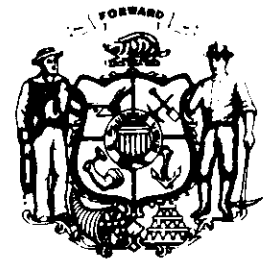


WISCONSIN TAX BULLETIN

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WISCONSIN'S 1978 SPECIAL PROPERTY TAX/RENT CREDIT

A special property tax/rent credit is available for 1978 to Wisconsin residents. If a person was a Wisconsin homeowner or renter in 1978, he or she may be eligible for this credit. Renters will receive a \$40 credit and homeowners a credit ranging from \$40 to \$100. This credit is available only for the year 1978.

Who may claim property tax/rent credit

To qualify for the property tax/rent credit, a person must meet all of the following conditions:

1. The person must be a natural person. A claim filed on behalf of a deceased person is not allowed. Also, estates, partnerships, trusts and corporations do not qualify for the credit.
2. The person must have been a legal resident of Wisconsin for all of 1978.
3. The person must have paid rent for occupying a Wisconsin homestead in 1978 or he or she owned and occupied a Wisconsin homestead and had property taxes accrued on it for 1978. If a person both rented and owned a home in 1978, he or she may still qualify for this credit.
4. The person was not claimed as a dependent on another person's 1978 federal income tax return. (This limitation does not apply if the person was 62 years of age or older in 1978.)

Only one member of a "household" may claim this credit ("household" means a husband and wife). Also, only one member of a dwelling unit may claim the credit. A dwelling unit is a building such as a house or a single apartment within an apartment building. Example: Two single persons occupy one apartment within a two-unit apartment building and each pays part of the rent. Only one of these two persons is eligible for the \$40 rent credit. If two other persons occupy the other apartment within the two-unit building, and each pays part of the rent, one of those persons may also qualify for the \$40 credit, but not both persons.

When two or more persons in a household or a dwelling unit have paid rent or had property taxes accrued for 1978, such persons must decide among themselves who will claim the credit.

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How is the credit claimed

For persons filing a 1978 Wisconsin income tax return, Form 1 or 1A, the credit should be claimed on the front page of the return. If a homestead credit claim, Schedule H, is filed, but an income tax return is not filed, the property tax/rent credit should be claimed on Schedule H.

For those persons not filing a 1978 Wisconsin income tax return or a homestead claim, the claim for property tax/rent credit should be made on Schedule PC, a new form which is available at any Department of Revenue office.

It is not necessary to obtain a statement from the landlord showing how much rent a person paid in 1978 or to submit a copy of the person's 1978 property tax bill to claim the property tax/rent credit. (Note: Certificates of rent paid and/or property tax bills are required for persons claiming homestead credit.)

When must claim for credit be filed

The claim for this property tax/rent credit must be filed by December 31, 1979. Any claim filed after December 31, 1979 will not be allowed.

How much credit will be received by renters

Renters will receive a \$40 credit if they paid rent for occupying a Wisconsin homestead for all or part of 1978, regardless of how much rent was paid.

How much credit will be received by homeowners

Homeowners will receive a credit of 10% of the property taxes accrued for 1978 on their Wisconsin homestead which they owned and (continued on page 2.)

SPECIAL NOTICE

As this issue of the WTB goes to press many of the details regarding the federal Revenue Act of 1978 are first becoming available. An article on page 3 indicates that none of the new federal law provisions may be used for Wisconsin purposes and identifies one significant item of difference between Wisconsin and federal law for 1978.

Further analysis of this new law has revealed the following additional differences in Wisconsin and federal law which may affect a significant number of Wisconsin taxpayers.

IRA Contribution Deadline - The federal provision allowing post year-end contributions to be made more than 45 days after the end of the taxable year does not apply for Wisconsin purposes.

IRA Rollovers - The new federal provisions allowing tax-free reinvestments of less than the full amount of lump-sum distributions and allowing rollovers by persons participating in a qualified plan for less than 5 years may not be used for Wisconsin purposes.

These and other differences in Wisconsin and federal law are described further in the instructions for the Schedule I attached to this bulletin.

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**WISCONSIN'S 1978 SPECIAL
PROPERTY TAX/RENT CREDIT**
(continued)

occupied in 1978. However, the credit will not be less than \$40 or more than \$100. (Example: A person had property taxes of \$1,200 accrued on his or her Wisconsin homestead for 1978. Since 10% of \$1,200 is \$120, which exceeds the \$100 maximum, the credit will be \$100.)

If a person was both a homeowner and a renter in 1978, the person may elect to (1) claim the \$40 credit or (2) claim 10% of the property taxes accrued for 1978 (not to exceed \$100), whichever is greater.

What are property taxes accrued for 1978

Property taxes accrued for 1978 are the amount of Wisconsin property taxes payable for 1978 on a person's principal residence which was owned and occupied by him or her in 1978. It does not include any charges for special assessments, delinquent interest and services which may be included on the tax bill. It also does not include taxes on property such as vacation homes or cottages. The property tax bill for property taxes accrued for 1978 will generally be received by homeowners in December 1978 or January 1979.

**REMINDER OF MAJOR WISCONSIN
INDIVIDUAL INCOME TAX CHANGES FOR
1978**

Several changes in the individual income tax law become effective for the taxable year 1978. These include an update of the reference to the Internal Revenue Code, enactment of an income tax credit for alternative energy systems, allowance of a tax credit for tax paid to another state on all types of income, allowance of deduction for adoption costs, and provision for an add or subtract modification for the difference in the Wisconsin and federal basis of property acquired by inheritance and disposed of in 1977 and thereafter.

**A. Internal Revenue Code update (s.
71.02 (2) (b))**

For the 1978 taxable year and thereafter, an individual, partnership, estate or trust must use the Internal Revenue Code in effect on December 31, 1977 in computing federal adjusted gross income and itemized deductions for Wisconsin income tax purposes with two exceptions:

1. Child care expenses remain an itemized deduction for Wisconsin purposes; and
2. The special tax treatment of certain pollution control facilities as enacted in the federal "Tax Reform Act of 1976" (Sec. 2112 of P.L. 94-455) is not allowed.

The Wisconsin standard deduction remains at 15% with a \$2,000 maximum for individuals or married couples plus any additional amount allowable for dependents, and the low-income allowance remains at the levels established for 1977.

**B. Credit for taxes paid to other states
(s. 71.09 (8))**

For 1978, Wisconsin residents are allowed an income tax credit for income tax paid to another state on all types of incomes (including income from intangibles, for which a credit was not allowed in prior years) provided the income is taxed by the other state and by Wisconsin.

**C. Income tax deduction for adoption
costs (s. 71.05 (1) (b) 7)**

A deduction, via a subtract modification, is allowed to an adoptive parent or a prospective adoptive parent for amounts expended for adoption fees, court costs or legal fees relating to the adoption of a child, whether or not the adoption process is completed. The deduction will be allowed to the extent that such amounts, when added to allowable medical deductions under Section 213 of the Internal Revenue Code, exceed 3% of the person's federal adjusted gross income.

**D. Disposition of property acquired by inheritance
(s. 71.05 (1) (g))**

Effective for sales, exchanges, abandonments or other dispositions occurring in the 1977 taxable year and thereafter, s. 71.05 (1) (g), Wis. Stats., provides for an add or subtract modification on the disposition of property acquired by inheritance, if such property has a different federal basis than Wisconsin basis. Under the new law, such property has a Wisconsin basis determined under the Internal Revenue Code as of December 31, 1975.

**E. Income tax credit for alternative energy
systems (s. 71.09 (12))**

Any natural person owning an alternative energy system installed on the person's property in Wisconsin may claim a tax credit for costs incurred in the taxable year in the design, construction, equipment and installation of an alternative energy system, provided such costs exceed \$500 in a single year. Only costs incurred during the period April 20, 1977 through December 31, 1984 qualify for the credit.

If more than one person owns an alternative energy system eligible for the credit, such persons may divide the credit among themselves as desired. Once a credit is claimed, subsequent owners of the alternative energy system are not eligible for the credit for the same system.

The amount of tax credit is based upon a percentage of the total costs incurred during the taxable year in the design, construction, equipment and installation of the system. If such costs exceed \$10,000, the percentage is applied to \$10,000 rather than the actual costs. The percentage of credit varies, depending on whether the real property improvements on which the alternative energy system is installed appeared on the local tax roll prior to April 20, 1977, or on or after April 20, 1977.

**% If Real Property Improvement
on Property Tax Roll:**

Credit for Tax- able Years	Prior to April 20, 1977	On or After April 20, 1977
1977 and 1978	30%	20%
1979 and 1980	24%	16%
1981 and 1982	18%	12%
1983 and 1984	12%	8%

Expenses incurred during the period April 20, 1977 through December 31, 1978 may be used to compute the credit in either the taxable year in which incurred or the next taxable year.

If the credit exceeds a person's income tax due, the amount of credit exceeding the tax due will be refunded without interest.

To claim the credit, a person must attach Schedule AE to his or her Wisconsin income tax return. If a tax return has already been filed for a year for which a benefit may be claimed, individuals should file Schedule AE by itself.

A claim for this credit must be filed no later than 4 years from the due date of the tax return for the taxable year in which expenses for the system were incurred (e.g., for expenses incurred during 1978 by a calendar year taxpayer, Schedule AE must be filed no later than April 18, 1983).

To qualify for the tax credit, the alternative energy system which is installed must meet certification requirements specified by the Wisconsin Department of Industry, Labor and Human Relations (DILHR). A person submitting a request to DILHR for certification should include Schedule AE, along with other information which DILHR may require.

The Schedule AE submitted to DILHR should contain the name, address and social security number of the claimant and the claimant's spouse (if any). The claimant must also complete Part I of Schedule AE to establish the claimant's eligibility for the credit. Part II will then be completed by DILHR to certify performance standards and costs and Schedule AE will be returned to the applicant. The person must then compute the tax benefit on Part III before submitting Schedule AE to the Department of Revenue for the tax credit.

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As an example of how to claim the tax credit, assume that \$10,000 of costs of an alternative energy system were incurred in July 1977 on a home which was on the local tax roll prior to April 20, 1977. DILHR certifies the system and costs on Schedule AE in March 1979. The person, who has not yet filed a 1978 Wisconsin income tax return, computes the allowable tax credit to be \$3,000. The person may claim this \$3,000 credit by either amending his or her 1977 Wisconsin income tax return, or by claiming it when filing the required 1978 Wisconsin income tax return. (The latest date for claiming this credit is April 18, 1983, which is four years after the due date of the 1978 Wisconsin income tax return.)

The following definitions apply for purposes of the income tax credit:

"Alternative energy system" means a solar energy system, a waste conversion energy system or a wind energy system, but does not include any equipment which would be present as part of a conventional energy system.

"Solar energy system" means equipment which converts and then transfers or stores solar energy into usable forms of energy for space heating or cooling, crop drying, electricity generation or hot water heating.

"Waste conversion system" means equipment which converts waste into usable forms of energy but does not include solid fuel-consuming devices used for residential purposes.

"Wind energy system" means equipment which converts and then transfers or stores energy from the wind into usable forms of energy.

FEDERAL TAX LAWS ENACTED IN 1978 DO NOT APPLY FOR WISCONSIN PURPOSES

For the taxable year 1978, Wisconsin law provides that only those provisions of the federal Internal Revenue Code (IRC) which became law by December 31, 1977 may be used in determining Wisconsin taxable income. Thus, none of the federal tax changes enacted during 1978 (including the Revenue Act of 1978) apply for Wisconsin purposes.

This will result in certain income and deduction items being different on 1978 Wisconsin and federal income tax returns. As in past years, Wisconsin Schedule I should be used to adjust for these differences.

The item of difference which will likely arise most frequently is the new federal provision allowing persons age 55 or older to elect to exclude from their federal taxable income up to \$100,000 of gain from the sale of their principal residence. This exclusion will not be permitted for Wisconsin purposes.

A more detailed explanation of the differences between Wisconsin and federal law for 1978 is included on the Wisconsin Form 1 and the instructions for Schedule I. A copy of Schedule I and its instructions is attached to this Bulletin.

REMINDER OF MAJOR WISCONSIN FORMS CHANGES FOR 1978

There are several significant revisions to 1978 Wisconsin income tax forms. In addition, 2 new filing forms will be used in 1978.

Form 1

Three new tax credit lines have been incorporated into page 1 of Form 1. The first two lines (11 and 12) have been added for the 1978 special property tax/rent credit which will be available to many homeowners and renters. The other new credit line (16b) is provided for use by individuals who installed an alternative energy system qualifying for a credit for 1978.

To provide space for these new lines, the format of the Form 1 was rearranged somewhat. The most noticeable change involves the signature area which has been moved from the bottom of the return's front page to the bottom of the back page.

Form 1A and Schedule H

Entry lines for the 1978 special property tax/rent credit have also been added to Form 1A (the short form income tax return) and the homestead credit claim form. The alternative energy credit line will not appear on either of these forms. Persons claiming a credit for an alternative energy system will be required to file Form 1.

New forms

Two new filing forms have been developed for 1978. The first is Schedule PC. It must be used to claim the 1978 special property tax/rent credit by persons who do not file either a Wisconsin income tax return or a homestead claim.

The other new form is Schedule AE, "Wisconsin Alternative Energy System Tax Benefit Claim". This form must be used by individuals claiming a tax credit based on the cost of an alternative energy system installed on their Wisconsin property. Individuals required to file a Wisconsin income tax return should attach the completed Schedule AE to that return. If an individual can claim an alternative energy system credit but is not required to file an income tax return, Schedule AE may be filed separately.

PREPARING 1978 WISCONSIN INCOME TAX RETURNS

Every year, the processing of several thousands of income tax returns is delayed because the returns are incorrectly prepared or incomplete.

To expedite the processing of income tax returns, the following suggestions are offered:

1. Attach to the return the proper wage statements showing the amounts of wages and Wisconsin income tax withheld. Be sure that the wage statements show the name of the state for which the tax was withheld and that the statements are legible.
2. A complete copy of the federal income tax return (Form 1040 and all schedules) must be attached to the Wisconsin Form 1. Itemized deductions cannot be allowed without a federal Schedule A or a separate itemized listing of the deductions claimed. If a deduction for child care expense is claimed, a copy of Wisconsin Schedule 2441W must be attached to the return.
Taxpayers using Wisconsin Form 1A do not have to attach a copy of their 1978 federal tax return, unless they were part-year residents or nonresidents during 1978.
3. Part-year residents and nonresidents should include a schedule of their computation of the required proration of their itemized deductions or low-income allowance and personal exemptions. They must include a copy of their federal tax returns, even if filing Wisconsin Form 1A, as it is necessary for verification of the proration computations. Brochures are available from the Department which further explain the 1978 tax requirements for nonresidents and part-year residents.
4. Both spouses must sign the return if both had income.
5. The municipality and county where the taxpayer resided during 1978 should be entered on the front of Form 1 or Form 1A. This should be done by checking the proper box and entering the name of the municipality and county in the space provided. If a business was operated or a profession practiced in another municipality, the taxpayer should enter the municipality and county in which the taxpayer resided, not where the office or business was located. Nonresidents should enter the word "Nonresident" instead of a municipality.
6. The taxpayer's school district number should be entered on the line provided. School district numbers are listed in the instruction booklet.

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7. Verification of any credit claimed for income tax paid to other states of \$10 or more must be submitted or no credit can be allowed. Proof of payment is not required if the tax due does not exceed \$10. The instructions in the income tax booklet describe the verification required.
8. The pre-printed mailing label should be used whenever possible. If information on the label is incorrect, it should be changed. The spelling of names should be reviewed for correctness and legibility. Also, social security numbers should be checked for accuracy.

HOMESTEAD CREDIT REMINDERS FOR 1978

A. Law changes for 1978 claims

New laws enacted in 1978 may affect a person's eligibility for 1978 homestead credit and the computation of household income. As explained in the June 1978 *Wisconsin Tax Bulletin*, homestead credit will not be allowed to any person who lived all of 1978 in housing which was exempt from real estate taxes under Chapter 70, Wisconsin Statutes, except if a person lived in housing for which payments in lieu of taxes are made under s. 66.40 (22), Wis. Stats. If a person lived part of the year in housing subject to real estate taxes and part of the year in exempt housing, "property taxes accrued" or "rent paid for occupancy" or both, will only include the rent or taxes relating to the housing subject to real estate taxes. For 1978, a person will not be disqualified for homestead credit because he or she lived in exempt housing at the time the homestead claim was filed.

A person will not be disqualified for 1978 homestead credit merely because of receiving foster care assistance under s. 49.19 (10) (a), Wis. Stats., or receiving assistance as a relative, other than a parent, with whom a dependent child is living, if the assistance did not aid the needs of the claimant, or the claimant's spouse or children.

Social Security Title XX payments do not have to be included in household income for 1978. Title XX payments are received by some persons in the form of cash and then such persons use the cash to purchase a service themselves, while others receive the actual service from a service provider. In 1977 and prior years, cash payments under Title XX were includable in household income, whereas if the actual service was directly received by the claimant, the cost of such service was not includable in household income.

Another law change is that a landlord is prohibited from charging a fee for completing a rent certificate for homestead credit.

B. Who may qualify for 1978 homestead credit

To qualify for 1978 homestead credit, a claimant must meet all of these conditions:

1. Must have been 18 years of age or over on December 31, 1978.
2. Was not claimed as a dependent on anyone else's 1978 federal income tax return (this does not apply to claimants 62 years of age or over during 1978).
3. Must have been a legal resident of Wisconsin all of 1978.
4. Household income must have been less than \$9,300 (\$9,900 if claimant, spouse or dependent was 65 years of age or over in 1978).
5. Was an owner or renter of the Wisconsin homestead he or she occupied during 1978.
6. Is not at the time of filing a homestead claim receiving general relief or aid to families with dependent or foster children (AFDC). General relief does not include old age assistance, blind aid, disabled aid or social security. AFDC does not include foster care payments (except that payments which include amounts for the claimant's own support or that of his or her spouse or children in addition to providing support for a foster child, are considered to be AFDC for purposes of homestead credit).
7. Is not at the time of filing a claim living in a nursing home and receiving medical assistance (Title XIX).
8. Did not live the entire year 1978 in housing which is exempt from real estate taxes. (Property owned and operated by a public housing authority is not considered exempt if the housing authority makes payments in lieu of real estate taxes to the municipality in which it is located.)
9. Did not claim farmland preservation credit for 1978.

C. Avoid errors on homestead credit claims

To avoid unnecessary correspondence and delays in processing 1978 homestead credit claims, the department offers the following suggestions:

1. Be sure the claimant's name, address, social security number and telephone number are complete and legible. Use the mailing label provided whenever possible. Enter on Schedule H the municipality and county in which the claimant lived as of the end of 1978.
2. Answer all questions on Schedule H. This information is necessary to determine eligibility.

3. Enter all household income. Note that there is a deduction of \$600 if the claimant or the claimant's spouse or dependent is 65 years of age or older.
4. If the claim is based on property taxes, a copy of the 1978 property tax bill must be attached to Schedule H. The tax bill must be for 1978 taxes payable in 1979 and the year 1978 must appear on the bill. If any name other than the claimant's appears on the tax bill, an explanation should be attached to Schedule H.
5. If the claim is based on rent paid, a *fully completed* "Certification of Rent Paid" must be attached to Schedule H.
6. If the claimant or the claimant's spouse is required to file a Wisconsin income tax return, attach the completed Schedule H to that return.
7. Claimants filing *only* a Schedule H (and not an income tax return) should not overlook the "1978 Special Property Tax/Rent Credit" on lines 21 to 23.

INCREASED FARMLAND PRESERVATION BENEFITS FOR 1978

Increased benefits are available for persons filing farmland preservation credit claims for 1978. In addition, qualifications for the credit have been changed so that more persons may qualify.

The maximum farmland preservation credit payable has increased from \$2,600 to \$4,200 for 1978. The maximum "property tax accrued" used to compute the credit has increased from \$4,000 to \$6,000.

The income used to compute the credit has been changed in ways that may benefit claimants. For 1978, the maximum household income persons may have and still qualify for benefits has increased to \$38,428. In addition, a person's income for farmland preservation credit purposes may be reduced by the first \$7,500 of nonfarm wages, tips and salaries earned by a household. Also, real property taxes deducted from a claimant's farm business income are not added back to such income as they were for 1977 claims.

Qualification for the farmland preservation credit has been eased for some people. The requirement has been eliminated that a claimant must report farm income on a farm business schedule or corporate income schedule of a Wisconsin income or franchise tax return. To qualify for the credit, farmland must produce at least \$6,000 in gross farm profits from agricultural use during the claim year or \$18,000 in gross farm profits from agricultural use during the claim year and the 2 years immediately preceding that year. For 1978, the definition of "gross farm profits" means gross receipts, excluding rent, from the land's agricultural use, less the cost or other basis of livestock or other

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items purchased for resale which are sold or otherwise disposed of during the income year. "Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming and vegetable raising (s. 91.01(1)).

The 20-year "rollback" provision has been reduced to 10 years, effective May 19, 1978. This provision requires that upon relinquishment of a farmland preservation agreement or a transition area agreement, or upon removal of land from an exclusive agricultural zone, the Department of Agriculture, Trade and Consumer Protection is required to record a lien against the farm property formerly subject to the agreement or zoning for the total amount of the credits received by the claimants, but not to exceed the last 10 years that claimants received credits based on the land.

EXEMPTION FROM WITHHOLDING IF NO TAX LIABILITY

Generally, all wages paid to Wisconsin residents by Wisconsin employers are subject to state withholding. For Wisconsin withholding purposes, an employee may claim the same number of withholding exemptions as for federal withholding purposes. If an employee is allowed by federal law to claim additional withholding exemptions for special circumstances (ex., because of unusually high itemized deductions or alimony payments), the same number of exemptions may be claimed for Wisconsin.

However, an employee may be exempt from Wisconsin withholding if the employee certifies to the employer that he or she incurred no Wisconsin income tax liability for the past year and expects to incur none for the current year. Wisconsin Form WT-4E ("Exemption from Withholding of Wisconsin Income Tax") should be used to claim this exemption. For calendar year taxpayers, this exemption from withholding expires on April 30 following the close of the taxable year. Therefore, an employee who filed Form WT-4E with his or her employer in 1978 and wishes to claim this exemption again in 1979 should complete and file a new Form WT-4E with the employer by April 30, 1979.

For purposes of claiming this exemption from withholding, a Wisconsin income tax liability is incurred if the employee's gross tax is more than his or her personal exemptions. For example, assume that an employee has 1978 net taxable income of \$2,000 on which the Wisconsin gross income tax is \$66, and that the employee is entitled to claim four personal exemptions at \$20 each (total of \$80) for

1978. The employee incurred no Wisconsin income tax liability for 1978 because the gross tax of \$66 is not more than the personal exemptions of \$80. The employee may claim exemption from withholding of Wisconsin income tax for 1979 if he or she does not anticipate incurring a Wisconsin tax liability for 1979.

HOW TO SUBSCRIBE TO REVENUE RULES

During the past two years, the Department has been adopting an increasing number of administrative rules. Rules are statements of policy of general application which are adopted by an agency to implement or interpret legislation. Rules have the effect of law.

Administrative rules of the Department are part of the Wisconsin Administrative Code and are available on a subscription basis. The charge for a booklet containing current Department rules is \$1.20 and the annual calendar year subscription service to keep the booklet current is \$1.20.

For information on how to obtain a subscription to the Department's administrative rules, you may write:

Document Sales Section
Department of Administration
202 South Thornton Avenue
Madison, WI 53702

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

James E. Basler vs. Department of Revenue (Wisconsin Tax Appeals Commission, June 29, 1978.) The taxpayer held a seller's permit for the sole purpose of reporting the sales tax from the sale of cigarettes at a gas station where he was employed. While holding the permit, the taxpayer sold his personal mobile home which was not used in the course of his business activities. The department assessed the sales tax on the mobile home sale, citing s. 77.51(10) (a), Wis. Stats. The department's interpretation of s. 77.51(10) (a) was that no sale of tangible personal property may be deemed an exempt occasional sale if the seller holds a seller's permit. In an oral opinion, the Tax Appeals Commission held in favor of the taxpayer.

The Department did not appeal the decision.

Horne Directory, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, August 15, 1978.) Taxpayer is a Wisconsin corporation doing business in Wisconsin with

its principal place of business in Madison. During the period involved, taxpayer was engaged in the business of soliciting telephone directory advertising and the publication of telephone directories.

Taxpayer contracted with an Illinois corporation to print the directories it solicited. All the directories involved were printed outside of Wisconsin. The printer delivered most of the directories to the U.S. Post Office, U.P.S. or common carriers outside Wisconsin for delivery directly to telephone subscribers, without any charge to the telephone companies. The decision as to the mode of delivery was made by the printer, not the taxpayer. Except for a small number of directories sent directly to taxpayer, taxpayer never had physical possession of the directories in Wisconsin.

The Department contended that taxpayer owed Wisconsin use tax based on the charges by the printer to the taxpayer for labor, materials, postage and transportation of the directories. The Department's position was that the telephone directories were purchased for storage, use or other consumption in Wisconsin by the taxpayer in providing its service and are subject to the use tax under s. 77.53(1) and (2), Wis. Stats.

The Commission held for the taxpayer. It stated that the directories were not stored, used or otherwise consumed in Wisconsin by taxpayer and were not subject to the use tax.

The Department has appealed this decision.

Trudell Trailer Sales, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, August 15, 1978.) Taxpayer was engaged in the business of selling semitrailers both inside and outside Wisconsin. Some semitrailers were sold to customers located outside Wisconsin to be used outside the state. The issue before the Commission was whether semitrailers come within the language of s. 77.54(5) (a), Wis. Stats., exempting from the sales and use tax "motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such . . . motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such . . . motor vehicles or trucks from this state".

The Commission concluded that the semitrailers involved "fall within the intent and meaning" of the exemption language of s. 77.54(5) (a), Wis. Stats., and are exempt from sales and use tax.

The Department has appealed this decision.

Harold N. Fuchs Agency, Inc. vs. Department of Revenue (Circuit Court of Dane County, Case No. 160-052, July 10, 1978.) This case

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was reported in the October issue of the Wisconsin Tax Bulletin. Contrary to the last sentence in that report, the taxpayer *has* appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. 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.

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

INCOME TAXES

New optional state sales tax tables for 1978

In 1978, the Internal Revenue Service revised the optional state sales tax tables for use in preparing 1978 federal income tax returns. The income brackets have been revised and have been extended to \$40,000, and a new method of computation of sales tax allowable for incomes over \$40,000 is provided.

These tables are for use by persons who claim an itemized deduction for sales taxes but do not keep records of sales taxes paid during the year. The tables are based on taxpayers' adjusted gross income plus other items which, though not taxable, increase spendable income (e.g., social security, veterans' and railroad retirement benefits; workers compensation; untaxed portion of long-term capital gains; disability income exclusion; dividend exclusion; unemployment compensation; and public assistance payments).

The revised tables will apply in the same manner for Wisconsin income tax purposes as they do for federal purposes. The revision was not the result of new federal legislation. Rather, it was accomplished by an Internal Revenue Service interpretation of an existing law.

SALES TAX

I. Sales by governmental units

Sales by the State of Wisconsin, by any state agency, and by governmental units within this state (such as counties, cities, towns and villages) are generally subject to the Wisconsin sales tax.

Taxable receipts of governmental units include the gross receipts from furnishing admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, skating fees

and park shelter house fees). It also includes any reservation fee paid by a user of a recreational facility to assure that the facility is available when it is needed.

Fees for instruction in a sport or hobby are not subject to the tax. This includes fees charged by a municipality for instruction programs such as swimming, soccer, dancing, chess, physical fitness, archery, yoga, golf, tennis, art and drawing.

Library fines and charges to borrowers for not returning a library's property, either on time or not returning the property at all, are not subject to the sales or use tax.

For additional information on the sales and use tax status of sales by governmental units, see administrative rule Tax 11.05, entitled "Governmental units".

II. Sales to governmental units and schools

Sales of tangible personal property or taxable services which are purchased directly by and used by the federal or state government, by municipalities or by public schools are not subject to the sales tax. Such sales do not have to be supported by exemption certificates if a copy of the purchase order received from the exempt entity is retained by the seller. However, sales to employees of these entities are taxable, even though the organization may subsequently reimburse the employee for the expenditure.

For additional information on the sales and use tax status of such sales, see administrative rule Tax 11.03, entitled "Elementary and secondary schools and related organizations".

III. Sale of a business or business assets

The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax. The tax applies if business assets are sold as a disposition of surplus assets of a continuing business or if they are sold in a single transaction at the time of termination of the business. Tax also applies if such assets are sold piecemeal whether as part of a continuing business or upon termination. The tax does not apply to merchandise inventory purchased for the purpose of resale in the regular course of the purchaser's business.

A person may qualify for the "occasional sale" exemption on such sales of business assets if that person delivers the seller's permit to the Department for cancellation prior to the disposition of the assets. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the Department since it is a violation of the law to continue regular business operations without a permit. A permit holder may deliver the seller's permit to the Department for cancellation in any one of the following ways:

1. Permittees may personally deliver their seller's permit to a representative of the Department's Income, Sales, Inheritance and Excise Tax Division located in any one of the Divi-

sion's offices during regular office hours. The Department shall presume the permit was received at 12:01 a.m. on the day it is received.

2. The seller's permit may be mailed to the Department (P.O. Box 8902, Madison, 53708) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, provided the envelope and its contents are actually received by the Department. If the retailer desires assurance that the Department has received the permit, the retailer may wish to send the permit by certified mail, return receipt requested.

3. If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to send in the actual seller's permit.

Although the permit may be deemed to have been delivered and canceled on the postmark date, cancellation cannot be effective prior to the postmark date.

If the permit is delivered to the Department for cancellation, the person immediately qualifies for the occasional sale exemption, even though the person contemplates a subsequent sale of fixtures or equipment. (See *Three Lions Supper Club, Ltd. vs. Wisconsin Department of Revenue* (1976), 72 Wis. 2d 546.) The person does not qualify for the occasional sale exemption, however, if the person holds or is required to hold another seller's permit for some other sales operation.

The fact that a business ceases operations and no longer conducts its day to day activities of selling tangible personal property or taxable services does not result in the automatic cancellation of a seller's permit. A registrant operating as a seller is directed by s. 77.52 (12), Wis. Stats., to "... forthwith surrender his permit ..." when the registrant ceases to operate as a seller. If the registrant does not surrender the permit at that time, the registrant does not qualify for the occasional sale exemption until the permit is surrendered to the Department for cancellation.

For additional information on this topic, see administrative rule Tax 11.13, entitled "Sale of a business or business assets".

IV. Sale of sole proprietor's nonbusiness assets

The Department is in the process of adopting a revision to rule Tax 11.10 ("Occasional sales") to clarify its acceptance of the Tax Appeals Commission's holding in *James E. Basler vs. Department of Revenue* (see summary of this case under "Report on Litigation" in this Bulletin).

In the proposed new Tax 11.10 (6) (e), exempt occasional sales are defined to include

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sales of tangible personal property by a sole proprietor who holds (or is required to hold) a seller's permit, if the property is not or has not been used in the course of the person's business activities and is not the type of property sold in the course of conducting the business activities. However, all tangible personal property sold by a corporation or partnership holding (or required to hold) a seller's permit shall be considered used or sold in the organiza-

tion's business activities and is taxable.

Examples of how the new rule will apply include the following: (1) Taxpayer is a sole proprietor and a service station operator who obtained a seller's permit for the purpose of selling cigarettes and repairing motor vehicles; taxpayer sold a refrigerator and stove used in the taxpayer's residence; the gross receipts from the sale of the refrigerator and stove are not subject to the sales tax. (2) Taxpayer in

the prior example sold a desk and refrigerator which were used in the service station's business activities; the gross receipts from the sale of these two items are subject to the sales tax.

Although the revision to the rule may not be adopted for several months, the Department has been following the new policy contained in Tax 11.10(6)(e). This new policy applies to all future sales and to all sales in prior periods which are open to adjustment under the statute of limitations in s. 77.59, Wis. Stats.