Boats, vessels and barges – nonresident purchases.** *Raymond and Patricia Wehrs vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 6, 2000). The Circuit Court vacated the previous decision of the Commission and remanded the case for further evidentiary proceedings on January 22, 1998. See Wisconsin Tax Bulletin 111 (October, 1998), page 18, for a summary of the Circuit Court decision. The issues in this case are:

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

At the times relevant to this matter, the taxpayers were domiciled in the state of Illinois. On July 2, 1992, the taxpayers purchased a boat. On the day of the sale, the taxpayers were in Illinois, while the boat and its seller were in Florida. The taxpayers were represented at the closing in Florida by Mr. Bernie Walker. Mr. Wehrs gave his permission for Mr. Walker to enter into the agreement for the purchase of the boat. A bill of sale was executed on the day of the sale in the state of Florida. The boat was not titled or registered in Florida, nor was a Florida sales tax paid on the sale of the boat.

On July 7, 1992, Mr. Wehrs rented a slip in Racine, Wisconsin for the remainder of 1992 and reserved a slip for 1993. Within days after purchasing the boat, Mr. Wehrs began piloting the boat to Lake Michigan. The boat entered the Wisconsin waters of Lake Michigan for the first time on August 8, 1992, and remained there for the next two or three days. The boat then left Wisconsin

waters, and returned to the Wisconsin waters of Lake Michigan on about August 19, 1992, and remained there for the next few days. In early September 1992, Mr. Wehrs took the boat to the waters off northern Michigan and Canada, and returned to Racine on about September 15, 1992. The boat remained in the Wisconsin waters of Lake Michigan for two or three days for repairs and maintenance.

On September 17, 1992, Mr. Wehrs filed an application for title and registration for the boat, listing Wisconsin as the state of principal use and Racine County as the county where the boat was kept. On the application, Mr. Wehrs claimed an exemption from use tax under sec. 77.53(17m), Wis. Stats., and the taxpayers did not pay any use tax.

From about September 18 through October 1, 1992, Mr. Wehrs piloted the boat throughout southern Lake Michigan, occasionally entering Wisconsin waters. After about October 1, 1992, Mr. Wehrs piloted the boat to the Caribbean for the winter. During the summer of 1993, the taxpayers used the boat throughout Lake Michigan. On approximately 20 days, the boat was used in Wisconsin waters. Although Mr. Wehrs made a deposit for a Racine boat slip for 1993, there is no record of the actual rental of the slip.

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

The Commission concluded:

A. The boat was not purchased in the state of Illinois and the taxpayers do not qualify for the exemption from use tax under sec. 77.53(17m), Wis. Stats.

B. The boat is exempt from use tax under sec. Tax 11.85(2)(d), Wis. Adm. Code, because the taxpayers only made temporary use of the boat in Wisconsin during the years 1992 and 1993, and any storage of the boat was incidental to the temporary use.

The department has not appealed this decision. [!\[\]\(339a16584d5da0f0a3ca4e9ec17bf6a1_img.jpg\)](#)

Exemptions – waste reduction or recycling machinery and equipment.

Browning–Ferris Industries of Wisconsin, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 13, 2000). The issues in this case are:

- A. Whether the taxpayer's purchases of compactors, bins, and containers used by its customers to reduce the size of or to collect disposed items, and motor vehicles and related items used to transport recyclables to processing facilities are subject to Wisconsin use tax.
- B. Whether the taxpayer's sales and rentals of compactors to customers of its hauling service are subject to Wisconsin sales tax.
- C. Whether tangible personal property the taxpayer received by intercompany transfer from separately organized affiliated entities is subject to Wisconsin use tax.
- D. Whether the refund of state motor fuel tax by the department to the taxpayer is subject to Wisconsin use tax.

During the period from October 1, 1989 through September 30, 1993, the taxpayer, a wholly-owned subsidiary of Browning-Ferris Industries (BFI), was a Wisconsin corporation with its headquarters and principal place of business in Muskego, Wisconsin. The taxpayer had operations at four business sites: Green Bay, Germantown and two in Madison.

The taxpayer was primarily engaged in the business of collecting trash, garbage, and recyclables from its Wisconsin residential and commercial customers, and transporting these discarded materials to landfills, recycling centers, or material recycling facilities.

The taxpayer leased or sold compactors to some of its hauling customers, and also provided bins, dumpsters, and containers to its customers without additional charge. The taxpayer's customers deposited their recy-

clable items in the bins, dumpsters, and containers and their nonrecyclable waste items in dumpsters for the taxpayer to pick up.

The compactors were stationary hand-fed, shoot-fed compactors that were placed on the customer's premises. A customer was not required to use or rent the taxpayer's compactors to obtain the taxpayer's hauling services. Most, if not all, of the taxpayer's compactor lease agreements allowed the customer to purchase the compactor at the termination of the lease.

The taxpayer paid no sales or use tax when purchasing the compactors, bins, or containers, or the motor vehicles and equipment, attachments, and repairs used to transport recyclables to processing facilities.

The taxpayer sometimes contracted for its hauling services separately from its compactor rentals and sales, and sometimes both were included on the same contract. The taxpayer's hauling contracts did not refer to the taxpayer's sales or rentals of compactors, and the compactor sales or rental contracts did not refer to the taxpayer's hauling services. In its internal accounting system, the taxpayer accounted separately for the revenue attributable to its waste hauling services from the revenue attributable to its sales or rentals of compactors. The taxpayer used resale exemption certificates to purchase the compactors it leased to its customers. The taxpayer did not collect or pay to the department any sales or use tax on its compactor lease or sales receipts.

BFI and/or its subsidiaries (BFI affiliates) transferred to the taxpayer items of tangible personal property such as trucks, tractors, tractor trailers, and containers, none of which are exempt as tangible personal property used in either common or contract carriage, or waste reduction or recycling activities. These "intercompany transfers" included all rights to, and ownership of, the transferred assets. The motor vehicles transferred were re-titled in the taxpayer's name with the Wisconsin Department of Transportation. Capital assets transferred were depreciated on the taxpayer's income/franchise tax returns. The

taxpayer paid no sales or use tax on the intercompany transfers.

BFI and the BFI affiliates that transferred assets to the taxpayer were separate, legal, corporate entities from the taxpayer and were not divisions or units of the taxpayer. The taxpayer's bookkeeping entry for the receipt of the intercompany transfers was to debit the specific asset account and credit an intercompany account. The bookkeeping entry for BFI affiliates/transferrors was to credit the specific asset account and to debit the intercompany account. No money was exchanged between the BFI affiliates and the taxpayer for the intercompany transfers the taxpayer received from them. The taxpayer received no invoice or other bill in connection with the receipt of intercompany assets.

The state motor fuel tax refunds at issue involve motor fuel on which the taxpayer paid the motor fuel tax, which was later refunded because the taxpayer did not use the fuel for operation upon the public highways. The taxpayer has paid no sales or use tax on its purchase of motor fuel related to the motor fuel tax refunds at issue.


The Commission concluded:

- A. The taxpayer's purchases of compactors, bins, and containers used by its customers to reduce the size of or to collect disposed items, and motor vehicles and related items used to transport recyclables to processing facilities are subject to Wisconsin use tax. These items are not exempt as machinery and equipment used "exclusively and directly for waste reduction or recycling activities" under sec. 77.54(26m), Wis. Stats. The items are used prior to the recycling process and do not reduce the amount of waste generated into the waste stream.
- B. The taxpayer's sales and rentals of compactors to customers of its hauling service are not incidental to

the hauling service under secs. 77.51(5) and 77.52(2m), Wis. Stats., and are subject to Wisconsin sales tax.

- C. The taxpayer's receipt of tangible personal property by intercompany transfer from separately organized affiliated entities is not subject to Wisconsin use tax. There was no transfer for remuneration or consideration and no exchange of money, and the transfers resulted in the taxpayer's receiving no invoice or other bill.
- D. The refund of state motor fuel tax by the department to the taxpayer is subject to Wisconsin use tax. Although sec. 77.51(15)(a)4, Wis. Stats., was amended effective December 1, 1997 to exclude from the sales price subject to the use tax any amount of motor fuel tax refunded, the amendment does not apply to purchases of motor fuel during the period from October 1, 1989 through September 30, 1993.

The taxpayer has appealed this decision to the Circuit Court. The department has not appealed the decision but has adopted a position of nonacquiescence in regard to conclusion C, and in regard to the Commission's opinion that the taxpayer's intercompany transfers are not sales or purchases from a retailer within the meaning of secs. 77.51(14) and 77.53(1) and (2), Wis. Stats.; that the taxpayer's entering the net book value of the transferred assets on its books is not remuneration or consideration for the subject intercompany transfers; and that the items of tangible personal property which the taxpayer received by intercompany transfer are not subject to Wisconsin use tax. The effect of this action is that, although the Decision and Order is binding on the parties for the instant case, the Commission's conclusions of law, the rationale, and construction of statutes related to the issue of the intercompany transfers are not binding upon or required to be followed by the department in other cases. [Ⓜ](#)

 **Officer liability.** *John D. Ceille and Charlene Ceille vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2000). The issue in this case is whether John Ceille ("the taxpayer") and Charlene Ceille ("the taxpayer's wife") are responsible persons under sec. 77.60(9), Wis. Stats., for delinquent sales and use taxes of Ceille Industries, Inc. ("the company"), during May and August 1988 and January through June 1989 ("the period under review").

Beginning in August of 1986, the taxpayer became sole shareholder, president, and treasurer of the company.

The taxpayer's authority included signing all checks drawn on the company's checking account. Also in August of 1986, the taxpayer initiated a loan agreement with the company's bank. The taxpayer alone negotiated and executed the loan documents on behalf of the company. The taxpayer, on behalf of the company, negotiated an additional loan with the bank in the spring of 1988.

Prior to August of 1988, the taxpayer's wife had no active involvement in the company. During a portion of the period under review, the taxpayer's wife was a member

of the company's board of directors and the company's vice-president and secretary.


In July of 1988, the taxpayer became incapacitated. In August of 1988, the taxpayer was no longer involved in the business affairs of the company, and, in accordance with the terms of a loan agreement between the taxpayer and the company's bank, the taxpayer's wife agreed to allow the company's bank to approve all checks written on the company's account. The taxpayer's wife was given authority to write checks, but the bank had final approval of all payments. The bank authorized some tax payments by the company, but sales tax returns for August of 1988 and the first six months of 1989 were filed without payment of the tax due. The taxpayer's wife attempted to pay a number of tax liabilities with checks that were not approved and were not honored by the bank.

The Commission concluded that the taxpayer was a responsible person under sec. 77.60(9), Wis. Stats., and was personally liable for the company's unpaid sales taxes.

The taxpayer, as the company's president and treasurer, had the **authority** to pay the company's taxes, had a **duty** to pay the sales taxes because he was aware that they were due, and he **intentionally violated this duty** by paying other vendors. Because he negotiated the loan agreements that allowed the bank to exercise control of the checking account, the taxpayer could not claim immunity from liability based on the control that he voluntarily conveyed to the bank.

The Commission concluded that the taxpayer's wife was not personally liable for the company's taxes because she had no active involvement in the company and did not have **authority** to direct the payment of taxes. The taxpayer's wife, while having authority to sign checks, did not have authority to cause the company to pay taxes, the control of which had been conveyed by the taxpayer to the bank.

Both the department and the taxpayer have appealed this decision to the Circuit Court. [⚖️](#)

 **Services subject to the tax – towing.** *City of Milwaukee vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2000). The issue in this case is whether the \$135 fee charged by the City of Milwaukee for removal of an illegally parked or abandoned vehicle is subject to the sales tax on towing services under sec. 77.52(2)(a)10, Wis. Stats.

During the period 1993 through 1996, the City of Milwaukee hired contractors to implement its enforcement towing program by removing illegally parked and abandoned vehicles from city streets. The amount billed by the contractors to the City for these towing services averaged about \$35 per tow and was exempt from the sales tax under sec. 77.54(9a)(b), Wis. Stats. Milwaukee City ordinance 101-25 provided in part that: "The charges for removal and storage under this section shall be \$135 per

vehicle... [T]he vehicle may be released from storage upon payment of all charges..." The \$135 fee was in addition to any illegal parking citation the vehicle owner may have received, and was refunded if the citation was dismissed by a court or was otherwise excused.

The Commission concluded the \$135 fee was not subject to the sales tax because the only towing services involved were provided to the City by its contractors, and the disputed receipts were not from towing services sold, performed or furnished by the City at retail to consumers as required by sec. 77.52(2)(a)10, Wis. Stats. The Commission found the \$135 charge was more like a non-taxable fine than a sale.

The department has appealed this decision to the Circuit Court. [⚖️](#)



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 release is included:

Sales and Use Taxes –

1. Micro-Brewing Beer – Do Manufacturing Exemptions Apply? 23

SALES AND USE TAXES

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

1 Micro-Brewing Beer – Do Manufacturing Exemptions Apply?

Statutes: Section 77.54(2), (6)(a), and (6m), Wis. Stats. (1997-98)

Wis. Adm. Code: Section Tax 11.39(2), (3)(d), and (4)(L), Wis. Adm. Code (October 1997 Register)

Background:

Section 77.54(6)(a), Wis. Stats. (1997-98), provides an exemption for machines and specific processing equipment used exclusively and directly by a manufacturer in manufacturing tangible personal property.

The six elements detailed in sec. 77.54(6m), Wis. Stats. (1997-98), must be met for the exemption of sec. 77.54(6)(a), Wis. Stats. (1997-98), to apply. These six elements are:

- 1) production by machinery,
- 2) of a new article,
- 3) with a different form,

- 4) with a different use,
- 5) with a different name, and
- 6) by a process popularly regarded as manufacturing.

Section 77.54(2), Wis. Stats. (1997-98), exempts the purchase of tangible personal property that:

- 1) becomes an ingredient or component part of an article of tangible personal property destined for sale; or
- 2) is consumed, destroyed, or loses its identity in the manufacture of tangible personal property destined for sale.

Section Tax 11.39(3)(d), Wis. Adm. Code (October 1997 Register), states that breweries are ordinarily considered manufacturers. For purposes of this tax release, a “brew pub” is a restaurant/tavern that has a micro-brewery operation within its facility.

Question: Is the process of micro-brewing beer considered manufacturing for purposes of the exemptions under sec. 77.54(2) and (6)(a)?

Answer: Generally, the process of micro-brewing beer by a brew pub is considered manufacturing.

The following is an example of a micro-brewery which is considered a manufacturer for purposes of the exemptions provided in sec. 77.54(2) and (6)(a), Wis. Stats. (1997-98).

Caution: *This tax release relates to the specific conditions detailed in the example. The taxability of equipment, machinery, and supplies used by other brew pubs may be different.*

Example:

- Company A is a brew pub that serves sandwiches and alcoholic beverages, including beer, to its customers.
- The beer that Company A serves is made in Company A’s micro-brewery.
- The main ingredient of the beer, pale malted barley, is delivered into a silo storage tower located outside Company A’s back door. The other ingredients, including other types of malted barley, are stored in the raw materials storage room in Company A’s basement.
- The silo storage tower is a real property improvement.
- Company A’s activities include the following:

Step 1: A cablevey (i.e., enclosed cable system with attached discs) transports the pale malted barley from the silo tower to the mill room in the basement. The barley is dropped by the cablevey into the milling machine, which weighs and mills the barley.

Step 2: The milled barley is transferred from the milling machine into a bucket elevator, which transports the barley up two floors to the storage tank. The ingredients are dropped from the storage tank to the combi-tank, located one floor below in the brew house. The top half of the combi-tank is used to store hot water, while the bottom half of the combi-tank is called the “mash tun.” The combi-tank is welded together with a brew kettle. The two units are interconnected by a computerized, variable speed pump control system.

Step 3: The brew kettle is filled with water and the water is heated. Some of the water is used to sterilize the system, while the rest of the water is used in the brewing process. The heated water used in brewing is mixed with the milled barley (as it comes from the storage tank, in Step 2 above) in the mash tun. The “mash” stays in the mash tun for approximately 40 minutes, at which time the enzymes activated by the water convert the starch into sugar.

Step 4: “Sparging” is the step that occurs when “wort” (i.e., sweet liquid) is rinsed from the barley by flushing it with water. The barley remains are given to a local sheep farmer as fodder, while the wort gets boiled with hops in the brew kettle to (a) sterilize it; (b) coagulate the proteins; and (c) help utilize the hops.

Step 5: The boiled wort is piped to one of three fermentation tanks in the fermentation room located on the main floor, which is one of two fermentation rooms. During the transfer, the wort is cooled by a heat exchanger.

Step 6: Oxygen is inserted into the wort before it enters the fermentation tank. Yeast is put into the tank as the wort enters the tank. The ales must ferment for 10-20 days, while the lagers must ferment for 30 days. During different times of the fermentation process, carbon dioxide must be released or retained to preserve its natural carbonation.

Step 7: The beer is piped to the filter machine in the lower fermentation room. Diatomaceous powder is added to the filter tank to trap yeast and other particles for removal from the brew. The filtered beer is piped to a serving tank in a serving room. The serving room is a walk-in cooler (none of the walls of the cooler are walls of the building). At this point, the amount of beer produced is measured for excise tax purposes. Each of the serving tanks has a spigot, which is used to fill kegs that will be delivered to Company A’s wholesale distributors. Each of the serving tanks is also connected to taps to serve beer to Company A’s in-store customers directly from the serving tanks.

Tax Treatment:

The manufacturing process of micro-brewing beer as detailed in the Example above, begins with the conveyance of raw materials from inventory to the work point in the same facility (i.e., the conveyance of the materials by the cablevey to the mill room). The manufacturing process includes milling, brewing, sparging, fermentation, and filtration procedures. The manufacturing process ends with the conveyance of finished product (i.e., beer) to the point of first storage on the facility’s premises (i.e., storage tank); however, the manufacturing process also includes the packaging of the beer in kegs for sale to wholesalers. (Section Tax 11.39(2), Wis. Adm. Code (October 1997 Register), provides that manufacturing includes packaging when it is a part of an operation performed by the producer of the product and the package or container becomes a part of the tangible personal property as the unit is customarily offered for sale by the producer (i.e., sold in the keg).)

The following chart summarizes what equipment, based on the *Example* above, may be purchased without tax as exempt manufacturing equipment under sec. 77.54(6)(a), Wis. Stats. (1997-98), providing it is used exclusively and directly in the manufacture of beer. It also summarizes which tangible personal property may be purchased without tax as exempt ingredients, component parts, or consumable items under sec. 77.54(2), Wis. Stats. (1997-98).

Note: The chart does not include Company A’s purchases of real property improvements (e.g., silo storage tower, building). The purchase of real property improvements is not subject to Wisconsin sales or use tax.

Equipment	
<i>Exempt under sec. 77.54(6)(a), Wis. Stats. (1997-98)</i> ¹	<i>Taxable under sec. 77.52(1), Wis. Stats. (1997-98)</i>
Brew kettle	Serving room (cooler)
Bucket elevator	Serving tanks ⁴
Cablevey	Taps
Combi-tank	
Computerized, variable speed pump control system	
Fermentation tanks	
Filter machine	
Filter tank	
Heat exchanger	
Milling machine	
Spigots ³	
Storage tank	
Ingredients, Component Parts, or Consumable Items	
<i>Exempt under sec. 77.54(2), Wis. Stats. (1997-98)</i> ²	
Diatonaceous powder	
Hops	
Malted barley	
Oxygen (if purchased)	
Water	
Yeast	

¹ Equipment that may be purchased without tax as exempt manufacturing equipment under sec. 77.54(6)(a), Wis. Stats. (1997-98), provided it is used exclusively and directly in the manufacturing process.

² Ingredients, component parts, or consumable items that may be purchased without tax under sec. 77.54(2), Wis. Stats. (1997-98), assuming the product is sold.

³ Equipment that may be purchased without tax as exempt manufacturing equipment under sec. 77.54(6)(a), Wis. Stats. (1997-98), because it is used in the packaging process. **Note:** Equipment must be used *exclusively and directly* in the manufacturing process to qualify for the exemption.

⁴ Equipment that may *not* be purchased without tax that is used in the packaging process, but ***is not used exclusively and directly*** in the manufacturing process. The serving tanks are also used to store beer which is served via taps to the brew pub's in-store customers. [☞](#)



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter ruling is included:

Sales and Use Taxes

Service enterprises - testing services

Incidental - testing services

W0009001 (p. 26)

✱ **W0009001** ✱

Type Tax: Sales and Use Taxes

Issue: Service enterprises - testing services
Incidental - testing services

Statutes: Sections 77.51(5) and 77.52(2)(a), Wis. Stats. (1997-98)

Wis. Adm. Code: Section Tax 11.67 (November 1993 Register)

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

Facts

The taxpayer is a membership organization exempt from payment of federal income tax under section 501(c) (6) of the Internal Revenue Code of 1986, as amended (the “Code”). The taxpayer is a not-for-profit corporation formed under the laws of another state and is headquar-

tered in that state. It also has an office in Washington, D.C. The taxpayer has no office or other facility in Wisconsin. The taxpayer provides certain testing (“Testing”) services to specific enterprises (“Enterprises”) in Wisconsin.

The Testing program consists of the testing of Enterprises to determine whether the Enterprises meet certain standards required by federal law and by the taxpayer. Under a provision in 42 U.S.C., every Enterprise in the United States must be accredited periodically by a certain Agency of the United States (“AUS”) or another organization recognized by AUS as having standards that are equivalent to or more stringent than federal accreditation standards. The only entities that AUS has recognized for these purposes are the taxpayer, other not-for-profit organizations, and agencies of a few state governments.

In order to obtain accreditation, an Enterprise must, *inter alia*, participate in a Testing program. A Testing program evaluates the ability of participating Enterprises to accurately perform diagnostic services for clients. Specifically, the Testing program involves:

1. The transfer to a participating Enterprise of certain materials (“the Materials”) the composition of which is unknown to the Enterprise,
2. The analysis of the Materials by the Enterprise and transmission of the Enterprise’s findings to the taxpayer, and
3. The processing and evaluation of the Enterprise’s findings by the taxpayer.

By federal law, the furnishing of the Materials to the Enterprise must be by a government agency or a not-for-profit entity. Most of the Materials consist of a specific ingredient or other base that is “spiked” with the analytes for which each participating Enterprise must test. The taxpayer purchases the Materials from various manufacturers.

The manufacturer generally delivers the Materials by common carrier to a third party repackager retained by the taxpayer or ships the Materials by common carrier directly to each participating Enterprise. The manufacturer invoices the taxpayer for the Materials at the time

the manufacturer ships the Materials to the repackager or directly to the Enterprise. The repackager breaks down the manufacturer's bulk shipment into individual packages for shipment to the Enterprise, adds printed instructions supplied by the taxpayer, and then ships the materials by U.S. Mail or by common carrier to the participating Enterprise. The manufacturers are located both in and outside Wisconsin. The repackagers are located outside Wisconsin.

The Enterprise has no independent use for the Materials apart from participating in the Testing program. Once a participating Enterprise has concluded its analysis of the Materials, the Enterprise generally disposes of those materials. The Enterprise sends a report of its analysis to the taxpayer at its headquarters in another state, where the taxpayer reviews the Enterprise's report. The taxpayer evaluates the Enterprise's analysis, and it provides its findings to the Enterprise and to the accreditation organization designated by the Enterprise. When the taxpayer provides the Enterprise with its results for each test, the taxpayer also provides the Enterprise with the mean result for that test, the standard deviation, the number of Enterprises that participated in the test, the standard deviation index, the lower and upper limits of acceptability, and a plot of the relative distance of the Enterprise's results from the established target as a percentage of the allowed deviation.

The taxpayer charges Enterprises a single subscription amount for participating in the Testing program. No separate charge is made for the Materials and for the Testing service. On average, the cost to the taxpayer of the Materials was historically about X% of the amount it invoiced customers for providing the Testing service. That percentage has been decreasing recently, and this year is expected to be approximately Y%. From time to time, the taxpayer also sells Materials to Enterprises (without providing Testing services) as replacements of items that were lost or broken prior to or during a test. The total sales of Materials apart from the testing program are equal to approximately Z% of the taxpayer's total receipts from the Testing program.

The specific Testing modules in which an Enterprise will enroll depends on the scope of the work done at the Enterprise. Thus, an Enterprise performing a wide range of analyses will participate in a larger number of modules than an Enterprise doing only basic testing. Each specific Testing module is priced separately.

Request

You ask the department to confirm that:

1. The "true object" of the taxpayer's Testing program is the administration of a Testing service rather than the provision of the Materials; therefore, the taxpayer's charges for participation in the Testing program are not subject to sales or use tax, and the taxpayer is deemed to be the consumer of the Materials.
2. The taxpayer is not subject to use tax on items shipped to Wisconsin Enterprises by common carrier from outside Wisconsin.
3. If the taxpayer is subject to use tax on items shipped to Wisconsin Enterprises by common carriers from outside Wisconsin, the taxpayer is entitled to a credit for tax properly paid to the state from which such materials were shipped.

Ruling

For purposes of the following ruling, it is assumed that although the taxpayer does not have a facility or office in Wisconsin, it is "engaged in business in Wisconsin" as the phrase is defined in sec. 77.51(13g), Wis. Stats. (1997-98), and sec. Tax 11.97, Wis. Adm. Code.

1. The taxpayer is providing a nontaxable service when it transfers Materials to a participating Enterprise and processes and evaluates the Enterprise's findings as a result of analysis of the Materials.

The Materials are considered to be transferred incidentally to participating Enterprises with the Testing services. Therefore, the taxpayer is considered to be the consumer of the materials used by the Enterprises.

Materials transferred to customers in Wisconsin without the furnishing of Testing services are subject to Wisconsin sales or use tax, unless the occasional sale exemption under sec. 77.54(7m), Wis. Stats. (1997-98), applies.

2. The taxpayer is not subject to Wisconsin use tax on its purchase of Materials that are shipped directly by out-of-state manufacturers (i.e., manufacturers with no business location in Wisconsin) to participating Enterprises in Wisconsin. However, the taxpayer is subject to Wisconsin sales or use tax on (a) Materials that are shipped by the repackager to participating Enterprises in Wisconsin and (b) Materials that are shipped by Wisconsin manufacturers (i.e., manufacturers with a business location in Wisconsin) to participating Enterprises in Wisconsin.

Materials furnished to customers without Testing services are not subject to Wisconsin sales or use tax because they are for resale.

3. The taxpayer may claim a credit against the Wisconsin use tax due on Materials for tax properly due and paid to another state on the same Materials (i.e., the sale of the Materials to the taxpayer would have had to occur in the other state or use of the materials must have first occurred in the other state).

Analysis:

1. Section Tax 11.67(1), Wis. Adm. Code (November 1993 Register), provides that when a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property or the performance of a service with the transfer of the property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of the service is involved even though, as an incidence to the service, some tangible personal property may be transferred.

“Incidental” is defined in sec. 77.51(5), Wis. Stats. (1997-98), as depending upon or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose of the service. Tangible personal property transferred by a service provider is incidental to the service if the purchaser’s main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service.

The true objective of each participating Enterprise is to have the analysis of its testing results and accreditation by the taxpayer. Although the Materials are necessary for the Enterprise to perform the test, it is furnished incidentally with the taxpayer’s service.

Section 77.52(2)(a), Wis. Stats. (1997-98), provides that the sale of certain enumerated services are subject to tax. The Testing service furnished by the taxpayer is not one of those enumerated services subject to tax.

2. Section Tax 11.67(2)(a), Wis. Adm. Code (November 1993 Register), provides that a person who performs a nontaxable service is the consumer of the tangible personal property which it uses incidentally in rendering its services.

- a. Out-of-State Manufacturer With No Business Location in Wisconsin (i.e., manufacturer has no nexus or manufacturer has nexus and properly holds or is required to hold a use tax registration certificate issued by the Department of Revenue)

Section 77.53(1), Wis. Stats. (1997-98), imposes a Wisconsin use tax on the storage, use, or other consumption of tangible personal property in Wisconsin.

In a decision dated July 27, 1982, the Wisconsin Court of Appeals, District IV, held in the case of *Wisconsin Department of Revenue vs. J.C. Penney, Inc.*, that a retailer’s catalogs published by a printer located outside Wisconsin that did not have nexus in Wisconsin, and shipped directly to the retailer’s customers in Wisconsin by mail or common carrier, were not subject to Wisconsin use tax. The Court concluded that J.C. Penney, Inc., had not “used” the catalogs in Wisconsin as defined in sec. 77.51(15), Wis. Stats. (1975-76). Because the catalogs moved by mail or common carrier from Minnesota to Wisconsin, they remained the property of the printer until they were delivered. Therefore, J.C. Penney, Inc., did not exercise any right or power over the tangible personal property in Wisconsin and was not subject to use tax on its purchase of the catalogs from the printer.

The department proposed sec. 77.51(15)(b), Wis. Stats., created by 1983 Wisconsin Act 27 (later renumbered sec. 77.51(22)(b) by 1983 Wisconsin Act 189), in an attempt to reverse the *J.C. Penney* decision and provide that for purposes of defining use, “‘enjoyment’ includes a purchaser’s right to direct the disposition of property, whether or not the purchaser has possession of the property. ‘Enjoyment’ also includes, but is not limited to, having shipped into this state by an out-of-state supplier printed material which is designed to promote the sale of property or services, or which is otherwise related to the business activities, of the purchaser of the printed material or printing service.”

However, in a decision dated May 21, 1985, the Circuit Court for Dane County in the case of *J.C. Penney, Inc., et al. vs. Wisconsin Department of Revenue*, held that the 1983 creation of sec. 77.51(15)(b), Wis. Stats., did not reverse previous court actions prohibiting the imposition of use tax on J.C. Penney, Inc., for catalogs it had printed by an out-of-state printer and sent to Wisconsin customers by mail or common carrier. The court held that because J.C. Penney did not exercise any right or power over the catalogs in Wisconsin, use tax could not be imposed. The department did not appeal this decision.

As a result of the *J. C. Penney* decisions, the taxpayer is not subject to Wisconsin use tax on Materials purchased from an out-of-state manufacturer with no nexus in Wisconsin who delivers the Materials by common carrier or the U.S. Mail to an Enterprise in Wisconsin. However, the *J. C. Penney* decision does not apply when the Materials are received by a repackager on behalf of the taxpayer. The taxpayer has ownership of the Materials when they are transported into Wisconsin to the Enterprise and has consumed them by transferring them incidentally with the nontaxable service provided.

Note: Under sec. 77.53(3), Wis. Stats. (1997-98), a retailer with no business location in Wisconsin that is engaged in business in Wisconsin (i.e., has nexus in Wisconsin) and makes sales of tangible personal property for delivery into Wisconsin is subject to Wisconsin use tax on such sales. “Retailer” is defined in sec. 77.51(13)(e), Wis. Stats. (1997-98), to include a person selling tangible personal property to a service provider who transfers the property in conjunction with the selling, performing or furnishing of any service, except certain taxable services, and the property is incidental to the service. Therefore, an out-of-state manufacturer with no business

location in Wisconsin that is engaged in business in Wisconsin (has nexus), is responsible for charging Wisconsin use tax on the Materials it sells to the taxpayer and delivers to participating Enterprises in Wisconsin.

- b. **Manufacturer With Business Location in Wisconsin** (i.e., manufacturer properly holds or is required to hold a Wisconsin seller’s permit)

Section 77.52(1), Wis. Stats. (1997-98), imposes a Wisconsin sales tax on tangible personal property sold at retail in Wisconsin.

If the manufacturer delivers the Materials to an Enterprise in Wisconsin, the sale of the materials to the taxpayer is subject to Wisconsin sales tax. If the manufacturer does not charge tax to the taxpayer, the taxpayer is liable for the sales tax under sec. 77.52(3) or 77.57, Wis. Stats. The *J.C. Penney* decision does not apply to the imposition of sales tax.

3. Section 77.53(16), Wis. Stats. (1997-98), provides that if the purchase, rental, or lease of tangible personal property or service subject to Wisconsin **state use tax** was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid the other state shall be applied as a credit against and deducted from the Wisconsin state use tax. “Sales tax” includes a use or excise tax imposed on the use of tangible personal property or taxable service by the state in which the sale occurred.

Section 77.71(2), Wis. Stats. (1997-98), provides, in part, that if a buyer has paid a similar local tax in another state on a purchase of the same property or services, the tax shall be credited against the Wisconsin **county and stadium use tax**.

There is no provision in the sales and use tax law that would provide a credit against Wisconsin **sales tax** for sales or use tax paid to another state.