

Wisconsin TAX BULLETIN


www.dor.state.wi.us

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Form Changes for 2000

Listed on page 4 of this Bulletin are brief descriptions of the major changes to the Wisconsin individual income tax forms (including Schedule H, the homestead credit form) for 2000. There are no major changes to Schedule FC, the farmland preservation credit form.

Preliminary copies of the 2000 Forms 1, 1A, and WI-Z, and Schedules H and FC, are reproduced on pages 49 to 60 of this Bulletin. The copies are subject to further revision. Draft copies of these and other Wisconsin income tax forms are also available on the department's Internet web site at www.dor.state.wi.us. 



Football Stadium Sales and Use Tax Effective November 1, 2000

On September 12, 2000, Brown County voters approved a referendum adopting a resolution to impose a 0.5% football stadium sales and use tax in Brown County. The football stadium sales and use tax will become effective November 1, 2000. The taxes collected will be used in the development of professional football stadium facilities in Wisconsin.

The Department of Revenue will administer the football stadium sales and use tax on behalf of the Professional Football Stadium District. Lines 7d and 11d have been added to the sales and use tax return (Form ST-12) for taxpayers to report the football stadium sales and use tax. The revised forms will be mailed to registrants beginning in October.

(continued on page 2)

**2000
Tax
Filing**

Season at a Glance

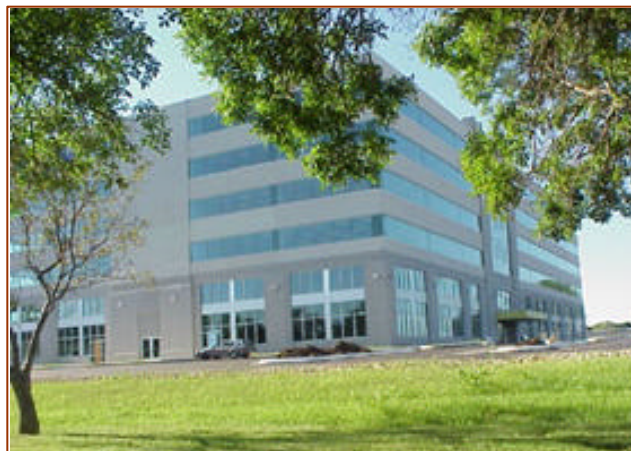
Number of returns
2,681,188 - down 3.4%

Number of refunds
1.9 million - same

Electronic filing
Preparer 487,514 - up 40.7%
TeleFile 126,850 - up 26.6%
Internet 57,123 - up 240%
Total* 671,487 - up 44.9%

* = 25% of all returns filed 

DOR Moves to New Madison Headquarters in November



See article on page 4.

Sales and Use Tax Filers Can File Electronically

Are you tired of filing sales tax returns on paper using the long ST-12 form? Do you wish you could file directly from your computer – or you could pay your taxes without writing a check? Would you like immediate confirmation that the Wisconsin Department of Revenue (DOR) has received your return and your payment?

The Wisconsin Department of Revenue proudly introduces the Sales Internet Process (SIP). SIP is a secure web-based Internet process that combines the convenience of electronic filing with the speed and flexibility of electronic funds transfer payments (EFT). Now you can file your sales and use tax return and pay your taxes from your computer desktop. Once you are registered, SIP is a paperless process.

Here is how SIP works:

- You register to use SIP
- You enter necessary data onto the computer screens
- You electronically submit your return and payment
- You receive a confirmation that DOR has received your return
- You are done until next time

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The new SIP electronic process has several benefits not available to paper filers:

- Provides a faster, more efficient way to file and pay sales and use tax
- Offers an option of EFT or paper check payment
- Deducts payments on a specified date through EFT
- Uses Secure Socket Layer technology to protect transactions
- Confirms date of filing
- Reduces paper handling and postage
- Increases accuracy because the system performs calculations
- Eliminates potential for checks or returns to be lost in the mail


Here's how you can register to use SIP:

- You must apply for a logon ID and password
- Download and print the application form by using the APPLY link at www.salestax.dor.state.wi.us, or

call DOR's Inquiry and Technical Assistance unit at (608) 261-6261

- Complete and mail the SIP application form (S-002) to
Wisconsin Department of Revenue
PO Box 8902
Madison WI 53708-8902
- Once you receive your logon ID and Password, logon to SIP at www.salestax.dor.state.wi.us
- SIP will automatically test your Internet browser
- Once you reach the SIP logon page, follow the on-line instructions for using the system

SIP has over 600 registrants and has successfully processed thousands of sales and use tax returns. Taxpayer feedback has been very positive, and the program continues to grow. DOR is extending an invitation to all sales and use taxpayers to participate in the program. There is no cost, it's simple to register, and it's easy to use SIP.

For more information, call (608) 261-6261 or e-mail DOR at sales10@dor.state.wi.us. 

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**Football Stadium Sales and Use Tax
Effective November 1, 2000**

(Continued from page 1)

The 0.5% football stadium sales and use tax law is identical to the baseball stadium tax except for the rate and jurisdiction.

The September 2000 *Sales and Use tax Report* explaining the football stadium tax was sent in late September and early October, to all persons registered for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 43 to 48 of this Bulletin. 



Integrated Tax System Progressing

The Department of Revenue (DOR) is in the second year of a five-year project to integrate its computer systems and business processes. The project was called the Integrated Tax System Project (ITS), and it now has a new name – Open DOR. Working with employees from the Departments of Administration and Workforce Development, DOR issued a Request for Proposal in 1998, to enable selecting a vendor (or vendors) to partner with to develop this system.

DOR has contracted with American Management Systems (AMS) to implement Open DOR. AMS has computerized tax systems for the states of Kansas, Virginia, and Hawaii. AMS, with 9,000 employees, is headquartered in Fairfax, Virginia. With over 25 years of experience in the state and local public sector market, the company brings deep expertise in tax and revenue management. It's one of the 20 largest business and information-technology consulting firms, worldwide.

Phase 1 of the project involved planning the entire project and the successful introduction of three pilots in sales tax Internet filing, data warehousing, and scanning. IBM worked with DOR on the planning piece of that phase. Phase 2 of Open DOR will complete sales and use tax registration, taxpayer accounting, form processing, revenue accounting, refunds, system administration, exception case management, customer service, and correspondence. The target date to flip the switch on the new system is early in 2002.

DOR's goals are to:

- Increase voluntary compliance
- Improve efficiency and fairness in collecting and distributing taxes
- Increase external customer satisfaction
- Improve effectiveness of DOR employees and the quality of their working environment
- Continue to provide policymakers and citizens with information to make tax and lottery policy decisions
- Increase participation in developing tax and lottery policies
- Generate additional revenue.

At DOR, AMS will employ state-of-the-art, object-oriented computer language, "JavaBeans," to construct

reusable software, including graphical user interfaces, that can be easily modified to meet specific needs.

WHAT IS AN INTEGRATED TAX SYSTEM?

Tax information is currently stored in 30 separate tax-specific "silo" systems. The integrated tax system will merge all information into one efficient system, organized by function. Tax Integration is a framework of people, processes, and technology, functionally organized to administer taxes. This system will work in tandem with technology, to offer around-the-clock customer service and Internet filing.

WHY DOES WISCONSIN NEED AN INTEGRATED TAX SYSTEM?

Integration will dramatically improve customer service, increase revenue for the state, reduce processing time, speed up refunds, and make the overall tax system more efficient.

WHAT ARE OTHER STATES DOING?

Twenty-eight other states have implemented an integrated tax system. Wisconsin will deploy Internet technology with Open DOR. This will make DOR a national leader among revenue agencies in the use of technology.

HOW LONG WILL THE PROJECT TAKE?

Full development and implementation will take up to five years. The first software release supporting sales and use tax is to be implemented in early 2002. Individual income tax will be integrated into Open DOR after that.

HOW MUCH WILL IT COST?

Based on DOR estimates and other states' experience, the total cost will be approximately \$50 million. The project should easily pay for itself with the increased revenue it generates. Funds have been authorized by the Governor and the Legislature.

ANY QUESTIONS?

Comments and questions about tax integration should be directed to Cheryl Sullivan, Project Director, via e-mail at csullivan@dor.state.wi.us, or by telephone at (608) 261-7687. [☎](#)

Form Changes for 2000 (see article on page 1)

- Lines are added to Forms 1, 1A, and WI-Z for entering the standard deduction. All taxpayers will have to look up their allowable standard deduction in a table in the tax booklet. In prior years, for most taxpayers the standard deduction was built into the tax table.
- Lines are added to all of the income tax forms for entering the amount of deduction for exemptions.
- Boxes are added to Forms 1, 1A, and 1NPR for checking whether the taxpayer was 65 years of age or over during the taxable year.
- Lines are provided on Forms 1, 1A, and 1NPR for the new armed forces member credit.
- Lines are provided on all of the income tax forms for the school property tax/rent credit. The maximum credit that may be claimed is \$300.
- Lines are added to Forms 1 and 1NPR for the recycling surcharge.
- A line is added to Form 1A for reporting capital gain distributions.
- A line is added to Forms 1, 1A, and 1NPR for entering the amount of underpayment interest.
- The amount of qualified earned income used to compute the married couple credit on all of the income tax forms, and the rate of credit, have changed. A maximum credit of \$440 is available for 2000.
- The percentage rate for computing the farmland tax relief credit on Forms 1 and 1NPR is changed from 13% to 11%. The maximum allowable credit is \$1,100.
- The itemized deduction credit schedule on Forms 1 and 1NPR is revised. Miscellaneous itemized deductions can no longer be used in the computation of the credit.
- The tax computation schedule on Form 1NPR is revised to reflect lower tax rates and the addition of another tax bracket.
- On Schedule 4 on the back of Schedule H, “care-taker of newborn child payments” are included as part of “Wisconsin Works payments” on line 1 rather than on line 2. This reflects a law change to require the one-twelfth reduction of property taxes or rent for months those payments were received.
- A “stop sign” graphic and message are added at the bottom of Schedule H, to emphasize the requirement to attach a rent certificate or property tax bill to the claim. [!\[\]\(633dd45d48d71eb51a85c6dd83ee51e9_img.jpg\)](#)

DOR Moves to New Madison Headquarters in November

The Department of Revenue (DOR) is planning a move to its new Madison headquarters at 2135 Rimrock Road in November. The move will encompass several weeks, to accommodate the computer hookups, the relocation of the large central files collection, and the integration of staff from five separate locations into one site for the first time. The move will not affect most existing telephone numbers or post office box mailing addresses.

The new building is located near the Dane County Coliseum/Alliant Energy Center, and near the Rimrock Road intersection with the West Beltline Highway. The six-story, 240,000 square foot building will allow consolidation of DOR offices currently located at 4622 and 4638 University Avenue, the Pyare Square Building at

4610 University Avenue, the GEF 3 Building at 125 South Webster Street, the Lottery headquarters at 1802 West Beltline Highway, and the PSC Building at 610 North Whitney Way.

The divisions of Administrative Services; Lottery; Income, Sales and Excise Tax (IS&E); State and Local Finance (SLF); and Research and Analysis, as well as the Secretary’s Office, will take part in the move. There will still be district and branch offices for SLF and IS&E across the state, including a Madison district office at 5005 University Avenue.

The consolidation should lead to greater operational efficiency for the department and will eliminate duplication of various services in the different locations, such as mailing. In addition, coordination of customer service across all the department’s divisions will be more efficient. [!\[\]\(aa53ad6fea213b8b2226d3077e30533a_img.jpg\)](#)



Motor Vehicle Dealers' Measure of Use Tax Increased to \$110

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2001, the amount subject to use tax is increased from \$106 to \$110 per plate per month. (Note: The use tax per plate per month is not \$110. Rather, \$110 is multiplied by the use tax rate –

5%, 5.1%, 5.5%, or 5.6% – to arrive at the use tax due per plate per month.)

The reason for the increase to \$110 per plate is that sec. 77.53(1m)(a), Wis. Stats. (1997-98), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12-month period ending June 30. The percentage change for the period July 1999 to June 2000 was 3.67% ($\$106 \times 1.0367 = \110 rounded to the nearest whole dollar). [↗](#)

Installment Payments Permitted for Delinquent Tax Compromises

As the result of recent legislation (1999 Wisconsin Act 189, effective June 2, 2000), the Department of Revenue has been authorized to accept installment payments to satisfy the amount agreed to in a Petition for Compromise of Delinquent Taxes. Previously, the amount agreed to in a compromise had to be paid in full within 10 days of the department's acceptance of the offer.

The new legislation affords greater flexibility to both taxpayers and the department. Accepting installment

payments to satisfy a compromise, however, is at the department's discretion. The best interest of the state will always be the determining factor in the department's deliberations and decision.

Publication 124, *Petition for Compromise of Delinquent Taxes*, has been revised to reflect this change. A copy of Publication 124 appears on pages 63 to 65 of this Bulletin. Also, see that article titled "Tax Publications Available," on page 11, for information about how to obtain additional copies. [↗](#)

Tobacco Agreement Emergency Rule Adopted

Under the terms of the "Master Settlement Agreement" of November 23, 1998, between Wisconsin and other states and participating U.S. tobacco product manufacturers, each state, in order to receive funds under the agreement, was required to enact a "qualifying statute" that would prevent the participating manufacturers from losing market share. The Wisconsin Legislature enacted 1999 Wisconsin Act 122, a "qualifying statute," effective May 23, 2000. Every tobacco product manufacturer that sells cigarettes in Wisconsin is required to either become a participating manufacturer under the terms of the Master Settlement Agreement or place funds into a qualified escrow fund.

Under a nonstatutory provision in Act 122, the Department of Revenue was authorized to promulgate an emergency rule, for the purpose of ascertaining the amount of Wisconsin excise tax paid each year on the cigarettes of each tobacco product manufacturer that elects to place funds into a qualified escrow fund. The

department was also required to submit a proposed permanent rule to the Legislative Council for its review by September 1, 2000. The emergency rule, which creates section Tax 9.69, *Master settlement agreement with tobacco product manufacturers*, has been adopted, effective August 17, 2000, and is applicable to sales of cigarettes on or after May 23, 2000. In addition, the proposed permanent rule creating Tax 9.69 was submitted as required, on August 14, 2000. The department held a public hearing on both the emergency rule and the proposed permanent rule on September 18, 2000.

The text of the emergency rule is as follows:

Tax 9.69 Master settlement agreement with tobacco product manufacturers. (1) PURPOSE. This section describes requirements and methods relating to collecting, maintaining and reporting data regarding the number of Wisconsin state cigarette excise tax stamps affixed to packages of cigarettes, and the amount of "roll-your-own" cigarette tobacco, sold in Wisconsin each year.

Note: The data collected, maintained and reported under this section shall be used to ascertain the amount of Wisconsin excise tax paid on the cigarettes of each tobacco

product manufacturer that elects to place funds in a qualified escrow fund under s. 895.10, Stats., for each year, or, if the department deems it appropriate, is a participating manufacturer under the master settlement agreement between the state and tobacco product manufacturers, pursuant to 1999 Wis. Act 122.

(2) DEFINITIONS. In this section:

(a) "Cigarette" has the same meaning as in s. 895.10(1)(d), Stats., and includes "roll-your-own" cigarette tobacco.

(b) "Master settlement agreement" has the same meaning as in s. 895.10(1)(e), Stats.

(c) "Qualified escrow fund" has the same meaning as in s. 895.10(1)(f), Stats.

(d) "Sell" or "sale" has the same meaning as in s. 139.30(12), Stats.

(e) "Tobacco product manufacturer" has the same meaning as in s. 895.10(1)(i), Stats., and includes both a cigarette manufacturer under subch. II of ch. 139, Stats., and a tobacco products manufacturer under subch. III of ch. 139, Stats., that sells "roll-your-own" cigarette tobacco.

(f) "Wisconsin consumer" means a consumer within this state, including a direct consumer, distributor, retailer or similar intermediary.

(3) REPORTING REQUIREMENT. (a) Every tobacco product manufacturer that elects to sell cigarettes to Wisconsin consumers shall, by the 15th day of each month, file a schedule with the department that reconciles the number of Wisconsin state cigarette excise tax stamps affixed to packages of cigarettes sold to Wisconsin consumers and the amount of "roll-your-own" cigarette tobacco sold to Wisconsin consumers in the previous calendar month.

(b) The schedule required under par. (a) shall contain all of the following information that is applicable:

1. A listing of each sale of cigarettes other than "roll-your-own" cigarette tobacco manufactured, or the name of the manufacturer of the cigarettes that were delivered to Wisconsin consumers, onto which state cigarette excise tax stamps were affixed.

2. A listing of each sale of "roll-your-own" cigarette tobacco manufactured, or the name of the manufacturer of the "roll-your-own" cigarette tobacco, that was delivered to Wisconsin consumers.

3. For each manufacturer listed pursuant to subd. 1., a listing of all brands of cigarettes sold and the number of Wisconsin state cigarette excise tax stamps affixed to cigarette packages with respect to each brand.

4. For each brand of cigarettes listed for each manufacturer pursuant to subd. 3., the following additional information, if known:

a. The name of the manufacturer of the cigarettes.

b. The name of the person or entity first responsible for the cigarettes being designated or identified for sale in the United States.

5. For each sale of "roll-your-own" cigarette tobacco listed for each manufacturer pursuant to subd. 2., the following additional information, if known:

a. The name of the manufacturer of the "roll-your-own" cigarette tobacco.

b. The name of the person or entity first responsible for the "roll-your-own" cigarette tobacco being designated or identified for sale in the United States, by brand.

6. Any other information the department may deem necessary to administer the provisions of this section.

(4) ESCROW FUND CERTIFICATION REQUIREMENTS. (a) Every tobacco product manufacturer that is not a participating manufacturer under the master settlement agreement shall by April 15 of each year certify to the department and to the attorney general that the amounts required under s. 895.10(2)(b), Stats., have been placed into a qualified escrow account that is designated for Wisconsin judgments or release payments.

(b) The certification required under par. (a) shall include all of the following:

1. The name of the qualified financial institution where the escrow account is maintained.

2. The amount of funds placed into the escrow account since the last reporting period, based on Wisconsin sales.

3. The amounts, if any, paid out of the escrow account in judgments or release payments and the purpose of the disbursements.

4. The balance in the escrow account as of March 31 of each year.

5. A copy of the escrow account balance statement as of March 31 of each year.

(5) RECORDKEEPING REQUIREMENTS. Every tobacco product manufacturer required to file a schedule under sub. (3) shall maintain complete and accurate records to support the information reported on the required schedule. These records shall be maintained for a period of 4 years from the date of sale into Wisconsin and shall include the following:

(a) Purchase records indicating the tobacco product manufacturer of the cigarettes, the date of purchase and the number of cigarettes by brand or amount of "roll-your-own" cigarette tobacco purchased, by brand.


(b) Sales records indicating to whom the sale was made, the tobacco product manufacturer of the cigarettes, the date of sale and the number of cigarettes by brand or amount of "roll-your-own" cigarette tobacco sold.

(c) The number of Wisconsin cigarette tax stamps placed on packages of cigarettes for sale in the state of Wisconsin.

(d) Any additional records deemed necessary by the secretary.

(6) REMEDIES FOR NONCOMPLIANCE. The failure of a tobacco product manufacturer to either become a participating manufacturer under the terms of the master settlement agreement or place funds into a qualified escrow fund, as provided in s. 895.10(2)(b)1., Stats., shall be subject to civil action and penalties under s. 895.10(2)(b)3., Stats.

(7) APPLICABILITY. This section applies to sales of cigarettes on or after May 23, 2000, pursuant to s. 895.10(2)(intro.), Stats.

Note: Section Tax 9.69 interprets subchs. II and III of ch. 139, Stats., and s. 895.10, Stats. 

Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division. A comprehensive listing of telephone numbers and addresses appears in *Wisconsin Tax Bulletin* 119 (April 2000), pages 33 to 36.

Madison — Main Office Area Code (608)

Appeals	266-0185
Audit of Returns: Corporation, Individual, Homestead	266-2772
Beverage Tax.....	266-6702
Cigarette, Tobacco Products Taxes	266-8970
Copies of Returns	267-1266
Corporation Franchise and Income Taxes.....	266-1143
Delinquent Taxes.....	266-7879
Electronic Filing:	
Individual Income Tax.....	264-9959
Sales Tax	261-6261
Electronic Funds Transfer	264-9918
Estimated Taxes.....	266-9940
Fiduciary, Estate Taxes	266-2772
Forms Request:	
Taxpayers	266-1961
Practitioners.....	267-2025
Fax-A-Form.....	261-6229
Homestead Credit	266-8641
Individual Income Tax.....	266-2486
Motor Vehicle Fuel Tax	266-3223
Refunds.....	266-8100
Sales, Use, Withholding Taxes.....	266-2776
TTY	267-1049

District Offices

Appleton.....	(920) 832-2727
Eau Claire	(715) 836-2811
Milwaukee:	
General.....	(414) 227-4000
Refunds.....	(414) 227-4907
TTY	(414) 227-4147



Guidelines for Reproduced and Substitute Tax Forms

Tax returns may generally be filed on forms that have been reproduced or on substitute forms that have been approved by the department. However, certain guidelines must be followed to ensure that the reproduced or substitute forms are compatible with the department's processing system.

A copy of the "Guidelines for Reproduced and Substitute Tax Forms" appears on pages 61 and 62 of this Bulletin. The guidelines are also on the department's Internet web site at www.dor.state.wi.us. Click on "Forms" and then see "Tax Return Guidelines." [☞](#)



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). [☞](#)

2000 Package WI-X Available in January

Wisconsin's Package WI-X will be available by January 31, 2001. Package WI-X will contain actual size copies of most 2000 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, estate tax, motor vehicle fuel tax, sales and use tax, and withholding tax forms.

The cost of the 2000 Package WI-X is \$7.00 plus sales tax. It may be ordered on the tax form order blank (Form P-744). This order blank was mailed in September. See the following article titled "Tax Form Order Blanks Mailed," for more information.

If you did not receive an order blank and want to purchase copies of the 2000 Package WI-X, mail your request indicating the number of copies you require, along with your remittance for the amount due, to Wisconsin Department of Revenue, Forms Request Office, PO Box 8951, Madison WI 53708-8951. [☞](#)

Tax Form Order Blanks Mailed

During September, the department mailed order blanks (Form P-744) to 9,000 tax preparers. Use these original order blanks (not copies) to request bulk orders of 2000 Wisconsin tax forms that require payment. Forms that do not require payment are not listed on the order blank.

Some of the forms you order will be accompanied by additional information. For example, your order will include instructions for the forms you request; Schedules 2K-1 and WD for Form 2 will be included with fiduciary Form 2 orders; and Schedules 3K-1 will be included with partnership Form 3 orders.

The department is also mailing order blanks (Forms P-744b and P-744L) to banks, post offices, and libraries for their use in requesting bulk orders of 2000

Wisconsin income tax forms. No charge is made for forms used for distribution to the general public (for example, in a bank, library, or post office).

If you have not received an order blank, you may request one by: contacting any department office; writing to Wisconsin Department of Revenue, Forms Request Office, PO Box 8951, Madison WI 53708-8951; or calling (608) 267-2025.

Place your order as early as possible after receiving the order blank. Orders are expected to be filled in late December and early January.

As an alternative to ordering forms, most forms in Package WI-X may be reproduced. Package WI-X will be mailed separately in late January. [☞](#)

Question and Answer



Q I inherited \$25,000 from my aunt's estate. Is this amount taxable on my income tax return?

A No. You do not have to report money or property that you inherited. However, any earnings on inherited money or property are taxable. For example, if you deposited the \$25,000 in a savings account, interest earned on the account is taxable.

Q I paid \$70 of Wisconsin sales tax on a purchase I made, and I have discovered that the purchase should have been exempt from sales tax. Am I required to go to the seller for a refund of the sales tax I paid in error?

A No. A buyer may file a claim for refund with the Department of Revenue for sales or use tax paid to a seller in error, if the claim for refund is \$50 or more of tax. Use Form S-220, *Buyer's Claim for Refund of Wisconsin State, County and Stadium Sales Taxes*.

Caution: A claim for refund may generally be filed within four years after the due date of your Wisconsin income or franchise tax return, with certain exceptions. For more information, refer to Wisconsin Publication 216, *Filing Claims for Refund of Sales or Use Tax*.

Q Are charges for towing a disabled vehicle from the site of a breakdown to a repair shop subject to Wisconsin sales or use tax?

A Yes. The charge to a customer for towing a vehicle to a repair facility is taxable.

Q I purchased a sweatshirt from the Wisconsin Department of Natural Resources (DNR). The DNR charged me sales tax on the price of the sweatshirt. Aren't sales by the state government exempt from sales tax?

A No. Although state government agencies may **purchase** items without sales tax, **sales** made by state government agencies are subject to sales tax. [☞](#)

Magnetic Media Filing Required for Some Forms

Employers and payers may be required to file wage statements and information returns on magnetic media with the Wisconsin Department of Revenue. Wisconsin magnetic media filing is required if all of the following apply:

- Comparable wage statements or information returns are required to be filed on magnetic media with the Internal Revenue Service or Social Security Administration.
- The income on the form is required to be reported to Wisconsin.

- The number of any one type of form required to be filed with Wisconsin is 250 or more.
- The Combined Federal/State Filing Program is not being used.
- No waiver has been granted by the department.

Wisconsin Publication 509, *Filing Wage Statements and Information Returns on Magnetic Media*, provides more information about magnetic media filing. For information about how to obtain this publication, see the article titled “Tax Publications Available” on page 11 of this Bulletin. [☞](#)

Reminder: IRS Mileage Rates for 2000 Apply for Wisconsin



The Internal Revenue Service (IRS) optional standard mileage rates for 2000, for computing automobile expenses for business, charitable, medical, and moving expense purposes, also apply for Wisconsin. For 2000 the business standard mileage rate is 32.5¢ per mile for all business miles driven, without regard to whether the automobile was previously considered fully depreciated.

If the standard mileage rate of 32.5¢ per mile is used, depreciation is considered to be allowed at 14¢ per mile. However, no portion of the 32.5¢ per mile is considered to be depreciation after the adjusted basis of the automobile reaches zero.

For 2000 the mileage rate allowed for calculating automobile expenses for charitable deduction purposes is 14¢ per mile, and the rate for medical expense and moving expense deductions is 10¢ per mile. [☞](#)

Former UW Professor Charged with Income Tax Evasion

Retired UW Professor Edward S. Oplinger, 57, of Madison, was charged in August 2000, with 12 counts of theft and 4 counts of Wisconsin state income tax evasion. The charges were filed in Dane County Circuit Court following a joint investigation by the UW Police Department and the Department of Revenue’s Fraud Unit.

According to the criminal complaint, Oplinger was a UW Madison professor in the Department of Agricultural and Life Sciences. The UW conducted studies for seed companies, which paid fees to the UW Agronomy Department. The fees were then supposed to be sent to the UW’s Wisconsin Soybean Evaluation Program. Instead, during the period from May 1992 through May 1999, Oplinger diverted over \$485,000 to his personal bank account. He failed to report more than \$188,000 of those funds on his 1995 through 1998 Wisconsin income tax returns, thereby evading Wisconsin income tax of \$12,928.

If convicted on all 16 counts, Oplinger faces a maximum penalty of up to 140 years in prison and \$160,000 in fines. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, penalty, and interest due follows a conviction for criminal violations.

In September 2000, Ronald E. Campbell, Sr., 43, Walworth, pled no contest to criminal charges that he filed a false income tax return for 1996 and that he failed to file a 1997 income tax return. Charges that he filed false income tax returns for 1993 to 1995 were dismissed and read in as part of a plea negotiation.

Walworth County Circuit Court Judge Michael Gibbs imposed and stayed a nine month jail sentence on each count and placed Campbell on probation for two years. He also ordered Campbell to spend two days in jail, without Huber privileges, and to comply with the Department of Revenue in filing tax returns and paying state taxes due.

According to the criminal complaint filed in April 2000, in December 1995 the Department of Revenue requested Campbell to file income tax returns for 1990 to 1994. After he failed to respond to the request, the department issued estimated assessments for those years. The assessments later resulted in liens against Campbell, after he failed to respond to the assessments.

In October 1997, Campbell filed income tax returns for 1993 to 1996. In each return he listed his income as zero. When a department agent asked Campbell how he could live on zero income, he stated that income tax was illegal under federal law. Upon the department’s request to file accurate returns, Campbell contended that the tax returns were correct and only debated the constitutionality of tax returns.

The Department of Revenue's Fraud Unit determined that Campbell actually received payments of \$13,506 in 1993, \$29,738 in 1994, \$34,308 in 1995, \$73,866 in 1996, and \$63,972 in 1997. During that time Campbell worked for six different trucking companies. In 1995 he also received unemployment compensation benefits.

Clothing retailer Carmen A. Chuquin, 51, of Madison, was charged in Dane County Circuit Court in July 2000, with 21 counts of felony theft of state sales taxes.

According to the criminal complaint, Chuquin collected nearly \$56,000 in Wisconsin sales taxes from July 1994 through December 1996, which she failed to pay over to the state. Through a partnership with her husband, Chuquin operated eight stores under the names "Indian Weavings" or "World Imports" with locations in Madison, Eau Claire, Janesville, La Crosse, Sheboygan, Fond du Lac, and Wisconsin Dells. She also allegedly spent about \$400,000 in funds from business accounts for personal items during 1993 to 1995.

In addition to operating the clothing stores, Chuquin, a native of Ecuador who holds a doctorate degree in education policy, has been a visiting lecturer at the University of Wisconsin since 1985. She has also been a part-time lecturer there in Latin American and Iberian studies since 1996.

If convicted on all 21 felony theft counts, Chuquin faces a maximum penalty of up to 122 years in prison and up to \$210,000 in fines.

In June 2000, Michael J. Quinn, 36, was charged in Eau Claire County Circuit Court with 31 felony counts, in-

cluding three counts of filing false income tax returns and one count of theft by an employee. Quinn, who lives in Altoona, is the former general manager of Grizzly's Grill 'N' Saloon in Eau Claire.

According to the criminal complaint, Quinn embezzled over \$143,000 between January 1997 and January 2000. Discrepancies in Grizzly's cash register receipts occurred almost daily during that time period. The false income tax return charges relate to Quinn's admission to taking the money and not reporting it on his 1997, 1998, and 1999 state income tax returns.

Quinn could be sentenced to up to 165 years in prison if convicted on all 31 felony charges.

In August 2000, Kenneth J. Allington, 49, of Prairie du Chien, was convicted of federal tax evasion in U. S. District Court in Madison. The conviction resulted from a joint investigation between the federal Internal Revenue Service (IRS) and the Wisconsin Department of Revenue's Fraud Unit.

Allington, who claimed he did not have to pay state and federal taxes because Wisconsin is not part of the United States, faces a maximum of 15 years in prison and a fine of \$750,000. Prosecutors alleged that the self-employed bark chipper generated gross revenue of more than \$800,000 from 1991 to 1995, and that he owed \$98,000 in taxes for those years. Instead of depositing the money into his account to be recorded as income by his accountant, Allington cashed customers' checks and retained large amounts of currency.

As part of the joint investigation with the IRS, Wisconsin income tax charges were not filed. Instead, the investigation concentrated on the federal charges. [\[Link\]](#)



Wanted: Your Comments About the Wisconsin Tax Bulletin

The *Wisconsin Tax Bulletin* (WTB) is published to provide tax information to **YOU**, the readers. To make the WTB more useful, the department is seeking suggestions for items that may be of interest to you, and ways to make the WTB more valuable to you.

How could the department improve on the information it publishes? What topics do you want covered or expanded? Do you have particular likes or dislikes about

the WTB? Do you have ideas, comments, or suggestions you'd like to share?

Please take a few moments to give us your comments or ideas, and be a part of improving *your* WTB. Send your comments or ideas to Mark Wipperfurth, Wisconsin Department of Revenue, Administration Technical Services, PO Box 8933, Madison WI 53708-8933. If you prefer, you may fax your comments to him at (608) 261-6240, or you may e-mail or call him at mwipperf@dor.state.wi.us or (608) 266-8253. We'd like to hear from you! [\[Link\]](#)

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 the Internet.

By Mail

Write to Wisconsin Department of Revenue, Forms Request Office, PO 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."

Note: 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 (9/00)
- 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 Nonresidents 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 (7/00)
- 205 Use Tax Information for Individuals (1/99)
- 206 Sales Tax Exemption for Nonprofit Organizations (6/00)
- 207 Sales and Use Tax Information for Contractors (9/98)
- 210 Sales and Use Tax Treatment of Landscaping (12/99)
- 211 Cemetery Monument Dealers - How Do Wisconsin Sales and Use Taxes Affect You? (6/00)
- 212 Businesses: Do You Owe Use Tax on Imported Goods? (1/99)
- 213 Travelers: Don't Forget About Use Tax (4/99)
- 214 Businesses: Do You Owe Use Tax? (4/99)
- 216 Filing Claims for Refund of Sales or Use Tax (3/99)
- 217 Auctioneers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)
- 219 Hotels, Motels, and Other Lodging Providers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (4/99)

- 220 Grocers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/98)
- 221 Farm Suppliers and Farmers - How Do Wisconsin Sales and Use Taxes Affect Sales to Farmers? (4/97)
- 222 Motor Vehicle Fuel Users: Do You Owe Use Tax? (3/00)
- 223 Bakeries – How Do Wisconsin Sales and Use Taxes Affect Your Business? (2/98)
- 224 Veterinarians - How Do Wisconsin Sales and Use Taxes Affect Your Business? (6/99)
- 225 Barber and Beauty Shops – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (12/99)
- 226 Golf Courses - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (3/00)

Other Taxes and Credits

- 127 Wisconsin Homestead Credit Situations and Solutions (11/99)
- 128 Wisconsin Farmland Preservation Credit Situations and Solutions (11/99)
- 400 Wisconsin's Temporary Recycling Surcharge (12/98)
- 403 Premier Resort Area Tax (2/98)
- 410 Local Exposition Taxes (2/99)
- 503 Wisconsin Farmland Preservation Credit (11/99)
- 508* Wisconsin Tax Requirements Relating to Nonresident Entertainers (6/00)
- W-166 Wisconsin Employer's Withholding Tax Guide (4/00)

Audits and Appeals

- 501 Field Audit of Wisconsin Tax Returns (9/99)
- 505 Taxpayers' Appeal Rights of Office Audit Adjustments (12/99)
- 506 Taxpayers' Appeal Rights of Field Audit Adjustments (9/99)
- 507 How to Appeal to the Tax Appeals Commission (7/98)

Other Topics

- 111 How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (2/00)
- 114 Your Wisconsin Taxpayer Bill of Rights (2/00)
- 115 Handbook for Federal/State Electronic Filing (12/99)
- 117 Guide to Wisconsin Information Returns (10/99)
- 124* Petition for Compromise of Delinquent Taxes (5/00)
- 130 Fax A Form (9/99)
- 140 Wisconsin E-File – A Tax Practitioner's Guide (6/00)
- 401 Extensions of Time to File (1/99)
- 500 Tax Guide for Wisconsin Political Organizations and Candidates (2/00)
- 502 Directory of Wisconsin Tax Publications (4/00)
- 504 Directory for Wisconsin Department of Revenue (2/00)
- 509 Filing Wage Statements and Information Returns on Magnetic Media (3/00)
- 700 Speakers Bureau presenting . . . (6/00) [🔗](#)



Take Advantage of the Speakers Bureau

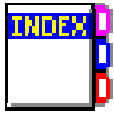
Are you planning a meeting, workshop, conference, or training program? The Department of Revenue's Speakers Bureau provides speakers, free of charge, who can provide information to business, community, and educational organizations.

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.
- Electronic filing of individual income tax returns.

To arrange for a speaker, you may write to Wisconsin Department of Revenue, Speakers Bureau, PO 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." [↗](#)



Index of Reference Material Available

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,

Wisconsin tax 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 67 of this Bulletin. [↗](#)



Nearly 1.9 Million Refunds Issued

More than 1,875,000 income tax refunds were issued to taxpayers during January through July 2000 (primarily 1999 returns), for an average refund of \$337. The average refund for 1998 returns was \$425; the decrease is due primarily to the one-year elimination of the school property tax/rent credit.

Here are some more comparisons:

	2000	1999
Number of individual income tax returns	2,681,188	2,776,779
Itemized deduction credit		
% of taxpayers claiming	33%	23%
Average credit	\$557	\$465

Homestead credit		
# of claimants	167,024	165,367
Average credit	\$447	\$500
Age 65 or older	47%	47%
Renters	55%	52%
Homeowners	45%	48%
Farmland preservation credit		
# of claimants	20,600	21,900
Average credit	\$838	\$827
Earned income credit		
# of claimants	187,000	188,040
Average credit	\$318	\$317
Sales/use tax payments		
Amount collected	\$1,207,996	\$1,019,647
# of payers	22,600	21,950

[↗](#)

State Election Campaign Fund Checkoffs Increase for 2000

Wisconsin income tax returns include checkboxes for taxpayers and spouses to designate \$1 to the State Election Campaign Fund.

During July 1999 through June 2000 (primarily 1999 tax returns), taxpayers designated \$339,033 to the election campaign fund on their Wisconsin tax returns. This compares to \$329,014 for the prior year, representing a 3% increase. [↗](#)



Endangered Resources Contributions Lower in 2000

The 1999 Wisconsin income tax returns included a line for taxpayers to designate a contribution to the Wisconsin Endangered Resources Fund. These contributions help protect and care for Wisconsin's endangered species, nongame wildlife, and rare plant and animal habitats.

Donations to the Endangered Resources Fund can be made on both paper filed tax returns and electronically filed returns.

During July 1999 through June 2000 (primarily 1999 returns), 43,334 taxpayers contributed \$603,395 to the Endangered Resources Fund. This compares with 1998 income tax returns, where 44,304 taxpayers contributed \$639,530. [↗](#)

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 October 1, 2000, or at the stage in which action occurred during the period from July 2 to October 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 67 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Scope Statement Published

- 2.03 Corporation returns–A (published 7/31/00)
- 2.04 Information returns and wage statements–A (published 7/31/00)
- 2.08 Returns of persons other than corporations–A (published 7/31/00)
- 2.12 Amended returns–A (published 7/31/00)
- 3.91 Petition for redetermination–A (published 7/31/00)
- 9.69 Master settlement agreement with tobacco product manufacturers–NR (published 7/15/00)

Rules Sent to Legislative Council Rules Clearinghouse

- 9.69 Master settlement agreement with tobacco product manufacturers –NR

Rules Sent to Revisor for Publication of Notice (Notice published 8-31-00)

- 9.69 Master settlement agreement with tobacco product manufacturers –NR

Public Hearing Held (9/18/00)

- 9.69 Master settlement agreement with tobacco product manufacturers –NR

Rules Being Reviewed Following Publication of Various Notices

- 1.13 Power of attorney–A
- 2.82 Nexus–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 and in Effect

- 2.32 Recycling surcharge - gross receipts defined–NR (effective 9/1/00)
- 14.01 Administrative provisions–A (effective 8/1/00)
- 14.02 Qualification for credit–A (effective 8/1/00)

- 14.03 Household income and income–A (effective 8/1/00)
- 14.04 Property taxes accrued–A (effective 8/1/00)
- 14.05 Gross rent and rent constituting property taxes accrued–A (effective 8/1/00)

- 14.06 Marriage, separation or divorce during a claim year–A (effective 8/1/00)

Emergency Rules Adopted (effective 8/17/00, but applicable to sales on or after 5/23/00)

- 9.69 Master settlement agreement with tobacco product manufacturers –NR 

Recently Adopted Rules Summarized

Summarized below is information regarding six recently revised rules relating to homestead tax credit, and a recently created rule relating to the definition of “gross receipts” for the recycling surcharge. Included is information regarding Tax 14.01, 14.02, 14.03, 14.04, 14.05, and 14.06, amended effective August 1, 2000, and Tax 2.32, created effective September 1, 2000.

In addition to the summary of changes, some of the text of the revised homestead tax credit rules, excluding notes and examples, and all of the text of the recycling surcharge rule is reproduced. In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

To order up-to-date administrative rules of the department, you can use the order blank on page 67 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

Tax 14.01 Administrative provisions. Subsections (1), (2)(intro.), and (3)(a) are revised, to conform language and punctuation to Legislative Council Rules Clearinghouse (“Clearinghouse”) standards.

Subsections (2)(a), (b), (c), and (d) are renumbered (2)(b), (c), (d) and (a), to keep the definitions in alphabetical order after changing “general relief” to “county relief.” As renumbered, par. (a) is revised to update language relating to county relief, and par. (b) is revised to conform language to Clearinghouse standards.

Subsection (4) is revised, to reflect proper filing procedures and to conform style to Clearinghouse standards.

Subsection (5)(a) is renumbered (5)(a)(intro.) and revised and subdivisions 1. and 2. are created, and par. (b) is revised, to provide proper filing deadlines and statutory references.

Subsection (6) is revised, to clarify a provision relating to deceased persons and to conform style and punctuation to Clearinghouse standards.

Subsection (7) is renumbered (7)(a)(intro.) and revised and subdivisions 1. to 4. and par. (b) are created, to set forth proper procedures for adjusting incorrect claims.

Subsection (8) is revised, to update provisions relating to the imposition of interest and to conform punctuation to Clearinghouse standards.

The text of Tax 14.01(5)(a), (5)(b), (7)(a), (7)(b), and (8) is as follows:

Tax 14.01(5)(a) Under ~~s. 71.53(2)~~ s. 71.53(2)(a), Stats., an original homestead credit claim shall be filed with the department ~~on or before December 31 of the year following the year to which the claim relates~~ in conformity with the filing requirements of s. 71.03(6), (6m) and (7), Stats., or the department shall disallow the claim. The deadline for filing a claim is as follows:

1. A claim filed for a taxable year for which an income tax return is also filed shall be filed on a calendar year basis as provided in sub. (3)(c), within 4 years, 3 ½ months of the end of the calendar year to which the claim relates.

2. Under s. 71.03(6m), Stats., a claim filed by a person who is not required to file an income tax return shall be filed on a calendar year basis. The claim shall be filed within 4 years, 3 ½ months of the end of the calendar year to which the claim relates.

(5)(b) ~~Under s. 71.53(3), Stats., a~~ A claimant who files a timely original claim may subsequently file an amended claim with the department. ~~An~~ Under s. 71.75(2), Stats., an amended claim shall be filed within 4 years of ~~December 31 of the year following the year to which the claim relates~~ the deadline for filing the original claim or the department shall disallow the claim.

(7)(a) ~~Under s. 71.74(8)(a), Stats., the~~ The department may give notice of an incorrect homestead credit amount ~~within 4 years from December 31 of the year following the year to which a homestead credit claim relates.~~ The department may correct incorrect claims by adjusting the credit claimed, by assessment as income taxes are assessed, or by refund, as appropriate. Under ss. 71.74(8)(a) and 71.77(2), Stats., unless the adjustment period is extended by a specific statutory provision, the notice shall be given by the later of 4

years from the unextended due date of the corresponding original income tax return or 4 years from the date a late-filed income tax return is filed. The statutory provisions under which the adjustment period may be extended include the following:

1. The “intent to defeat or evade” provision under s. 71.77(3), Stats.
2. The “extension agreement” provision under s. 71.77(5), Stats.
3. The “six-year” provision under s. 71.77(7)(a), Stats.
4. The “federal change” provisions under s. 71.77(7)(b), Stats.

(7)(b) Under s. 71.75(7), Stats., the department shall act on a claim for homestead credit within one year after it receives the claim, or the credit shall be allowed even if incorrect, unless the claimant has agreed in writing to an extension of the one-year time period. Within the one-year period, prior to allowing the credit, the claimed credit may be reduced. However, under s. 71.74(8)(a), Stats., if the date of acting on an amended claim is later than the last date for adjusting an original claim as provided in par. (a), the credit may not be reduced to an amount less than the credit allowed on the original claim, and after allowing the credit on the amended claim no further reduction of the credit may be made.

(8) ~~INTEREST AND PENALTIES ON INCORRECT CLAIMS.~~ (a) ~~Excessive claims.~~ ~~Excessive~~ Under s. 71.82(1)(c), Stats., ~~excessive~~ homestead credit amounts, not the result of negligence or fraudulent intent, that have been paid or credited shall be subject to interest ~~as provided by s. 71.82(1)(c), Stats.~~ ~~The interest shall be imposed from the date on which the excessive amount was paid or credited, but not earlier than from December 31 of the year following the year to which the claim relates, to the date on which the amount when subsequently assessed will become delinquent if unpaid. If unpaid by the due date shown on the notice of adjustments to the homestead credit claim, the amount due, including interest, shall be subject to delinquent interest at the rate provided by s. 71.82(2)(a), Stats. at 12% per year from the deadline for filing the claim. Assessments to collect excessive homestead credit amounts payable before the deadline for filing the claim may not include interest charges.~~

(b) *Understated claims.* Under s. 71.55(4), Stats., the department may not pay interest on any homestead credit, including any additional credit, refund, or payment allowed as the result of the review of a homestead credit claim or an amended claim.

Tax 14.02 Qualification for credit. Subsection (2)(c) is repealed and sub. (9) is revised, and notes are created, to place mailing addresses in a note rather than in the text of the rule, per Clearinghouse standards.

Subsection (5) is revised, to reflect proper terminology relating to property taxes.

Subsection (10) is revised, to conform format to Clearinghouse standards.

Subsection (11) is revised, to clarify that a person who is deceased cannot be a claimant.

None of the text of Tax 14.02 is being reproduced.

Tax 14.03 Household income and income. Subsection (2)(intro.) is created and subs. (3)(a), (b), and (c)2. and (4)(b)5.a. are revised, to conform style and punctuation to Clearinghouse standards.

Subsection (4)(b)(intro.) is revised, to state the content of the paragraph as amended. Subdivision 2. is revised, to clarify a provision relating to support payments. Subdivision 3. is repealed and recreated, to update provisions relating to cash public assistance and county relief and to list additional items of income. Subdivision 5.(intro.) is revised and 5.e. is created, to clarify provisions relating to social security. Subdivisions 7., 11., 12., 14., 15., and 20. are revised, to clarify provisions relating to payments to survivors of deceased veterans, scholarships, unemployment insurance, home sale gains (per the amendment of s. 71.01(6), Stats., by 1997 Wis. Act 37), and Native Americans.

Subsection (4)(b)23.(intro.) and a. to i. is renumbered (4)(c)(intro.) and 1. to 9., to list items that are deducted in determining Wisconsin adjusted gross income in a separate paragraph. As renumbered, sub. (4)(c)(intro.) is revised, to add a reference to items deducted in determining limited liability company income or losses, and subd. 6. is revised, to add a reference to SIMPLEs and to conform punctuation to Clearinghouse standards.

Subsection (5) is repealed and recreated, to clarify provisions relating to exclusions from income and list additional exclusions, including previously reported scholarship income per the amendment of s. 71.52(6), Stats., by 1997 Wis. Act 27.

The text of Tax 14.03(2)(intro.), (4)(b)3., 5.e. and 15. and (5) is as follows:

Tax 14.03(2)(intro.) DEFINITIONS. In this section: (4)(b)3. Cash public assistance and county relief, including the following:

a. Aid to families with dependent children, or “AFDC.”

b. Wisconsin works, or “W-2” payments.

c. Non-legally responsible relative, or “NLRR” AFDC payments or kinship care payments under s. 48.57, Stats. These are payments received as a relative other than a parent, for caring for a dependent child in the claimant’s homestead.

d. Cash benefits paid by counties under s. 59.53(21), Stats.

e. Reimbursement from a governmental agency for amounts originally paid for by the recipient, not including cash reimbursements for home energy assistance or for services under Title XX of the federal social security act and community options program, or “COP” payments under s. 46.27, Stats.

f. Adoption assistance payments under Title IV-E of the federal social security act or from another state, or payments by the Wisconsin department of health and family services under s. 48.975, Stats., to adoptive parents of children having special needs as described in s. HSS 50.03(1)(b).

g. Veterans administration payments for reimbursement of services purchased by the recipient.

h. Federal housing and urban development, or “H.U.D.” payments for housing.

i. Disaster relief grants under the federal disaster relief act of 1974.

5.e. Supplemental security income - exceptional needs, or “SSI-E” payments under s. 49.77(3s), Stats.

15. A gain on the sale of a personal residence excluded under s. 121 of the internal revenue code, ~~which is the once-in-a-lifetime exclusion for a qualifying sale by a person age 55 or older.~~ A gain on the sale of a personal residence which would be reportable under the installment sale method if taxable may be reported either in full in the year of sale or each year as payments are received.

(5) EXCLUSIONS FROM INCOME. (a) Under s. 71.52(6), Stats., income does not include the following:

1. Amounts described in sub. (4)(b)1., 3.e., 7., 11. and 14. as not being includable.

2. Gifts from natural persons, including voluntary support payments.

3. Relief in kind by a governmental agency, including surplus food, food stamps and payments directly to a supplier of goods or services, such as medical care, food, clothing and residential energy.

4. The nontaxable portions of lump sum insurance proceeds received:

a. For a recipient’s disability or loss of limb.

b. By a beneficiary of a decedent’s life insurance policy.

c. From the surrender of any portion of an insurance policy that does not constitute a personal endowment insurance policy or an annuity contract purchased by the recipient.

5. Wisconsin homestead credit amounts received.

6. Social security or SSI payments received on behalf of a claimant’s children or the children of the claimant’s household.

7. Pension, annuity or other retirement plan payments rolled over from one retirement plan to another.

8. Tax-free exchanges of insurance contracts under s. 1035 of the internal revenue code.

9. Crime victim compensation payments under ch. 949, Stats.

10. Payments under the Wisconsin petroleum cleanup fund act.

11. “Foster grandparents program” payments under the federal domestic volunteer service act of 1973.

12. Community spouse income allowance payments under the Wisconsin spousal impoverishment program, except the portion of the payments includable under Wisconsin marital property law.

(b) Amounts added to Wisconsin adjusted gross income under s. 71.52(6), Stats., on a previous year’s homestead credit claim and subsequently repaid may be subtracted from income for the year during which they are repaid.

(c) Scholarship and fellowship gifts or income included in Wisconsin adjusted gross income, which were included in income under s. 71.52(6), Stats., on a previous year’s homestead credit claim may be subtracted from income for the current year.

Tax 14.04 Property taxes accrued. Subsection (2) is revised, to remove obsolete language relating to general property tax relief.

Subsections (3)(b) and (3)(c) are revised, to clarify various provisions relating to property taxes accrued.

Subsection (4)(a) is revised to remove obsolete provisions relating to property tax verification. Paragraphs (b)1. and (b)2. are revised, to conform punctuation to Clearinghouse standards. Paragraph (c) is revised, to clarify a provision relating to mobile home ownership and to conform language to Clearinghouse standards.

Subsection (5) is repealed and recreated, to update provisions relating to the reduction of property taxes accrued for months certain public assistance payments are received.

Subsections (8)(a) and (8)(b) are revised and par. (c) is created, to clarify various provisions relating to allowable property taxes for a co-owned homestead.

Subsections (9)(a) and (b), (10)(a), and (11) are revised, to clarify various provisions relating to property taxes accrued and to conform language and punctuation to Clearinghouse standards.

The text of Tax 14.04(5) and (8)(c) is as follows:

Tax 14.04(5) EFFECT OF RELIEF AND OTHER PUBLIC ASSISTANCE. (a) Under s. 71.54(2)(a), Stats., property taxes accrued shall be reduced by one-twelfth for each month or portion of a month for which the claimant received either \$400 or more of county relief under s. 59.53(21), Stats., or any amount of aid to families with dependent children, or “AFDC” under s. 49.19, Stats., Wisconsin works payments for community service jobs or transitional placements under s. 49.147(4) or (5), Stats., or Wisconsin works payments as a caretaker of a newborn child under s.

49.148(1m), Stats. However, property taxes accrued need not be reduced if the assistance consists solely of foster care payments under s. 49.19(10)(a), Stats., non-legally responsible relative, or “NLRR” AFDC payments or kinship care payments.

(b) County relief and other cash public assistance payments that are repaid by the claimant in the same calendar year in which they are received are not considered payments for purposes of computing the one-twelfth reduction of property taxes accrued as required by par. (a).

(8)(c) Under s. 71.52(7), Stats., if a claimant has inherited a partial ownership interest in a homestead, is entitled to possession of the property and is required by the terms of the will that transferred the ownership to pay all of the property taxes on the homestead, the claimant may claim a homestead credit based upon the entire amount of property taxes accrued on the homestead.

Tax 14.05 Gross rent and rent constituting property taxes accrued. Subsection (2) is repealed and recreated, to reference a statute rather than quote it and to provide that certain separate payments to a landlord are considered gross rent.

Subsection (3)(b), relating to indirect rent payments by a governmental agency, is repealed and its provisions are placed in sub. (13), relating to low-income housing. Paragraphs (c) and (d) are renumbered (b) and (c) and as renumbered par. (b) is revised, to clarify a provision relating to property taxes for a homestead not owned by the claimant.

Subsections (4)(a) and (4)(c) are revised, to conform language and punctuation to Clearinghouse standards. Paragraph (b) is revised, to clarify a provision relating to paying rent for more than one homestead during the year. Paragraph (c) is further revised, to update procedures for preparing a rent certificate, and par. (e) is revised, to update procedures for preparing a rent certificate when one cannot be obtained from a landlord.

Subsection (5) is repealed and recreated, to update provisions relating to the reduction of rent constituting property taxes accrued for months certain public assistance payments are received.

Subsection (7) is revised, to replace quoted statutory language relating to non-arms length rental with explanatory language.

Subsections (8)(a), (8)(d)(intro.) and 1. to 3., (12), and (13)(title) are revised, to conform language and punctuation to Clearinghouse standards. Subsection (8)(b) is revised, to reflect the department’s position that the paragraph also interprets s. 71.53(2)(e), Stats., and sub.

(8)(c) is revised, to reflect the department’s position that it applies to both sub. (8)(a) and sub. (8)(b).

Subsection (9)(a) is revised, to clarify a provision relating to joint occupancy of a rental unit.

Subsections (13)(a)(intro.) and (13)(b) are renumbered (13)(b) and (13)(c), and par. (a)1., 2., and 3. is repealed. As renumbered, par. (b) is revised, to clarify a provision relating to rent computation when a landlord receives subsidies from a governmental agency. New par. (a) is created, to place a provision relating to indirect rent payments by a governmental agency in sub. (13) rather than sub. (3).

Subsection(14)(a)1. is revised, effective with rent paid for calendar year 2000, to increase the “standard rate” for rent paid for occupancy by residents of nursing homes or long-term care facilities from \$40 per week to \$100 per week. This rate more accurately reflects the portion of payments to those types of facilities that constitutes rent paid for occupancy. It also more closely approximates the rent paid for occupancy as computed using the other department-approved method, the “percentage of building occupancy expenses” method; the standard rate had not been changed since March 1990.

Subsection (14)(a)2. is revised, to include substantive material from an example, relating to the “percentage of building occupancy expenses” method of computing rent paid for occupancy by residents of nursing homes or long-term care facilities. Paragraph (b) is renumbered (b)1. and subd. 2. is created, to clarify that a nursing home resident who received medical assistance during the year but is no longer receiving the assistance may be eligible to claim a homestead credit.

The text of Tax 14.05(2), (4)(e), (5), (13)(a), (14)(a)1., and (14)(b)2. is as follows:

Tax 14.05(2) DEFINITIONS. (a) “Gross rent” has the meaning specified in s. 71.52(2), Stats. Gross rent includes payments by a claimant to the landlord for items normally associated with the occupancy of a homestead, such as a garage or parking space, appliances, furniture or utilities. However, payments for food, medical services or other personal services are expressly excluded under s. 71.52(2), Stats. In situations where charges for food and services are subtracted from amounts paid to a landlord, gross rent is commonly referred to as “rent paid for occupancy.”

(b) “Rent constituting property taxes accrued” has the meaning specified in s. 71.52(8), Stats.

(4)(e) If a claimant is unable to obtain a rent certificate from a landlord, proper rent receipts, money order receipts, cancelled checks, or cancelled share drafts substanti-

ating amounts paid shall be acceptable evidence of gross rent paid. The claimant shall ~~attach a statement to the homestead credit claim giving the name and address of the landlord, the address of the homestead for which credit is claimed, an explanation of the inability of the claimant to obtain a rent certificate, a list of food, medical services, and other personal services as described in par. (c) provided by the landlord, and a statement as to whether heat was included in the rent paid to the landlord, as evidence of rent constituting property taxes accrued, also include a rent certificate on which all lines except the signature line have been filled in, or a statement providing the same information as that requested on the rent certificate. The statement or rent certificate shall indicate whether heat was included in the rent, and whether food or services as described in par. (c) were provided and if so the estimated value of the food and services provided. The statement or top portion of the rent certificate should be marked with a comment such as "Landlord Refuses to Sign."~~

(5) EFFECT OF RELIEF AND OTHER PUBLIC ASSISTANCE. (a) Under s. 71.54(2)(a), Stats., rent constituting property taxes accrued shall be reduced by one-twelfth for each month or portion of a month for which the claimant received either \$400 or more of county relief under s. 59.53(21), Stats., or any amount of aid to families with dependent children, or "AFDC" under s. 49.19, Stats., Wisconsin works payments for community service jobs or transitional placements under s. 49.147(4) or (5), Stats., or Wisconsin works payments as a caretaker of a newborn child under s. 49.148(1m), Stats. However, rent constituting property taxes accrued need not be reduced if the assistance consists solely of foster care payments under s. 49.19(10)(a), Stats., non-legally responsible relative, or "NLRR" AFDC payments or kinship care payments.

(b) County relief and other cash public assistance payments that are repaid by the claimant in the same calendar year in which they are received are not considered payments for purposes of computing the one-twelfth reduction of rent constituting property taxes accrued as required by par. (a).

(13)(a) Indirect payments of rent, such as a subsidy payment from a governmental agency for low-income housing, are not includable in determining gross rent.

(14)(a)1. A standard rate of ~~\$40~~ \$100 per week but not more than the actual rent paid.

(14)(b)2. A person living in a nursing home who received medical assistance under s. 49.45, Stats., during the year to which the claim relates but is not receiving the medical assistance at the time of filing a homestead credit claim may claim the homestead credit if otherwise eligible. In this situation, amounts paid by medical assistance are not includable in determining rent paid for occupancy.

Tax 14.06 Marriage, separation or divorce during a claim year. The title and subs. (1) and (3)(c)(intro.) are revised, to conform punctuation to Clearinghouse standards.

None of the text of Tax 14.06 is being reproduced.

Tax 2.32 Recycling surcharge – gross receipts defined. This section is created as required pursuant to 1999 Wis. Act 9, to define the term "gross receipts" as it applies to subch. VII of ch. 77, Stats., relating to the recycling surcharge.

The text of Tax 2.32, including notes, is as follows:

Tax 2.32 Recycling surcharge – gross receipts defined. (1) PURPOSE. This section defines "gross receipts" for purposes of the recycling surcharge under subch. VII of ch. 77, Stats.

Note: For any taxable year, a recycling surcharge is imposed on: (a) individuals, estates, trusts, statutory employees and partnerships that have at least \$4,000,000 in gross receipts from a trade or business for the taxable year; (b) corporations and insurers that have at least \$4,000,000 in gross receipts from all activities for the taxable year; and (c) individuals, estates, trusts and partnerships engaged in farming that have at least \$1,000,000 in gross receipts from farming for the taxable year.

(2) DEFINITIONS. In subch. VII of ch. 77, Stats., and this section:

(a) "Gross receipts from all activities of corporations" means the sum of the following items reportable by corporations other than those listed in pars. (c) and (d):

1. Gross receipts or sales reportable on line 1a of federal form 1120, U. S. corporation income tax return.
2. Gross dividends reportable on line 4 of federal form 1120.
3. Gross interest income reportable on line 5 of federal form 1120.
4. Gross rents reportable on line 6 of federal form 1120.
5. Gross royalties reportable on line 7 of federal form 1120.
6. The gross sales price from the disposition of capital assets and business assets includable in computing the net gain or loss on lines 8 and 9 of federal form 1120.
7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

Note: In this subsection, line numbers of forms refer to the 1999 forms.

(b) "Gross receipts from all activities of exempt organizations taxable as corporations" means the sum of the following items reportable by those entities:

1. Gross receipts or sales reportable on line 1a of federal form 990-T, exempt organization business income tax return.
2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 4a and 4b of federal form 990-T.
3. Gross rents includable in computing rent income on line 6 of federal form 990-T.
4. Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on line 7 of federal form 990-T.

5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on line 8 of federal form 990-T.

6. Gross investment income includable in computing investment income on line 9 of federal form 990-T.

7. Gross exploited exempt activity income includable in computing that item of income on line 10 of federal form 990-T.

8. Gross advertising income includable in computing advertising income on line 11 of federal form 990-T.

9. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(c) “Gross receipts from all activities of insurance companies” means the sum of the following items reportable by insurance companies:

1. Gross premiums earned reportable on lines 1 and 8 of schedule A on federal form 1120-PC, U. S. property and casualty insurance company income tax return.

2. Gross dividends reportable on line 2 of schedule A, or line 2 of schedule B if applicable, on federal form 1120-PC.

3. Gross interest income reportable on line 3a of schedule A, or line 1a of schedule B if applicable, on federal form 1120-PC.

4. Gross rents reportable on line 4 of schedule A, or line 3 of schedule B if applicable, on federal form 1120-PC.

5. Gross royalties reportable on line 5 of schedule A, or line 4 of schedule B if applicable, on federal form 1120-PC.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 6 and 7 of schedule A, or lines 5 and 7 of schedule B if applicable, on federal form 1120-PC.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(d) “Gross receipts from all activities of tax-option (S) corporations” means the sum of the following items reportable by S corporations:

1. Gross receipts or sales reportable on line 1a of federal form 1120S, U. S. corporation income tax return for an S corporation.

2. Gross rents includable in computing the income from real estate and other rental activities reportable on lines 2 and 3a of schedule K on federal form 1120S.

3. Gross interest income reportable on line 4a of schedule K on federal form 1120S.

4. Gross dividends reportable on line 4b of schedule K on federal form 1120S.

5. Gross royalties includable in computing royalty income reportable on line 4c of schedule K on federal form 1120S.

6. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on line 4 of federal form 1120S and lines 4d, 4e, 4f and 5 of schedule K on federal form 1120S.

7. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(e) “Gross receipts from farming, of individuals, estates, trusts and partnerships engaged in farming” means the sum of the following items reportable by those entities:

1. Gross receipts or sales reportable on lines 1, 4, 5a, 6a, 7a, 8a and 9 of federal schedule F, profit or loss from farming.

2. The gross sales price of farm assets, including livestock, includable in computing ordinary income or loss on federal form 4797, sales of business property.

(f) “Gross receipts of exempt organizations taxable as trusts” means the total receipts or sales from all trade or business activities other than farming, reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include any of the following:

1. Gross receipts or sales reportable on line 1a of federal form 990-T, exempt organization business income tax return.

2. The gross sales price from the disposition of capital assets and business assets includable in computing the gain or loss on lines 4a and 4b of federal form 990-T.

3. Gross rents includable in computing rent income on line 6 of federal form 990-T.

4. Gross income from unrelated debt-financed property includable in computing unrelated debt-financed income on line 7 of federal form 990-T.

5. Gross interest, annuities, royalties and rents from controlled organizations includable in computing those items of income on line 8 of federal form 990-T.

6. Gross investment income includable in computing investment income on line 9 of federal form 990-T.

7. Gross exploited exempt activity income includable in computing that item of income on line 10 of federal form 990-T.

8. Gross advertising income includable in computing advertising income on line 11 of federal form 990-T.

9. Gross receipts passed through from other entities, and all other receipts that are included in gross income for Wisconsin franchise or income tax purposes.

(g) “Gross receipts of individuals, estates, trusts and statutory employees” means the total receipts or sales from all trade or business activities other than farming, reportable by those entities for federal income tax purposes, before any deduction for returns and allowances or any other business expenses. Gross receipts include any of the following:

1. Gross receipts or sales reportable on line 1 of federal schedule C, profit or loss from business.

2. Gross receipts reportable on line 1 of federal schedule C-EZ, net profit from business.

3. The gross sales price of assets includable in computing ordinary income or loss on federal form 4797, sales of business property.

Note: See par. (e) for information relating to individuals, estates and trusts engaged in farming.

(h) “Gross receipts of partnerships” means the total receipts or sales from all trade or business activities other than farming, reportable by partnerships for federal income tax purposes, before any deduction for returns and allowances or

any other business expenses. Gross receipts include the sum of the following:

1. Gross receipts or sales reportable on line 1a of federal form 1065, U. S. partnership return of income.
2. Gross receipts, other than farm receipts, passed through from other partnerships and fiduciaries and includable in computing the amount on line 4 of federal form 1065.
3. The gross sales price from the sale or disposition of business assets, other than farm assets, includable in computing the net gain or loss on line 6 of federal form 1065.
4. Gross receipts from the rental of tangible personal property.

5. Other gross receipts includable in computing other income or loss on line 7 of federal form 1065.

Note: See par. (e) for information relating to partnerships engaged in farming.

Note: Section Tax 2.32 interprets subch. VII of ch. 77, Stats.

Note: Subchapter VII of ch. 77, Stats., was amended by 1999 Wis. Act 9, to replace the expired temporary recycling surcharge with a recycling surcharge, effective for taxable years beginning on or after January 1, 2000. This section applies to the recycling surcharge imposed for taxable years beginning on or after January 1, 2000. [!\[\]\(003082e50e3009141f59bd5df831749f_img.jpg\)](#)



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:

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INDIVIDUAL INCOME TAXES

 **Domicile; Assessments - presumed correct; Signature.** *Crazy Jim* vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, June 21, 2000). The issues in this case are:

- Whether the taxpayer was a Wisconsin resident in 1984.
- Whether the department's assessment against the taxpayer for 1994 was correct.
- Whether the taxpayer signed his 1994 income tax return under duress.

In November 1996, the department issued an income tax assessment to the taxpayer for tax year 1984, based on information contained in an Internal Revenue Service ("IRS") adjustment. Also in that month, the department issued an income tax assessment to the taxpayer covering 1994. The taxpayer filed a petition for redetermination objecting to both assessments. The department denied the petition.

The taxpayer filed a timely 1984 Wisconsin resident income tax return that included a Form W-2 for a Wisconsin employer, listing a Wisconsin address for the taxpayer. The taxpayer also filed a timely 1984 federal income tax return listing a Wisconsin address. In April 1996 he filed an amended 1984 return again listing a Wisconsin address, on which he claimed he was a Nevada resident in 1984. The department rejected the claim of 1984 Nevada domicile for lack of substantiation.

On the taxpayer's 1994 Wisconsin income tax return, he reported a \$97,000 capital gain from the sale of Wisconsin real property, and he calculated his income tax due as \$6,601. No payment was included, and the department issued an assessment for the tax plus interest and a late filing penalty. The taxpayer appealed the assessment, on the grounds that he signed his income tax return under duress and that he did not actually receive the \$97,000.

The Commission concluded as follows:

- The taxpayer was a Wisconsin resident in 1984. He did not meet his burden of proof to show otherwise.

B. The taxpayer failed to meet his burden of proof to overcome the presumptive correctness of the department's assessment for tax year 1994.

C. The taxpayer did not sign his 1994 income tax return under duress.

The taxpayer has not appealed this decision. 



Interest income, municipal bonds.


Michael and Betty C. Borge vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, May 22, 2000). The issue in this case is whether the department properly determined that distributions received by the taxpayers from mutual funds that invest solely in obligations whose interest is subject to Wisconsin income tax is taxable as “interest” within the meaning of sec. 71.05(6)(a)1, Wis. Stats.

The taxpayers filed joint resident Wisconsin income tax returns for 1993 to 1996 (“the years at issue”). On those returns they reported interest received from individual state and municipal bonds. On those same returns, they excluded from income certain dividend distributions (“the disputed distributions”) received from mutual funds investing solely in federally tax-exempt state and/or municipal bonds. The department adjusted the returns for the years at issue, on the basis that the taxpayers may not exclude the disputed distributions.

The taxpayers filed a letter of objection, which the department considered a petition for redetermination. The taxpayers argued that the disputed distributions were not “interest” within the meaning of sec. 71.05(6)(a)1, Wis.

Stats., and are, therefore, not subject to Wisconsin income tax. The department denied the taxpayers’ petition for redetermination on grounds that the disputed distributions retain their character as state and municipal interest when passed as dividends to the shareholders of a mutual fund and are thus taxable under sec. 71.05(6)(a)1.

The Commission concluded that the department properly determined that dividend distributions received by the taxpayers from mutual funds investing solely in obligations whose interest is subject to Wisconsin income tax are includable in Wisconsin adjusted gross income as “interest,” pursuant to sec. 71.05(6)(a)1, Wis. Stats. The disputed distributions are expressly required by Internal Revenue Code sec. (852)(b)(5)(B) to be treated as “interest,” excludable for federal income tax purposes. Section 71.05(6)(a)1, Wis. Stats., requires that they be added back in determining Wisconsin adjusted gross income because they are “interest ... which is not included in federal adjusted gross income ...”

The taxpayers have appealed this decision to the Circuit Court. 



Records required – substantiation.

Billy E. and Terry Stephenson vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 20, 2000). The issue in this case is whether the taxpayers substantiated business and rental deductions and losses they claimed.


In 1991, Billy E. Stephenson (“the taxpayer”) attempted to open a telemarketing business. The business, allegedly operated out of the basement of the taxpayers’ home, was never formally incorporated, never had any employees, and never produced any receipts or income.


The taxpayer claimed to have purchased various items for use in the business, including office equipment and supplies, two boats, a camper, an automobile, and a commercial furnace. The taxpayer claimed a net business loss in 1991, a loss on the sale of business property (with a sales price of “0”) in 1992, and a loss on the sale of business property in 1994.

In addition, The taxpayers rented out the second floor of their residence in 1993 and received \$1,500 in rent. They claimed a rental loss for 1993. They also claimed an itemized deduction credit for unreimbursed employee business expenses in 1993 and 1994.

The department disallowed all of the losses and deductions, on the basis that none of the items were substantiated. The department did allow rental expenses to offset the gross rent of \$1,500 for 1993.

The Commission concluded that the department properly determined the taxpayers’ tax liability for 1991 to 1994, because the taxpayers did not substantiate the deductions and losses for those years.

The taxpayers have appealed this decision to the Circuit Court. 

 **Retirement funds exempt.** *Phillip A. and Ruth E. Kuss vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 26, 2000). The issue in this case is whether the taxpayers are entitled to a refund of Wisconsin income taxes paid on Ruth E. Kuss' pension income in 1994 and 1995, based on the exemption provided by sec. 71.05(1)(a), Wis. Stats.

Ruth E. Kuss ("the taxpayer") was a member of the State of Minnesota Teachers Retirement System ("MTRS"), or a predecessor system, on December 31, 1963. The taxpayer retired from the MTRS and began receiving a pension based on her 31 years of service.

The taxpayers reported the pension income on their 1994 and 1995 Wisconsin income tax returns. They later filed amended 1994 and 1995 returns, seeking a refund of the taxes paid on the pension income.

The department issued the refund for 1994 in October 1996 but later issued an assessment for recovery of the refund. The taxpayers returned the check "under protest," along with a petition for redetermination. The department denied the petition. In January 1997, the de-


partment denied the taxpayers' claim for refund for 1995. The taxpayers filed a petition for redetermination of that denial, and the department denied the petition.

The department's basis for its actions is that the taxpayer's pension income did not come from any of the retirement systems identified in sec. 71.05(1)(a), Wis. Stats. That section exempts payments from certain retirement systems based on membership in any of those systems as of December 31, 1963. The taxpayers' sole argument is that the statute unfairly discriminates against them because it grants an income tax exemption to members of certain retirement systems as of December 31, 1963, but not to other similarly situated pensioners.

The Commission concluded that the taxpayers are not entitled to a refund of Wisconsin income taxes paid on the taxpayer's pension income from the MTRS, because they have not shown that the disparate treatment under sec. 71.05(1)(a), Wis. Stats., is impermissibly irrational or arbitrary.

The taxpayers have not appealed this decision. [!\[\]\(aa53ad6fea213b8b2226d3077e30533a_img.jpg\)](#)

CORPORATION FRANCHISE AND INCOME TAXES

 **Dividends received deduction.** *Firststar Bank Wausau, N.A. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, April 24, 2000). The Wisconsin Tax Appeals Commission issued a decision on August 18, 1999, which the taxpayer appealed to the Circuit Court. See *Wisconsin Tax Bulletin* 115 (October 1999), page 24, for a summary of the Commission's decision. The issue in this case is whether the department properly disallowed, pursuant to sec. 71.26(3)(j), Wis. Stats., the taxpayer's deduction of dividends it received from the Federal Reserve Bank ("FRB").

The taxpayer is a national bank. As such, it is required to be a member of the Federal Reserve System and to hold FRB stock. FRBs, incorporated under the laws of the United States and not of any state, are exempt from all taxes except real estate taxes. The taxpayer received a dividend on its FRB stock and claimed a deduction for the dividend on its 1991 Wisconsin franchise tax return. The department disallowed the deduction, and the Commission affirmed the department's action.

The taxpayer argued that the Commission erroneously applied sec. 71.26(3)(j), Wis. Stats. (1991-92), by concluding that the FRB dividend could not be deducted. It further argued that, because the statute that allows the deduction discriminates against dividends received from non-Wisconsin corporations, it violates the Interstate Commerce, the Equal Protection, and the Supremacy clauses of the United States Constitution.

The Circuit Court concluded that the Commission's interpretation of sec. 71.26(3)(j), Wis. Stats. (1991-92), was reasonable, and that its application of the statute was consistent with that interpretation. The Circuit Court further concluded that although sec. 71.26(3)(j), Wis. Stats. (1991-92), is unconstitutional in certain respects, it is not unconstitutional with respect to the taxpayer's dividend. It only discriminates against dividends received from non-Wisconsin corporations that pay franchise and income taxes in other jurisdictions, a class that does not include the taxpayer's FRB dividend.

The taxpayer has not appealed this decision. [!\[\]\(248b91fcdac4810ffd15cf33fb6aec6f_img.jpg\)](#)

SALES AND USE TAXES



Manufacturing. *Parkview Sand & Gravel, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, July 25, 2000). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated June 22, 1999. See *Wisconsin Tax Bulletin* 115 (October 1999), page 25, for a summary of the Commission's decision. The issues in this case are:

- A. Whether the taxpayer's purchase and use of a backhoe and related parts and repairs was exempt from use tax under sec. 77.54(6)(a), Wis. Stats.
- B. Whether the taxpayer was negligent in failing to report use tax and filing incorrect use tax returns for taxable years 1992 to 1995.

The taxpayer is a Wisconsin corporation engaged in manufacturing operations at a sand and gravel pit. The taxpayer purchased the backhoe for use in its operations without paying any sales or use tax.

The department assessed the taxpayer use tax on its purchase of the backhoe because the backhoe was used partly outside the scope of manufacturing for:

- Stripping and restoration of land before and after extraction of stone (33% use),
- Excavation of earth and materials in creating new settling ponds (30.8%),
- And loading materials onto customers' trucks (1%).

The Department also imposed the 25% negligence penalty under sec. 77.60(3), Wis. Stats.

The Circuit Court affirmed the Commission's decision and concluded:

- A. The taxpayer's purchase of the backhoe and related parts and repairs is not exempt from use tax under sec. 77.54(6), Wis. Stats.
- B. The taxpayer was negligent in filing incorrect returns for the period under review.

The Circuit Court found the Commission's interpretation of sec. 77.54(6), Wis. Stats., reasonable when the Commission determined the backhoe was not used *exclusively* and *directly* in the manufacturing process, two of the elements required for the exemption.

The Circuit Court further found that the Commission's interpretation of sec. 77.60(3), Wis. Stats., was reasonable for the imposition of the negligence penalty because (1) the taxpayer had previously been audited for similar violations, (2) the taxpayer had no system of recording or reporting use tax on its purchases, and (3) when asked on its franchise tax returns if it made any purchases without payment of Wisconsin tax, it answered "no." The Court did not accept the taxpayer's explanation that (1) it relied on its suppliers to collect the tax, (2) its accountant found the items to be exempt, and (3) the department did not impose the negligence penalty during a prior audit when the taxpayer used the same record-keeping system.

The taxpayer has not appealed this decision.



Motor vehicles and trailers – nonresident purchases. *Wisconsin Department of Revenue vs. Johnson Welding & Manufacturing Company, Inc., a/k/a Johnson Truck Bodies* (Court of Appeals, District IV, July 13, 2000). On August 11, 1999, the Circuit Court for Dane County reversed the Wisconsin Tax Appeals Commission's December 30, 1998 decision. See *Wisconsin Tax Bulletin* 118 (January 2000), page 31, and *Wisconsin Tax Bulletin* 113 (April 1999), page 22, for summaries of the decisions of the Circuit Court and the Commission. The issue in this case is whether the taxpayer's sales of 25 truck bodies to a Minnesota corporation doing business in Wisconsin qualify as exempt sales under sec. 77.54(5)(a), Wis. Stats.

The truck bodies were delivered to Schwan's Sales Enterprises, Inc. ("Schwan's") in Rice Lake, Wisconsin, and installed on trucks assigned to Schwan's depots located in other states. Schwan's is a corporation organized and incorporated under the laws of Minnesota. Its corporate headquarters are, and at all times during its existence have been, in Minnesota. Schwan's does business in all 50 states, including permanent places of business at 19 locations throughout Wisconsin.

The Commission held that the taxpayer's sales to Schwan's qualified for the exemption under sec. 77.54(5)(a), Wis. Stats. because there is no provision in Chapter 77 that would find a corporation's residence different than its state of incorporation.


The Circuit Court reversed the Commission's decision, concluding that residency for sales tax exemptions was more reasonably determined on the basis of the nature and extent of a corporation's business activities in Wisconsin.

The Court of Appeals concluded that the Commission's interpretation of there being no provision in Chapter 77 to find a corporation's residence different from its state of incorporation was acceptable unless a more reasonable interpretation was available. Giving due weight to

the Commission's conclusions, and finding that it was not more reasonable to determine a corporation's residency based on the nature and extent of its Wisconsin business activities, the Court of Appeals was satisfied that the Commission's interpretation was correct and the taxpayer's sales qualified for the exemption.

The department appealed this decision to the Wisconsin Supreme Court but subsequently filed a notice of voluntary withdrawal, which was granted by the Supreme Court on August 23, 2000. [☞](#)

Services subject to the tax – towing.

 *Wisconsin Department of Revenue vs. City of Milwaukee* (Circuit Court for Dane County, July 20, 2000). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated February 28, 2000. See *Wisconsin Tax Bulletin* 119 (April 2000), page 22, for a summary of the Commission's decision. 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. 7.52(2)(a)10, Wis. Stats.


As a deterrent to illegal parking, the City of Milwaukee passed ordinance 101.25 that provided for the confiscation of illegally parked vehicles. The vehicles were released to the owners upon payment of a \$135 assessment. The City contracted with a private towing

company for these towing services for a flat \$35 towing fee.

The Circuit Court affirmed the Commission's decision and concluded that this case was the same as Example 4 of Tax Release 5 in *Wisconsin Tax Bulletin* 81 (April 1993), page 18. The City was the consumer of the towing services, it was not reselling the towing services, and it was not providing retail towing services under sec. 77.52(2)(a)10, Wis. Stats. The Court found the \$100 additional cost to the violator over the \$35 towing fee to be an additional charge, assessment, penalty, forfeiture, painful consequence, punishment established by law, or fine, and similar to a sentence under the criminal law.

The department has not appealed this decision. [☞](#)

WITHHOLDING OF TAXES

 **Officer liability.** *Alexander Alex vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 17, 2000). The issues in this case are:

- A. Whether the taxpayer is a responsible person who is liable for the unpaid withholding taxes of Alexis Investment Co., Inc. ("Alexis") under sec. 71.83(1)(b)2, Wis. Stats., for portions of 1992 and 1993.
- B. Whether the taxpayer is liable under sec. 73.01(4)(am), Wis. Stats., for an additional amount to be assessed by the Commission, on the grounds the taxpayer maintained this proceeding primarily for delay.

In a May 1997 stipulation, the taxpayer agreed to the following facts:

1. That he was the owner, president, and sole signatory on the business checking account of Alexis;
2. That he was a person with the authority and duty to withhold, account for, and pay over the withholding taxes of employees of Alexis;
3. That he failed to cause Alexis to pay withholding taxes to the department, even though sufficient funds existed in Alexis' business checking account;
4. That he paid other creditors of Alexis, knowing that the withholding taxes at issue were not paid; and
5. That he intentionally failed to pay the withholding tax liability of Alexis.

The only issue that remained after the May 1997 stipulation was the amount of the taxpayer's tax liability.

The matter was held in abeyance for more than two years, to allow Alexis to collect its accounts receivable and apply the proceeds to Alexis' withholding tax liability. In June 1999, the taxpayer's representative stated that Alexis had exhausted all collection efforts and conceded that there was no issue as to the amount of the taxpayer's liability. The taxpayer failed to respond to two subsequent settlement stipulations.

The Commission concluded as follows:

A. The taxpayer is liable for the withholding tax liability of Alexis, because he had the **authority** and **duty**

to direct payment of Alexis' taxes, and he **intentionally breached this duty**.

B. The taxpayer is liable under sec. 73.01(4)(am), Wis. Stats., for an additional amount to be assessed by the Commission, because he maintained this proceeding primarily for delay. The Commission ordered that \$750 be added to the assessment at issue in this case.

The taxpayer has not appealed this decision. [!\[\]\(e474458956c9a37fbf9586ddb60a7fa1_img.jpg\)](#)



Officer liability. *Robert H. Sabaska vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 26, 2000). The issue in this case is whether the taxpayer is a responsible person who is liable for withholding taxes.

The Commission set an initial telephone scheduling conference date of July 12, 2000, and in a Notice dated June 8, 2000, requested the taxpayer to provide a telephone number. The taxpayer did not supply a telephone number, was not at the telephone number listed in the telephone book, and did not appear at the July 12, 2000 scheduling conference. On July 13, 2000, the Commis-

sion issued a Scheduling Order Memorandum setting another telephone scheduling conference on July 25, 2000, and again requested the taxpayer to supply a telephone number. The taxpayer again failed to provide a telephone number.

The Commission, on its own motion, dismissed the taxpayer's petition for review because he ignored two telephone scheduling conferences and failed to provide any explanation for his actions.

The taxpayer has not appealed this decision. [!\[\]\(b792654f2cef9719eabeb6c5be00811e_img.jpg\)](#)



Officer liability. *Martha Washington vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 26, 2000). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid withholding taxes of Inner City Council on Alcoholism, Inc. ("the corporation"), under sec. 71.83(1)(b)2, Wis. Stats., for the period January through September 1996.

The taxpayer was a member of the corporation's board of directors and was the corporation's president and board chairperson, beginning in February 1996. The taxpayer was at the corporation's offices nearly every day and observed what obligations of the corporation were being paid. The taxpayer signed most of the corporation's semi-monthly withholding deposit reports and did not sign the reports for January through April and June 1996 until June 25, 1996. None of the tax due on any of the reports for the period January through September 1996 was remitted, or the reports were filed late, or both. The taxpayer also signed the corporation's 1996 annual withholding reconciliation report as Board Chairperson.

The corporation's checking account showed a positive balance, and other creditors were paid during the month of February 1996. However, no payments were made to the department for the withholding taxes due on the reports the taxpayer signed. The taxpayer directed the corporation's executive director to pay the withholding taxes during March 1996, but they also were not paid.

In mid-June 1996, the taxpayer became a signatory on the corporation's checking account and co-signed checks totaling \$1,811.70 to pay wages to four employees of the corporation. At the time, the corporation's checking account had a balance of nearly \$5,600. Deposits totaling \$4,100 were made in July 1996. The taxpayer also co-signed a check to the department for \$403.12 in July 1996, while checks totaling more than \$10,000 were paid to other creditors.

The Commission concluded that the taxpayer is a responsible person who is liable for the corporation's unpaid withholding taxes under sec. 71.83(1)(b)2, Wis. Stats., for the period January through September 1996.

The taxpayer was the corporation president and board chairperson and had **authority** to direct payment of the taxes. She exercised her authority by directing the executive director to pay the taxes, which were left unpaid, and by signing the corporation's withholding deposit reports, even though she did not see to it that the withholding taxes for those periods were paid. The taxpayer

was aware of the corporation's unpaid taxes and had a **duty** to make sure they were paid. She was directly involved with the corporation's payment of creditors and corporation payroll, and she **intentionally breached her duty** to pay the corporation's withholding taxes.

The taxpayer has not appealed this decision. [Ⓜ](#)



Officer liability. *Essie L. Zollicoffer vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 27, 2000). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid withholding taxes of Inner City Council on Alcoholism, Inc. ("the corporation") under sec. 71.83(1)(b)2, Wis. Stats., for the period January through September 1996.

The taxpayer was employed by the corporation as "interim executive director" from August 1995 until February 1996, when the corporation hired an executive director. At that point the taxpayer returned to her former position of "director of business and personnel."

With the assistance of others, including a bookkeeping firm, the taxpayer maintained the corporation's books and records between January 1 and July 30, 1996. The taxpayer's other duties included personnel administration and payroll.

Between January 1 and July 30, 1996, the taxpayer was an authorized co-signatory on the corporation's checking account. Each check required two signatures. Four other individuals were also authorized to sign checks. During that period the taxpayer co-signed payroll checks to pay net wages to employees of the corporation. During that period she knew that taxes withheld from wages were not being paid to the department.

The taxpayer was laid off as a paid employee of the corporation on June 30, 1996, but she continued to provide her services without pay until December 1996.

The taxpayer did not have the authority to order, direct, or prioritize the payment of taxes due to the department, or of other obligations of the corporation.

The Commission concluded that the taxpayer was not a person responsible for the payment of withholding taxes of the corporation within the meaning of sec. 71.83(1)(b)2, Wis. Stats., because she did not have the authority to pay or direct payment of the taxes to the department. Even though the taxpayer was one of five authorized check signatories, she needed prior approval to exercise that authority. Because she did not have the authority to see to the payment of withholding taxes, the taxpayer cannot be held liable as a responsible person.

The department has not appealed this decision but has adopted a position of nonacquiescence to the extent that the decision is based upon a factual finding that the taxpayer lacked the ability or authority to order, direct, or prioritize the payment of corporate taxes or other obligations due the department. The effect of this action is that, although the decision or order is binding on the parties for the instant case, the Commission's conclusions of law, its construction of statutes, its use of case law and other authority, and the legal rationale of its decision in the instant case are not binding upon or required to be followed by the department in other cases. [Ⓜ](#)

SALES AND USE TAXES, AND WITHHOLDING OF TAXES



Officer liability. *James R. Werner vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 16, 2000). The issues in this case are:

- A. Whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of Ceille Industries, Inc. ("Ceille Industries") under sec. 77.60(9), Wis. Stats, for the periods of August, 1990 and November 1990 through September 1992.
- B. Whether the taxpayer is a responsible person who is liable for the unpaid withholding taxes of Ceille Industries under sec. 71.83(1)(b)2, Wis. Stats., for the period of June 16 through September 30, 1992.

- C. Whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of Five Ceals, Inc. ("Five Ceals") under sec. 77.60(9), Wis. Stats., for the period of May through June, 1992.

During the period from July 15, 1990 to July 15, 1992, the taxpayer was the manager of a restaurant operated by Ceille Industries known as Country Gardens. Five Ceals held the liquor license for the bar on the premises. The taxpayer had little or no role in operating the bar, which was operated by another employee of Ceille Industries. The taxpayer had check writing authority on the business checking account of Ceille Industries which was also used to pay obligations of Five Ceals.


The taxpayer had no other position or office associated with Ceille Industries and was not a shareholder of Ceille Industries. The taxpayer had authority to run the day-to-day affairs of Country Gardens, but the Board of

Directors limited his authority in directing payments to vendors and creditors of Ceille Industries. The Board of Directors authorized the taxpayer to pay those vendors who required payment in exchange for supplies. Decisions concerning payments to other vendors and creditors, including the Department of Revenue, rested with the Board of Directors. The Board of Directors ordered the taxpayer to pay other expenses, while tax obligations went unpaid, and to pay taxes only when the restaurant's finances permitted.

The Commission concluded the taxpayer was not liable for the unpaid withholding tax or sales and use tax liabilities of Ceille Industries, or the unpaid sales and use tax liability of Five Ceals, because he lacked the authority to direct payment of the unpaid taxes.

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

DRUG TAXES

 **Drug tax, appeals – timeliness.** *David L. Gilbert vs. Wisconsin Department of Revenue* (Circuit Court for Waukesha County, June 21, 2000). The is a petition for judicial review of the Tax Appeals Commission's Ruling and Order dated August 27, 1999, and the Commission's October 8, 1999, denial of the taxpayer's petition for rehearing. See *Wisconsin Tax Bulletin* 118 (January 2000), page 33, for a summary of the Commission's August 27, 2000, decision.

In June 1993, the department issued a controlled substances tax assessment, plus interest and penalties, against the taxpayer, pursuant to sec. 139.93(1), Wis. Stats. The taxpayer paid the assessment.

In 1997, the Wisconsin Supreme Court, in *State v. Hall*, 207 Wis. 2d 54 (1997), held that secs. 139.87 to 139.96, Wis. Stats., the controlled substances tax, were unconstitutional because they violated the constitutionally guaranteed privilege against self-incrimination.

In November 1997, the taxpayer filed a claim for refund with the department, asserting that the department illegally collected amounts pursuant to the assessment since the controlled substances tax was declared unconstitutional in *Hall*. The department denied the claim for refund on the basis that it was not filed within two years of the assessment, as required under secs. 71.75(5) and 139.93(1), Wis. Stats. The taxpayer filed a petition for

redetermination, and the department denied it, again stating that the request was untimely.

The taxpayer filed a petition for review with the Commission, alleging that the assessment was invalid and that the department erred on a number of grounds, including timeliness, void assessment, and retroactivity. The department sought an order dismissing the petition, and the Commission granted the motion to dismiss without addressing whether the assessment itself was constitutionally valid under *Hall*. The Commission then denied the taxpayer's timely filed petition for rehearing.

The Circuit Court concluded that the taxpayer's petitions were in fact timely, and that the Commission improperly denied them. Because the drug tax was held to be unconstitutional, any assessment resulting from it is void and has no legal existence. The statute of limitations therefore cannot be triggered. Since the Commission denied the taxpayer's petition based on timeliness and did not address the other issues in the case, the Circuit Court may review only the timeliness issue.

Accordingly, the Circuit Court reversed the Commission's Ruling and Order dated August 27, 1999, as well as the October 8, 1999 Order denying the taxpayer's petition for rehearing. The Court also remanded the matter to the Commission for consideration of the taxpayer's refund and reassessment claims on the merits.

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



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. Occasional Sale Exemption in Section 77.54(7)(a), Wis. Stats.: When Does it Apply ? 30
2. Taxability of Computer Programs (Software)..... 38

SALES AND USE TAXES

Note: The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The 0.5% county sales and use tax and the 0.5% football stadium and 0.1% baseball 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 Occasional Sale Exemption in Section 77.54(7)(a), Wis. Stats.: When Does it Apply?

Statutes: Sections 77.51(9)(a) and 77.54(7)(a), Wis. Stats. (1997-98)

Purpose of Tax Release:

This tax release explains which sales qualify for the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98).

Caution: This tax release does not apply to the following sales:

- Sales of business assets, sold after the seller has ceased actively operating in the regular course of business as a seller (sec. 77.51(9)(am), Wis. Stats.).

- Auction sales (sec. 77.51(9)(e), Wis. Stats.).
- Sales of motor vehicles, snowmobiles, mobile homes, trailers, semitrailers, all-terrain vehicles or aircraft registered or titled, or required to be registered or titled, in Wisconsin (sec. 77.54(7)(b), Wis. Stats.).
- Sales of boats registered or titled, or required to be registered or titled, in Wisconsin or under the laws of the United States (sec. 77.54(7)(b), Wis. Stats.).
- Sales by nonprofit organizations, including governmental units (sec. 77.54(7m), Wis. Stats.).

Law:

Section 77.54(7)(a), Wis. Stats. (1997-98), provides a sales and use tax exemption for:

“...the **occasional sales** of tangible personal property and services and the storage, use or other consumption in this state of tangible personal property the transfer of which to the purchaser is an occasional sale.” (Emphasis supplied)

Section 77.51(9)(a), Wis. Stats. (1997-98), provides that “**occasional sales**” include:

“Isolated and sporadic sales of tangible personal property or taxable services where the infrequency, in relation to the other circumstances, including the sales price and the gross profit, support the inference that the seller is not pursuing a vocation, occupation or business or a partial vocation or occupation or part-time business as a vendor of personal property or taxable services. No sale of any tangible personal property or taxable service may be deemed an occasional sale if at the time of such sale the seller holds or is required to hold a seller’s permit, except that this provision does not apply to an organization required to hold a seller’s permit solely for the purpose of conducting bingo games and except as provided in par. (am).” (**Note:** “Par. (am),” as used in sec. 77.51(9)(a), Wis. Stats. (1997-98), relates to sales of business assets, sold after the seller has ceased actively operating in the regular course of business as a seller. This tax release does not apply to such sales.)

Questions Answered in This Tax Release:

Question 1: If a seller's "taxable sales"* are less than \$1,000 in a calendar year, does the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), apply for that year?.....See page 32

Question 2: If a seller's "taxable sales"* are \$1,000 or more in a calendar year, does the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), apply for that year?.....See page 34

Question 3: If a seller's "taxable sales"* are \$1,000 or more in a calendar year and do not qualify for the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), does the occasional sale exemption apply to the first \$999 of "taxable sales"?.....See page 36

Question 4: If a seller's "taxable sales"* qualify for the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), may the seller give its supplier an exemption certificate claiming resale on tangible personal property or taxable services it purchases for resale?....See page 36

Question 5: May a seller inactivate its seller's permit and qualify for the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), for "taxable sales"* made after it inactivates its permit?...See page 37

Caution: The following notes apply to this tax release:

Note 1: Page numbers refer to the page numbers of the tax release as it appears in *Wisconsin Tax Bulletin 122* (October 2000).

Note 2: The transactions and situations described in this tax release occur in Wisconsin, unless otherwise indicated.

Note 3: "Tangible personal property" and "Taxable services" are defined as follows:

- **"Tangible personal property"** means all tangible personal property, whether or not sales or use tax is imposed on the sale of such property.

Example. Manufacturer A sold \$50,000 of widgets (with no tax imposed) to wholesalers who provided Manufacturer A with exemption certificates claiming resale. It also sold furniture that it used in its office for \$10,000.

"Tangible personal property" of \$60,000 was sold by Manufacturer A. This includes both (1) the \$50,000 of widgets sold to wholesalers, and (2) the \$10,000 sale of furniture.

- **"Taxable services"** means those services listed in sec. 77.52(2)(a), Wis. Stats. (1997-98), whether or not sales or use tax is imposed on the sale of such services.

Example. Landscaper B sold \$100,000 of landscaping services to customers who provided Landscaper B with exemption certificates claiming resale. Landscaper B also sold lawn seeding services of \$2,000 to Customer C who did not provide an exemption certificate, and snowplowing services of \$30,000 to Customer D.

"Taxable services" of \$102,000 were sold by Landscaper B. This includes both (1) the \$100,000 of landscaping services for which it received exemption certificates, and (2) the \$2,000 sale to Customer C. "Taxable services" does not include the \$30,000 of snowplowing services. Snowplowing services are not listed in sec. 77.52(2)(a), Wis. Stats. (1997-98).

Note 4: "Taxable sales" means total **taxable** receipts from sales of tangible personal property and taxable services, after subtracting "allowable deductions." For those persons filing a sales and use tax return (Form ST-12), "allowable deductions" includes amounts properly reportable on the following lines of Form ST-12 (9/00 Revision):

- Line 2, Resale and exemption certificate sales
- Line 3, Sales of exempt property and services (interstate commerce, real property, groceries, highway fuel, etc.)
- Line 4, Other (sales tax if included in line 1, returns, trade-ins, etc.)

Exception: "Allowable deductions" does not include "tax paid purchases resold," which is deducted on line 4, Form ST-12. For example, Seller A sells tangible personal property to Seller B for \$100 plus \$5 sales tax. Seller B then sells the tangible personal property to Customer C for \$150 plus \$7.50 sales tax. Seller B may take a deduction of \$100 for "tax paid purchases resold" on line 4 of its Form ST-12, when reporting the tax on its sale to Customer C. However, the \$100 on line 4 is not

* See Note 4 on pages 31 and 32 for a definition of "taxable sales."

an allowable deduction in determining “taxable sales.” Seller B’s “taxable sales” do include the \$150 sale of tangible personal property to Customer C.

For those who do not file a sales and use tax return, “allowable deductions” includes amounts which would be properly reported on lines 2 through 4 (except “tax paid purchases resold”), if the seller had filed an ST-12.)

Examples of “Taxable Sales”:

Example 1. Individual D operates a business providing accounting services and also sells soda water beverages. Individual D’s total gross receipts from sales of accounting services and soda water beverages are \$30,900. The “accounting services” portion of Individual D’s total gross receipts is \$30,000. Soda water beverage sales are \$900.

Individual D’s “taxable sales” are \$900. Since accounting services are nontaxable services, the \$30,000 of receipts are not included in “taxable sales.”

Example 2. Company E operates a home construction business and also makes repairs to tangible personal property. Company E’s total gross receipts are \$51,500. Nontaxable real property construction activities generate \$50,000 of Company E’s total gross receipts. Repairs to tangible personal property generate \$1,500 of Company E’s total gross receipts. Company E receives exemption certificates for \$1,400 of the repairs to tangible personal property.

Company E’s “taxable sales” are \$100 (\$1,500 repairs to tangible personal property less \$1,400 of such repairs for which it receives properly completed exemption certificates).

Note 5: “Required to hold a seller’s permit”: A seller is “required to hold a seller’s permit” if it makes sales of tangible personal property or taxable services which:

- (a) Do not meet the definition of “occasional sales” in any of the following 3 provisions:
 - Section 77.51(9)(a), Wis. Stats. (1997-98), which relates to isolated and sporadic sales,
 - Section 77.51(9)(am), Wis. Stats. (1997-98), which relates to certain sales of business assets, or

- Section 77.51(9)(e), Wis. Stats. (1997-98), which relates to certain auction sales; **and**

- (b) Are retail sales on which sales tax should be imposed (for example, sales of computers for which the seller does not receive an exemption certificate).

“Seller’s permit,” as used in this tax release, includes both seller’s permits and use tax registration certificates. Use tax registration certificates are generally issued by the Wisconsin Department of Revenue to retailers who do not have a physical location in Wisconsin.

Questions, Answers, and Examples:

Question 1: If a seller’s “taxable sales”* are less than \$1,000 in a calendar year, does the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), apply for that year?

Answer 1: Yes.

Exception: The “taxable sales”* **do not qualify** for the occasional sale exemption if the seller:

- (a) Holds a seller’s permit at the time of the sales, or does not hold a seller’s permit but is required to hold a seller’s permit, and
- (b) The tangible personal property sold is a business asset of the seller (including inventory), or the taxable services sold are sold in the seller’s business to which the seller’s permit, or seller’s permit requirement, relates.

Note: If a seller’s “taxable sales”* are less than \$1,000 during the calendar year, and the exception above does not apply, the seller’s sales qualify for the occasional sale exemption, regardless of the frequency of the seller’s “taxable sales.”*

A. Examples - “Taxable Sales”* Are Less Than \$1,000, Seller Is Not in a Business

Example 1. From April to October each year, Individual A mows lawns for neighbors. Individual A does not hold a seller’s permit and does not make any other “taxable sales”* of tangible personal property or taxable services. Individual A’s receipts from providing lawn mowing services are \$500 for the calendar year 2000.

* See Note 4 on pages 31 and 32 for a definition of “taxable sales.”

Individual A's 2000 sales of \$500 of lawn mowing services qualify as exempt occasional sales because Individual A:

- (a) Does not hold a seller's permit, and is not required to hold a seller's permit, and
- (b) Has "taxable sales"* of less than \$1,000 in the calendar year 2000.

Example 2. Individual B holds a two-day garage sale at her home in July 2000 and sells \$600 of household goods. Individual B does not hold a seller's permit and makes no other "taxable sales"* of tangible personal property or taxable services during the calendar year 2000.

Individual B's 2000 sales of \$600 of household goods qualify as exempt occasional sales because Individual B:

- (a) Does not hold a seller's permit, and is not required to hold a seller's permit, and
- (b) Has "taxable sales"* of less than \$1,000 in the calendar year 2000.

Example 3. Individual C makes quilts and sells them at a craft fair. Individual C has "taxable sales"* of \$900 of quilts in the calendar year 2000. Individual C does not hold a seller's permit.

Individual C's 2000 quilt sales of \$900 qualify as exempt occasional sales because Individual C:

- (a) Does not hold a seller's permit, and is not required to hold a seller's permit, and
- (b) Has "taxable sales"* of less than \$1,000 in the calendar year 2000.

B. Examples - "Taxable Sales"* Are Less Than \$1,000, Seller Is in a Business

Example 1. On October 20, 2000, Company D purchases the following equipment: truck, trailer, three riding lawn mowers, and two push mowers. Company D begins mowing lawns for residential and commercial customers. From October 20, 2000 through November 5, 2000 (the end of the 2000 mowing season), Company D's receipts from providing lawn mowing services are \$900. Company D does not hold a seller's permit and does not make any other "taxable sales"* of tangible

personal property or taxable services during the calendar year 2000.

Company D's 2000 sales of \$900 of lawn mowing services do not qualify as exempt occasional sales because Company D was required to hold a seller's permit, starting on October 20, 2000. The facts and circumstances indicate that Company D is pursuing a business as a vendor of taxable services (i.e., landscaping services) starting on October 20, 2000.

Example 2. Company E opens a restaurant and begins making "taxable sales"* of meals, food, and beverages on December 26, 2000. Company E obtains a seller's permit on January 1, 2001. Company E's "taxable sales"* for the period of December 26, 2000 through December 31, 2000 are \$900. Company E makes no other "taxable sales"* of tangible personal property or taxable services during the calendar year 2000.

Company E's 2000 sales of \$900 of meals, food, and beverages do not qualify as exempt occasional sales because Company E was required to hold a seller's permit, starting on December 26, 2000. The facts and circumstances indicate that Company E is pursuing a business as a vendor of personal property starting on December 26, 2000.

Example 3. Individual F obtains a seller's permit on December 15, 2000 for a bookstore. Individual F's "taxable sales"* of books for the period of December 15, 2000 through December 31, 2000 are \$900. Individual F makes no other "taxable sales"* of tangible personal property or taxable services during the calendar year 2000.

Individual F's 2000 book sales of \$900 do not qualify as exempt occasional sales because Individual F held a seller's permit at the time of the sales and the tangible personal property sold (books) is business inventory of Individual F.

Example 4. Company G is a retailer of carpeting and rugs, with its store located in Illinois. Company G does not hold a Wisconsin seller's permit. Company G's total gross receipts from sales of carpeting and rugs are \$500,000 for the calendar year 2000. Of the \$500,000 of receipts, \$499,200 are from sales which occurred in Illinois. The remaining \$800 are from sales of rugs in Wisconsin.

* See Note 4 on pages 31 and 32 for a definition of "taxable sales."

Company G's calendar year 2000 "taxable sales"* are \$800, and such sales qualify as exempt occasional sales because Company G:

- (a) Does not hold a Wisconsin seller's permit and is not required to hold a Wisconsin seller's permit, and
- (b) Has "taxable sales"* of less than \$1,000 in the calendar year 2000.

Example 5. Individual H is a farmer who sells \$100,000 of vegetables during the calendar year 2000. (The vegetable sales are nontaxable sales.) Individual H does not hold a seller's permit. In August 2000, Individual H sells a garden tractor, which is a business asset of Individual H, to a nonfarmer for \$500. Individual H makes no other "taxable sales"* of tangible personal property or taxable services during the calendar year 2000.

Individual H's calendar year 2000 "taxable sales"* are \$500 (sale of the garden tractor). The sale of the garden tractor qualifies as an exempt occasional sale because Individual H:

- (a) Does not hold a seller's permit and is not required to hold a seller's permit, and
- (b) Has "taxable sales"* of less than \$1,000 in the calendar year 2000.

(**Note:** Example 2, page 35, column 2, is the same as this example, except the garden tractor is sold for \$1,500, and the sale **does not** qualify as an exempt occasional sale.)

Question 2: If a seller's "taxable sales"* are \$1,000 or more in a calendar year, does the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), apply for that year?

Answer 2:

- **If the seller holds a seller's permit** and the tangible personal property sold is a business asset (including inventory) of the seller, or the taxable services sold are sold in the seller's business, then the occasional sale exemption does not apply and the sales are taxable. (**Note:** All sales of tangible personal property by a partnership or corporation are considered to be sales of business assets. All taxable services sold by a partnership or corporation are considered to be sold in the seller's business.)

- **If the seller does not hold a seller's permit** and the "taxable sales"* are:

- (a) Isolated and sporadic, and the facts and circumstances indicate that the seller is not pursuing a business or a part-time business as a vendor of tangible personal property or taxable services (as provided in sec. 77.51(9)(a), Wis. Stats. (1997-98)), the "taxable sales"* are exempt occasional sales.
- (b) Not isolated and sporadic, and the facts and circumstances indicate that the seller is pursuing a business or a part-time business as a vendor of tangible personal property or taxable services (as provided in sec. 77.51(9)(a), Wis. Stats. (1997-98)), the "taxable sales"* are taxable.

Summary of Tax Treatment - "Taxable Sales"* of \$1,000 or More

The following summarizes the sales and use tax treatment for various situations involving "taxable sales"* of \$1,000 or more in a calendar year.

"Taxable Sales"* by Individuals ("Taxable Sales"* Are \$1,000 or More in the Calendar Year)

Individual holds a seller's permit

If the tangible personal property sold is a business asset (including inventory) of the seller, or the taxable services sold are sold by the seller in the seller's business, the sales of the tangible personal property or taxable services do not qualify as exempt occasional sales.

If the tangible personal property sold is **not** a business asset (including inventory) of the seller, or the taxable services sold are **not** sold in the seller's business, the facts and circumstances are used to determine whether the sales of the tangible personal property or taxable services qualify as exempt occasional sales.

Example 1. Individual A operates a restaurant as a sole proprietor and holds a seller's permit. Between January 2000 and July 2000, she builds a roll-top desk as a hobby. The desk is not a business asset of Individual A. On September 1, 2000, she sells the desk for \$2,500. The desk is her only sale of tangible personal property or taxable services during the calendar year 2000 (other than restaurant sales).

* See Note 4 on pages 31 and 32 for a definition of "taxable sales."

Individual A's sale of the desk is an exempt occasional sale because (1) it is an isolated and sporadic sale of tangible personal property, and the facts and circumstances indicate that the seller is not pursuing a business or a part-time business as a vendor of desks (tangible personal property), and (2) the desk is not a business asset.

Example 2. Individual B operates a photography studio and holds a seller's permit. In addition, Individual B has receipts of \$10,000 for the calendar year 2000 from repairing electronic equipment in his home, making approximately three to four repairs each month.

Individual B's repairs of electronic equipment do not qualify as exempt occasional sales because the facts and circumstances indicate that Individual B is pursuing a business as a vendor of taxable electronic equipment repair services.

Individual does not hold a seller's permit

If (1) the facts and circumstances indicate that the individual is pursuing a business or a part-time business as a vendor of tangible personal property or taxable services, and (2) the tangible personal property sold is a business asset (including inventory) of the seller or the taxable services sold are sold in the seller's business, the individual's sales do not qualify as exempt occasional sales.

If the facts and circumstances indicate that the individual is **not** pursuing a business or a part-time business as a vendor of personal property or taxable services, the individual's sales qualify as exempt occasional sales.

Example 1. Individual A provides accounting services as a sole proprietor. Individual A does not hold a seller's permit.

Individual A sells \$100 of photocopies, that are not transferred with accounting services, during the calendar year 2000, making "taxable sales"* of photocopies on a total of five days in 2000. Individual A sells \$10,000 of office furniture and equipment used in the accounting business on August 15, 2000.

Both the \$100 of photocopy sales and the \$10,000 sale of office furniture and equipment qualify as exempt occasional sales. Such sales are isolated and sporadic and the facts and circumstances indicate that Individual A is not pursuing a business or part-time business as a vendor of personal property or taxable services.

Example 2. Individual B is a farmer who sells \$100,000 of vegetables during the calendar year 2000. (Note: The vegetable sales are nontaxable sales.) Individual B does not hold a seller's permit. In August 2000, Individual B sells a garden tractor, which is a business asset of Individual B, to a nonfarmer for \$1,500. Individual B makes no other "taxable sales"* of tangible personal property or taxable services during the calendar year 2000.

Individual B's sale of the garden tractor does not qualify as an exempt occasional sale because:

- (a) Individual B is engaged in business as a vendor of tangible personal property,
- (b) Individual B's "taxable sales"* (sale of garden tractor for \$1,500) are \$1,000 or more for the calendar year 2000, and
- (c) the garden tractor is a business asset of Individual B.

(**Note:** Example 5, page 34, is the same as this example, except the garden tractor is sold for \$500, and the sale qualifies as an exempt occasional sale.)

"Taxable Sales"* by Partnerships and Corporations ("Taxable Sales"* Are \$1,000 or More in the Calendar Year)

Partnership/Corporation holds a seller's permit

"Taxable sales"* do not qualify for the occasional sale exemption.

Partnership/Corporation does not hold seller's permit

The facts and circumstances are used to determine whether the "taxable sales"* qualify as exempt occasional sales.

If the facts and circumstances indicate that the partnership or corporation is pursuing a business or a part-time business as a vendor of tangible personal property or taxable services, the partnership's or corporation's sales do not qualify as exempt occasional sales.

If the facts and circumstances indicate that the partnership or corporation is **not** pursuing a business or a part-time business as a vendor of personal property or taxable services, the partnership's or corporation's sales qualify as exempt occasional sales.

* See Note 4 on pages 31 and 32 for a definition of "taxable sales."

Example 1. Corporation A provides medical services at its clinic. Corporation A does not hold a seller's permit. During the calendar year 2000, Corporation A sells \$2,500 of photocopies of medical records, averaging approximately three sales each week. These photocopies are not transferred incidentally with medical services.

Corporation A's sales of photocopies of medical records do not qualify for the occasional sale exemption because such sales are not isolated and sporadic. The facts and circumstances indicate that Corporation A is pursuing a business as a vendor of personal property or taxable services.

Example 2. Corporation B provides medical services at its clinic. Corporation B does not hold a seller's permit. From January 1, 2000 to June 30, 2000, Corporation B sells \$500 of photocopies of medical records. These photocopies are not transferred incidentally with medical services.

On July 1, 2000, Corporation B sells computers it used in its business for \$10,000. From July 1, 2000 through December 31, 2000, Corporation B sells an additional \$1,000 of photocopies of medical records. Corporation B averages two "taxable sales"* of photocopies of medical records each week.

Both the sales of the photocopies of medical records (the entire \$1,500 of photocopies sold during the calendar year 2000) and the sale of the computers are taxable. Neither the sales of photocopies nor the sale of the computers qualify for the occasional sale exemption. The facts and circumstances indicate that Corporation B is pursuing a business as a vendor of personal property or taxable services for the calendar year 2000.

The fact that Corporation B had not yet reached \$1,000 in "taxable sales"* of photocopies at the time it sold the computers does not mean that Corporation B was not required to hold a seller's permit. The facts and circumstances indicate that Corporation B was required to hold a seller's permit for the entire calendar year 2000.

Example 3. Company C operates an accounting business. Company C does not hold a seller's permit. On May 1, 2000, Company C sells office furniture for \$800. On November 15, 2000, Company C sells a computer for \$3,000. The office furniture and computer are business assets of Company C. Company C makes no other sales of tangible personal property or taxable services during the calendar year 2000.

Because Company C's sales of tangible personal property are isolated and sporadic, and the facts and circumstances indicate that Company C is not pursuing a business or a part-time business as a vendor of tangible personal property or taxable services, its sales of both the office furniture and computer during the calendar year 2000 qualify as exempt occasional sales.

Question 3: If a seller's "taxable sales"* are \$1,000 or more in a calendar year and do not qualify for the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), does the occasional sale exemption apply to the first \$999 of "taxable sales"*?

Answer 3: No.

Example. Individual A files an application for a seller's permit, Form A-101, with the Wisconsin Department of Revenue on February 15, 2000, indicating that monthly "taxable sales"* at his restaurant will be \$5,000. On February 20, 2000, Individual A is issued a seller's permit. Individual A opens the restaurant on March 1, 2000.

None of Individual A's year 2000 sales of food, beverages, etc. (including the first \$999 of sales) at the restaurant qualify for the occasional sale exemption, because Individual A held a seller's permit at the time of the sales.

Note: Even if Individual A did not hold a seller's permit, the first \$999 of sales at the restaurant would still be subject to tax, because Individual A is engaged in the business of selling tangible personal property and is required to hold a seller's permit.

Question 4: If a seller's "taxable sales"* qualify for the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), may the seller give its supplier an exemption certificate claiming resale on tangible personal property or taxable services it purchases for resale?

Answer 4: No. If a seller is not pursuing a business or a part time business as a vendor of tangible personal property or taxable services (that is, the seller's sales are "occasional sales" as provided in sec. 77.51(9)(a), Wis. Stats. (1997-98)), the seller is liable for sales or use tax on its purchases of tangible personal property or taxable services it transfers to customers.

Example. Individual A sells \$500 of popcorn during the calendar year 2000. Individual A does not hold a seller's

* See Note 4 on pages 31 and 32 for a definition of "taxable sales."

permit and is not required to hold a seller's permit. Individual A makes no other sales of tangible personal property or taxable services during the calendar year 2000. Individual A's sales of popcorn qualify as exempt occasional sales. Individual A may not claim a resale exemption on his purchases of popcorn which he sells as exempt occasional sales.

Question 5: May a seller inactivate its seller's permit and qualify for the occasional sale exemption in sec. 77.54(7)(a), Wis. Stats. (1997-98), for "taxable sales"* made after it inactivates its permit?

Answer 5: Yes, provided that, after the seller inactivates its seller's permit, the seller is not **required** to hold a seller's permit.

Note: If a seller "guesses" wrong (inactivates seller's permit anticipating that it will not be required to hold a seller's permit, but after the seller's permit is inactivated, the seller **is** required to hold a seller's permit), the seller's "taxable sales"* do not qualify for the occasional sale exemption.

Example 1. Individual A is a landlord who rents apartments for \$750 per month. If a person wants a parking space, Individual A charges an extra \$50 per month. Individual A obtains a seller's permit on January 1, 1997. Individual A has the following receipts from the \$50 parking charge:

1997 - \$1,200
 1998 - \$1,250
 1999 - \$1,300
 1/1/00 to 7/31/00 - \$600
 8/1/00 to 12/31/00 - \$200

On July 31, 2000, Individual A sold an apartment building and expects her parking receipts to be less than \$1,000 per year, and expects to make no other sales of tangible personal property or taxable services. Individual A inactivates her seller's permit on July 31, 2000.

Individual A qualifies for the occasional sale exemption under secs. 77.51(9)(a) and 77.54(7)(a), Wis. Stats. (1997-98), on her receipts from parking during the period of August 1, 2000 through December 31, 2000. After inactivating her seller's permit, Individual A did not hold a seller's permit for the period of August 1,

2000 through December 31, 2000. Also, Individual A's "taxable sales"* are less than \$1,000 for the calendar year 2000.

Note: Because Individual A held a seller's permit during the period of January 1, 2000 through July 31, 2000, Individual A's receipts from parking for this period do not qualify for the occasional sale exemption.

Example 2. Same as Example 1, except Individual A's receipts from parking are as follows:

1997 - \$2,000
 1998 - \$2,100
 1999 - \$2,050
 1/1/00 to 7/31/00 - \$1,200
 8/1/00 to 12/31/00 - \$250

On July 31, 2000, Individual A sold an apartment building and expects her parking receipts to be only \$600 per calendar year in the year 2001 and future years. Individual A inactivates her seller's permit on July 31, 2000.

Because Individual A's calendar year 2000 "taxable sales"* of parking are \$1,000 or more, and the facts and circumstances of Individual A's sales indicate that Individual A is pursuing a business as a vendor of taxable services, Individual A's receipts from parking during the entire calendar year 2000 do not qualify for the occasional sale exemption.

Note: Individual A should not have inactivated her seller's permit on July 31, 2000, because her "taxable sales"* during the entire calendar year 2000 are \$1,000 or more. Individual A may inactivate her seller's permit on December 31, 2000, because she expects her parking receipts to be only \$600 per year for the calendar year 2001 and after.

Other Questions?

If you have questions about whether specific sales qualify for the occasional sale exemption, please write to Wisconsin Department of Revenue, Administration Technical Services, PO Box 8933, Madison WI 53708-8933. [✉](#)

* See Note 4 on pages 31 and 32 for a definition of "taxable sales."

2 Taxability of Computer Programs (Software)

Statutes: Sections 77.51(14)(h) and (j) and (20) and 77.52(1) and (2)(a)10, Wis. Stats. (1997-98)

Wis. Adm. Code: Section Tax 11.71, Wis. Adm. Code (April 1993 Register)

Note: This tax release supersedes the tax release titled “Taxability of Computer Programs (Software)” that appeared in *Wisconsin Tax Bulletin* 79 (October 1992), page 23. The substantive changes to the previous draft are as follows:

- The Circuit Court for Dane County decision, in the case of *Manpower International, Inc. vs. Wisconsin Department of Revenue* (June 15, 1995, Case No. 94-CV-2858), is addressed to explain why all computer programs prior to May 1, 1992 are not tangible personal property and, therefore, are not subject to Wisconsin sales or use tax.
- Reference to the Court of Appeals decision in the case of *Wisconsin Department of Revenue v. International Business Machines* (CCH 202-983, June 23, 1988) is removed. This case may not be used in the determination of what is a custom computer program.

“Sale” for purposes of this tax release includes the license or lease of computer programs.

Background: Section 77.51(20), Wis. Stats. (1997-98), defines tangible personal property to include computer programs, except custom computer programs (effective May 1, 1992).

The Circuit Court for Dane County, in the case of *Manpower International, Inc. vs. Wisconsin Department of Revenue* (June 15, 1995, Case No. 94-CV-2858), affirmed a decision of the Wisconsin Tax Appeals Commission which held that prior to May 1, 1992, non-custom computer programs were not subject tangible personal property.

In summary, prior to May 1, 1992, the sale, lease, or license of computer programs (custom and noncustom) is not subject to Wisconsin sales or use tax. Beginning May 1, 1992, and thereafter, the sale, lease, or license of computer programs, except custom computer programs, is subject to Wisconsin sales or use tax, unless an exemption applies.

The determination of whether a computer program is a custom program is based on the criteria set forth in sec. Tax 11.71(1)(e), Wis. Adm. Code (April 1993 Register), which are as follows:

- a. The extent to which the vendor or independent consultant engages in significant presale consultation and analysis of the user's requirements and system.
- b. Whether the program is loaded into the customer's computer by the vendor, and the extent to which the installed program must be tested against the program's specifications.
- c. The extent to which the use of the programs requires substantial training of the customer's personnel and substantial written documentation.
- d. The extent to which the enhancement and maintenance support by the vendor is needed for continued usefulness.
- e. There is a rebuttable presumption that any program with a cost of \$10,000 or less is not a custom program.
- f. Custom programs do not include basic operational programs or prewritten programs.
- g. If an existing program is selected for modification, there must be a significant modification to the program by the vendor so that it may be used in the customer's specific hardware and program environment.

Facts and Questions: The following questions and answers illustrate the department's position regarding the taxability of sales of computer programs on or after May 1, 1992.

Facts and Question 1: Vendor SV-A develops and markets computer programs for users of computers that improve operating system performance and user productivity. The programs are system programs (i.e., basic operational programs as defined in sec. Tax 11.71(1)(c), Wis. Adm. Code), which activate and control the computer hardware. Other pertinent facts include:

- a. The exact programs or modules sold by Vendor SV-A exist at the time that the customer places an order. Vendor SV-A does not change the preexisting programs or modules based upon the customer's data or specific hardware or program environment.

- b. Vendor SV-A's salespersons determine which operating system program is appropriate for the customer's operating system environment when an order is placed.
- c. A copy of the program in machine-readable form is made by transferring a copy of the program from the master magnetic tape to a blank tape, which is then sent to the customer.
- d. Vendor SV-A instructs its customers to return the tape as soon as copies of the programs contained on the tape have been read into the customers' system. Vendor SV-A reuses the returned tapes to transmit the same or other programs to other customers.
- e. The customer has the option of making its own backup copies of the programs on its own tape or other media.
- f. Vendor SV-A does not load the programs into the customer's computer.
- g. Vendor SV-A provides maintenance and improvements to these programs for most of its customers.
- h. Vendor SV-A provides telephone support during and after installation.
- a. The exact programs or modules Vendor SV-B licenses exist at the time that the customer places an order. Vendor SV-B does not change the preexisting programs or modules based upon the customer's data or specific hardware or program environment.
- b. Vendor SV-B's salespersons determine which operating system program is appropriate for the customer's operating system environment when an order is placed.
- c. A copy of the program in machine-readable form is made by transferring a copy of the program from the master magnetic tape to a blank tape, which is then sent to the customer.
- d. Vendor SV-B's customer copies the tape, retains the tape in a vault for two years as a backup, and then discards the tape when a new release is issued.
- e. Vendor SV-B does not load the program into the customer's computer.
- f. Vendor SV-B provides maintenance and improvements to these programs for most of its customers.
- g. Vendor SV-B provides telephone support during and after installation.

Are the sales of the programs and maintenance of the programs by Vendor SV-A subject to Wisconsin sales and use tax?

Answer 1:

Yes. The programs sold by Vendor SV-A are systems programs and are tangible personal property. Section Tax 11.71(1)(e)6, Wis. Adm. Code, specifically provides that custom programs do not include basic operational programs (commonly referred to as "systems programs"). Since the systems programs are not custom programs, they are tangible personal property under sec. 77.51(20), Wis. Stats. (1997-98). Therefore, the sales of the programs and any maintenance associated with the programs are subject to Wisconsin sales or use tax.

Facts and Question 2: Vendor SV-B sells programs that assist a computer's operating system in monitoring usage levels to help prevent system crashes. The programs are systems programs. Other pertinent facts include:

Are the sales of the programs and maintenance for the programs by Vendor SV-B subject to Wisconsin sales and use tax?

Answer 2:

Yes. The programs sold by Vendor SV-B are systems programs. Section Tax 11.71(1)(e)6, Wis. Adm. Code, specifically provides that custom programs do not include basic operational programs (commonly referred to as "systems programs"). Since the systems programs are not custom programs, they are tangible personal property under sec. 77.51(20), Wis. Stats. (1997-98). Therefore, the sales of the programs and maintenance relating to the programs are subject to Wisconsin sales or use tax.

Facts and Question 3: Vendor SV-C sells utility programs, which capture and archive messages as jobs are run on mainframe computers. The prospective customer contacts Vendor SV-C, usually after reviewing a brochure or trade magazine. Other pertinent facts regarding these programs include:

- a. Vendor SV-C's salespersons determine which operating system program is appropriate for the customer's operating system environment when an order is placed.
 - b. The programs exist at the time a customer places an order, and modifications are not made to any programs prior to the shipment of the program to the customer.
 - c. Programs are transferred to the customer on magnetic tape.
 - d. Vendor SV-C's customer copies the tape and returns the tape to Vendor SV-C as instructed.
 - e. No training is provided to the customer's personnel, although installation instructions and user instructions are included with the programs.
 - f. The programs are loaded, installed, and tested by the customer.
 - g. The program is licensed annually. Maintenance and enhancements are included in the license fee.
 - h. A customer may modify the programs; however, modifications to the object code (the program itself) voids the warranty.
 - i. Corrections to the programs are released as needed, usually every six months. Enhancements are issued about once a year.
- a. Prior to a sale, Vendor SV-D personnel spend 40 to 60 hours in meetings with the customer to determine the needs of the customer.
 - b. The systems sold are made up of several modules (programs). Each module requires some modification. A minor modification might require adding another field or changing the length of a field. A major modification might require changing the method of computing discounts. Major modifications take 160 person-hours or more.
 - c. Vendor SV-D will install and test the programs on a customer's system, which normally takes 20 to 40 hours.
 - d. Training is available and strongly recommended to customers.
 - e. Documentation provided to each customer includes a reference manual and actual source code (the programs). The documentation is customized for each system.
 - f. Vendor SV-D provides modifications to the programs as its principal form of maintenance. A modem is set up to enable Vendor SV-D's computer to talk with the customer's computer. When a problem is encountered, the customer contacts Vendor SV-D via a hotline. A technician at Vendor SV-D's headquarters can make changes to the customer's program, compile it, test it, and have it ready for the customer without leaving his or her desk. Telephone support constitutes 98% of the support provided.
 - g. Program upgrades are made periodically. These upgrades are purchased separately, usually at 10% of the current list price.
 - h. Maintenance is billed separately.

Is the sale of the utility program by Vendor SV-C subject to Wisconsin sales or use tax?

Answer 3:

Yes. Based on the criteria in sec. Tax 11.71(1)(e), Wis. Adm. Code, the computer programs are not custom programs. Therefore, the programs are tangible personal property, and the sale of the programs is subject to Wisconsin sales or use tax.

Facts and Question 4: Vendor SV-D sells computer systems for manufacturers and distributors. Vendor SV-D sells both the hardware and programs to a customer. The base price of the program is \$20,000. The program is purchased independent of the hardware.

Other pertinent facts regarding Vendor SV-D include:

Are the programs and maintenance sold by Vendor SV-D subject to Wisconsin sales or use tax?

Answer 4:

No. The programs as described above are "custom" programs for the following reasons:

- 1. Significant modifications are being made to virtually all programs to meet the specific needs of an individual customer.

2. The extent of useful enhancements and maintenance support far exceed that which would be required for “canned” programs.

“Custom” programs are not tangible personal property. Therefore, the sale of the program is not subject to Wisconsin sales or use tax. Since the sale of the program is not subject to tax, any maintenance to the program is not subject to tax under sec. 77.52(2)(a)10, Wis. Stats. (1997-98).

Any charges for computer hardware are taxable.

Facts and Question 5: Vendor SV-E sells a computer program to Customer A (an accounting firm) for \$65,000. Other facts include:

- a. The program is a time/billing package used to track accountants’ time and generate billings to clients.
- b. The program is changed to meet the needs of Customer A. Modules are changed to customize fields (i.e. timekeeper numbers, matter numbers, account numbers, etc.), change field formats, and provide additional reports.
- c. Changes are also made to conform the program to Customer A’s operating environment. Interfaces to other program packages have been created. The program has been changed to accommodate Customer A’s printing capabilities.
- d. The program is loaded onto Customer A’s system by Vendor SV-E, with the actual code transferred by magnetic tape.
- e. Maintenance “fixes” are released as necessary. Enhancements are released on a quarterly or semi-annual basis.

Is the sale of the computer program and maintenance service for the computer program provided by Vendor SV-E subject to Wisconsin sales or use tax?

Answer 5:

No. The programs are “custom” programs for the following reasons:

1. The program purchased by Customer A is unique as compared to any other system sold by Vendor SV-E.

2. Significant modifications are made to the time and billing programs and other support programs based on the particular needs and system requirements of Customer A.

“Custom” programs are not tangible personal property. Therefore, the sale of the program is not subject to Wisconsin sales or use tax. Since the sale of the program is not subject to tax, any maintenance to the program is not subject to tax under sec. 77.52(2)(a)10, Wis. Stats. (1997-98).

Facts and Question 6: Customer C purchased a spreadsheet program for \$400 for use on its personal computer (PC). The program comes in a shrink-wrapped package and is available from many vendors.

Customer C’s personnel installed the program on the PC. An installation program prompted the user for information such as type of monitor, type of printer, and default drive. Customer C’s personnel took a course on how to use this program. In addition, several employees of Customer C spent in excess of 100 hours writing macros and designing templates that are used in conjunction with the program for budgeting, accounts receivable aging, inventory tracking, and other functions.

Is the sale of this computer program for \$400 to Customer C subject to Wisconsin sales or use tax?

Answer 6:

Yes. The spreadsheet program is not a custom program because:

1. The individual needs of Customer C were not considered in the design of the program.
2. The program existed at the time Customer C purchased the program.
3. The vendor makes no changes to the program because of Customer C’s computer environment. The work done by Customer C’s employees does not impact on the nature of the program. Any customizing, other than changes made by the vendor prior to the sale or license, does not affect the taxability of the sale.

Therefore, the program is tangible personal property, the sale of which is subject to Wisconsin sales or use tax.

Facts and Question 7: Customer D contracts with Vendor SV-G to obtain new computer programs for use on its mainframe computer. Included in the agreement are programs that will assist in the following areas:

- a. Order entry and billing.
- b. Accounts receivable.
- c. Purchasing.
- d. Accounts payable.
- e. General ledger.
- f. Financial reporting and budgeting.
- g. Inventory control.
- h. Product structure.
- i. Materials planning.
- j. Production scheduling.
- k. Product standard costing.
- l. Shop floor control.
- m. Capacity planning.

After an extensive review by Customer D and a professional consultant (Consultant E) of products on the market, Customer D purchases computer programs from Vendor SV-G for \$100,000.

Additional facts regarding these programs are as follows:

- a. The programs purchased existed at the time Customer D placed the order. Vendor SV-G did not change the pre-existing programs based on Customer D's data or specific hardware or program environment.
- b. The programs were shipped to Customer D via magnetic tape.

- c. In order to make the programs useful to Customer D, extensive modifications were necessary. Customer D did not employ Vendor SV-G to install and modify the program. Instead, the testing and installation were initially completed by Consultant E.
- d. Consultant E had difficulties in modifying the program to make it operational. After one year, only two of the modules were operational. The service contract with Consultant E was terminated.
- e. After another unsuccessful attempt to get the system operational using another consulting company, Vendor SV-G was hired to modify the programs to make them operational. This occurred two years after the original license of the base programs.

Is the sale of these programs for \$100,000 by Vendor SV-G subject to Wisconsin sales or use tax?

Answer 7:

Yes. The programs are not custom programs based on the criteria set forth in sec. Tax 11.71(1)(e), Wis. Adm. Code:

- 1. Vendor SV-G sold pre-written programs "as is."
- 2. No changes were made by Vendor SV-G prior to the licensing to tailor the programs to Customer D's data or hardware or program environment.

Modifications made by Customer D or other third parties, subsequent to the initial licensing, do not impact on the determination of taxability at the time of sale.

Therefore, the programs are tangible personal property, the sale of which is subject to Wisconsin sales or use tax.

