



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.

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INDIVIDUAL INCOME TAXES

1 Deduction for Repayment of Income Previously Taxed

Statutes: Section 71.05(6)(b)29, Wis. Stats. (1999-00)

Note: This tax release applies only with respect to taxable years beginning on or after January 1, 2000.

Background:

Wisconsin Law: You may claim a subtraction (deduction) from federal adjusted gross income when you compute Wisconsin adjusted gross income for the amount you claimed as a federal miscellaneous itemized deduction for repayment of an amount that you included in income in a previous year. You may claim the deduction to the extent that you previously included the repayment in your Wisconsin adjusted gross income. [Section 71.05(6)(b)29, Wis. Stats. (1999-00)]

Note: If the amount of the repayment is more than \$3,000, you may choose to claim either the deduction as described above or a tax credit for the year of repayment. This tax release discusses only the deduction.

Federal Law: If you had to repay an amount that you included in income in an earlier year, you may be able to deduct the amount repaid from your income in the year in which you repaid it. The type of deduction allowed in the year of repayment depends on the type of income you included in the earlier year. For instance, if you repay an amount that you previously reported as a capital gain, the repayment is deducted as a capital loss.

If you repay an amount that you previously reported as wages, unemployment compensation, or other nonbusiness ordinary income, the repayment is deducted as a miscellaneous deduction on Schedule A (Itemized Deductions). If the amount repaid was \$3,000 or less, you deduct it on line 22 of 2000 Schedule A (Form 1040). This deduction is subject to the 2% of federal adjusted gross income limit. If the amount repaid was more than \$3,000, you deduct it on line 27 of 2000 Schedule A (Form 1040). This deduction is *not* subject to the 2% of federal adjusted gross income limit.

Facts and Question 1: You reported wages of \$60,000 on both your federal and Wisconsin income tax returns for 1999. In 2000, you had to repay \$2,000 of the wages to your employer. You report the repayment on line 22 of Schedule A. You do not have any additional miscellaneous deductions. Your 2000 federal adjusted gross income is \$52,000. You may claim \$960 (\$2,000 less 2% of federal adjusted gross income) as a miscellaneous deduction on Schedule A.

What amount may you deduct as a repayment of income previously taxed on your 2000 Wisconsin income tax return?

Answer 1: You can deduct \$960 on your Wisconsin income tax return. Your deduction is limited to the amount that you claim as a miscellaneous deduction on Schedule A.

Facts and Question 2: You included \$3,000 of unemployment compensation in both your federal and Wisconsin taxable income for 1999. In 2000, you had to repay \$1,000 of the unemployment compensation. However, you do not claim itemized deductions on your federal income tax return for 2000 because the standard deduction is more than your total itemized deductions.

Can you claim the Wisconsin deduction for repayment of income previously taxed even though you did not itemize deductions for federal tax purposes?

Answer 2: Yes. However, your Wisconsin deduction is limited to the amount that would have been allowed if you had been able to itemize deductions.

In this instance, assume that your federal adjusted gross income for the tax year 2000 was \$20,000, and the only miscellaneous deduction on Schedule A would have been the \$1,000 repayment of unemployment compensation. Your Wisconsin deduction for repayment of the unemployment compensation is \$600 (\$1,000 repayment less 2% of federal adjusted gross income). This is the amount that would have been allowed as a miscellaneous deduction on federal Schedule A if you had been able to itemize deductions.

Facts and Question 3: You included \$5,000 of unemployment compensation in both your federal and Wisconsin taxable income for 1999. In 2000, you had to repay \$1,400 of the unemployment compensation. You report the following miscellaneous deductions on your 2000 federal Schedule A:

Unreimbursed employee expenses	\$3,000
Tax preparation fee	100
Repayment of unemployment compensation	1,400
Investment expense	<u>500</u>
Total	\$5,000
Less 2% of federal adjusted gross income	1,200
Miscellaneous deductions	<u>\$3,800</u>

What amount may you deduct as a repayment of income previously taxed on your 2000 Wisconsin income tax return?

Answer 3: You can deduct \$1,064 on your 2000 Wisconsin income tax return. You must allocate the total miscellaneous deductions (\$3,800) that you claimed on Schedule A among the items that were included in the deduction. Use the following formula to allocate the deduction:

Amount of repayment			
<hr/>			
Total miscellaneous deductions before 2% of federal AGI limit	X	Miscellaneous deductions after reduction for 2% of federal AGI	= Wisconsin deduction

Using the formula, you compute the Wisconsin deduction as follows:

$$\frac{\$1,400}{\$5,000} \times \$3,800 = \$1,064$$

Facts and Question 4: You included \$7,000 of taxable unemployment compensation in your federal taxable income tax for 1999. You were taxed on only \$3,000 of the unemployment compensation on your Wisconsin income tax return for 1999.

In 2000, you had to repay \$2,000 of the unemployment compensation. You report the repayment on line 22 of your 2000 federal Schedule A. You do not have any additional miscellaneous deductions. Your federal adjusted gross income for 2000 is \$24,000. You may claim \$1,520 (\$2,000 less 2% of federal adjusted gross income) as a miscellaneous deduction on Schedule A.

What amount may you deduct as a repayment of income previously taxed on your 2000 Wisconsin income tax return?

Answer 4: \$651. Because only a portion of the unemployment compensation was taxable for Wisconsin, you may deduct only a portion of the amount allowed as a federal itemized deduction. Use the following formula to compute the allowable deduction for Wisconsin:

Unemployment compensation taxable by Wisconsin	X	Miscellaneous deduction allowed on Schedule A	=	Wisconsin deduc- tion for repayment of income previ- ously taxed
<hr/>				
Unemployment compensation taxable on federal return				

Using the above formula, your Wisconsin deduction for repayment of the unemployment compensation is computed as follows:

$$\frac{\$3,000}{\$7,000} \times \$1,520 = \$651 \text{ (figure rounded)}$$

Facts and Question 5: You included \$8,000 of unemployment compensation in your federal taxable income for 1999. You were taxed on only \$3,000 of the unemployment compensation on your Wisconsin income tax return for 1999. In 2000, you had to repay \$3,000 of the unemployment compensation. You report the following

miscellaneous deductions on your 2000 federal Schedule A:

Unreimbursed employee expenses	\$4,000
Tax preparation fee	100
Repayment of unemployment compensation	<u>3,000</u>
Total	\$7,100
Less 2% of federal adjusted gross income	<u>800</u>
Miscellaneous deductions	\$6,300

What amount may you deduct as a repayment of income previously taxed on your 2000 Wisconsin income tax return?

Answer 5: You must complete two steps to compute the Wisconsin deduction. First, you must allocate the total miscellaneous deductions (\$6,300) among the items that are included in the deduction (see Question and Answer 3). The portion of the total miscellaneous deductions that is allocated to the repayment must then be prorated based on the ratio of the unemployment taxable to Wisconsin to the unemployment taxable for federal purposes.

Using the formula in Answer 3 above, the portion of the miscellaneous deductions allocated to the repayment of unemployment compensation is \$2,662 computed as follows:

$$\frac{\$3,000}{\$7,100} \times \$6,300 = \$2,662 \text{ (figure rounded)}$$

This amount is then prorated as follows:

$$\frac{\$3,000}{\$8,000} \times \$2,662 = \$998 \text{ (figure rounded)}$$

You can claim a deduction of \$998 on your 2000 Wisconsin income tax return for repayment of income previously taxed.

Facts and Question 6: You included \$8,000 of unemployment compensation in both your federal and Wisconsin taxable income for 1999. In 2000, you had to repay \$3,200 of the unemployment compensation. Because the repayment is more than \$3,000, you report it on line 27 of your Schedule A for 2000. This deduction is *not* subject to the 2% of federal adjusted gross income limit. What amount may you deduct as a repayment of income previously taxed on your 2000 Wisconsin income tax return?

Answer 6: \$3,200.

Facts and Question 7: Assume the same facts as in Facts and Question 6 except that only \$3,000 of the unemployment compensation was taxable on your 1999 Wisconsin income tax return. What amount may you deduct as a repayment of income previously taxed on your 2000 Wisconsin income tax return?

Answer 7: \$1,200. Because only a portion of the unemployment compensation was taxable for Wisconsin, you may deduct only a portion of the amount allowed as a federal itemized deduction (see Question and Answer 4). Using the formula in Answer 4, your Wisconsin deduction for repayment of the unemployment compensation is computed as follows:

$$\frac{\$3,000}{\$8,000} \times \$3,200 = \$1,200$$



2 Statute of Limitations for Claiming the Earned Income Credit

Statutes: Sections 71.07(9e)(af) and 71.75(2), Wis. Stats. (1999-00)

Background: Section 71.75(2), Wis. Stats. (1999-00), provides that a claim for refund may be filed within four years of the unextended due date of the tax return.

Section 71.07(9e)(af), Wis. Stats. (1999-00), provides for the Wisconsin earned income credit. This credit is equal to a certain percentage of the federal basic earned income credit for which the person is eligible for the taxable year under the Internal Revenue Code.

For federal purposes, a claim for refund must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever is later.

Facts and Question: You did not claim the earned income credit on either your Wisconsin or federal income tax returns for 1996 through 1999. In 2000, you learned that you were eligible to claim the credit for those years. You amend your 1997, 1998, and 1999 federal and Wisconsin income tax returns to claim the credit.

You met all the requirements to claim the earned income credit for federal tax purposes for 1996. However, you could not claim the credit because 1996 federal returns were closed to adjustment because of the three-year statute of limitations. Wisconsin, however, has a four-year statute of limitations. May you amend your 1996 Wisconsin re-

turn to claim the credit even though you could not claim it for federal tax purposes for the 1996 tax year?

Answer: Yes. Wisconsin law only requires that you are “eligible” to claim the federal credit for the taxable year; it does not require that a credit actually be claimed for federal purposes. As long as you meet all the qualifications to claim the federal credit, you may claim the earned income credit on an amended 1996 Wisconsin return, provided it is filed within the four-year statute of limitations under sec. 71.75(2), Wis. Stats. (1999-00). [☞](#)

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*.

3 Motor Vehicles, Machinery, and Equipment Used in Waste Reduction or Recycling Activities

Statutes: Section 77.54 (5)(c) and (26m), Wis. Stats. (1999-00)

This tax release supersedes the tax release previously published in *Wisconsin Tax Bulletin 42* (July 1985), titled “Waste Reduction and Recycling Exemptions” and the information previously published in the June 1986 *Tax Report* titled “The Recycling Exemption.”

Since this tax release contains some positions that are consistent with the positions taken in previously published information and other positions that are not consistent with the positions taken in previously published information, the effective date of each of the positions taken in this tax release follows each example.

Background: Section 77.54(5)(c), Wis. Stats. (1999-00), provides an exemption from Wisconsin sales and use tax for certain motor vehicles used exclusively and directly in conjunction with waste reduction and recycling activities. The waste reduction or recycling activity must either reduce the amount of solid waste generated, reuse

solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

Section 77.54(26m), Wis. Stats. (1999-00), provides an exemption from Wisconsin sales and use tax for machinery and equipment that is used exclusively and directly in waste reduction and recycling activities. The waste reduction or recycling activity must either reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

“Solid waste” is defined in sec. 77.54(5)(c) and (26m), Wis. Stats. (1999-00), to mean garbage, refuse, sludge, or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid, or contained gaseous materials or articles resulting from industrial, commercial, mining, or agricultural operations or from domestic use or from public service activities.

(Note: The examples in this tax release only address whether or not the items qualify for the exemptions from Wisconsin sales and use tax provided in sec. 77.54(5)(c) and (26m), Wis. Stats. It is possible that some of the items which do not qualify for the exemptions provided in sec. 77.54(5)(c) and (26m), Wis. Stats. (1999-00), may qualify for other exemptions.)

A. Motor Vehicles

Facts and Question A1: Company A purchases motor vehicles which are used exclusively to collect and transport recyclable materials to Company A’s recycling facility. The vehicles are required to be licensed for highway use.

Are Company A’s purchases of these motor vehicles subject to Wisconsin sales and use tax?

Answer A1: Yes. Company A is required to pay Wisconsin sales or use tax on its purchases of these motor vehicles.

Analysis A1: Section 77.54(5)(c), Wis. Stats., provides an exemption from Wisconsin sales and use tax for motor vehicles used exclusively and directly in conjunction with waste reduction or recycling activities that reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste, provided the motor vehicles are **not** required to be licensed for highway use. Since the motor vehicles Company A purchases are required to be

licensed for highway use, they do not qualify for the exemption provided under sec. 77.54(5)(c), Wis. Stats.

Effective Date A1: This position applies to all prior periods open to adjustment under the statute of limitations and current and subsequent periods.

Facts and Question A2: Company B purchases a motor vehicle which is used exclusively and directly in conjunction with waste reduction or recycling activities. The motor vehicle is not required to be licensed for highway use.

Is Company B's purchase of this motor vehicle subject to Wisconsin sales or use tax?

Answer A2: No. Company B's purchase of the motor vehicle which is used exclusively and directly in conjunction with waste reduction or recycling activities is not subject to Wisconsin sales or use tax.

Analysis A2: Section 77.54(5)(c), Wis. Stats., provides an exemption from Wisconsin sales and use tax for motor vehicles used exclusively and directly in conjunction with waste reduction or recycling activities that reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste, provided the motor vehicles are **not** required to be licensed for highway use. Since the motor vehicle Company B purchases is **not** required to be licensed for highway use and is used exclusively and directly in conjunction with qualifying waste reduction or recycling activities, it qualifies for the exemption provided under sec. 77.54(5)(c), Wis. Stats.

Effective Date A2: See Effective Date A1 above.

B. Collection Machinery and Equipment

Facts and Question B1: Company C provides waste collection and disposal services. Company C purchases containers and dumpsters, which Company C provides to its customers without an additional charge. The customers place certain waste and recyclable materials into the containers and dumpsters. Company C requires that only certain types of items be placed in certain containers and dumpsters (i.e., only aluminum, tin, glass, and paper). Company C then picks up the materials in the containers or dumpsters and transports the materials to Company C's recycling facility.

Are Company C's purchases of these containers and dumpsters subject to Wisconsin sales and use tax?

Answer B1: Yes. Company C's purchases of the containers and dumpsters used by Company C's customers to collect or transport the customer's waste and recyclable materials are subject to Wisconsin sales and use tax. (**Note:** Containers and dumpsters used at a recycling facility to collect, hold or transport recyclable materials would also be subject to sales and use tax.)

Analysis B1: Section 77.54(26m), Wis. Stats., provides an exemption from Wisconsin sales and use tax for machinery and equipment used exclusively and directly in waste reduction and recycling activities that reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

The Wisconsin Court of Appeals, District IV, held in the case of *Wisconsin Department of Revenue v. Parks-Pioneer Corporation*, June 25, 1992, that lugger and roll-off boxes used to collect solid waste and transport it to Parks-Pioneer's facility for further processing did not perform an integral function in waste reduction or recycling activities because the actual recycling took place **after** the materials were collected and transported to Parks-Pioneer's facility.

In addition, the Wisconsin Tax Appeals Commission held in the case of *Browning-Ferris Industries of Wisconsin, Inc. v. Wisconsin Department of Revenue*, January 13, 2000, that bins and storage containers "...are simply receptacles into which recyclable and waste material is placed prior to petitioner's collecting and transporting it to a facility where the actual recycling occurs. These items do not perform an 'integral function' in recycling activities and are therefore not 'directly' used in recycling activities under the test articulated in *Parks-Pioneer*." This decision was also affirmed by the Dane County Circuit Court on September 28, 2000. In that decision, the Dane County Circuit Court held that although the bins and storage containers "...are related to an activity that recycles solid waste, they are not used *directly* in that activity...."

Based on the above court decisions, containers and dumpsters purchased by Company C, which it provided to its customers without additional charge, and into which Company C's customers placed waste and recyclable materials and which Company C uses in transporting waste and recyclable materials, are subject to Wisconsin sales and use tax.

(**Note:** At the time this tax release was published, the Dane County Circuit Court decision in *Browning-Ferris*

Industries of Wisconsin, Inc. v. Wisconsin Department of Revenue was on appeal to the Wisconsin Court of Appeals.)

Effective Date B1: This position applies to all prior periods open to adjustment under the statute of limitations and current and subsequent periods.

Facts and Question B2: Company D purchases a curb sorter which will be mounted on a truck chassis and used to collect, sort, and transport recyclable materials from various pick-up locations to a recycling facility. The curb sorter is a hydraulically operated machine that contains various compartments. Each compartment will hold a specific type of recyclable material (i.e., aluminum, green glass, brown glass, tin, etc.). The curb sorter is driven to Company D's facility and each of the curb sorter's hydraulically operated compartments dumps its contents into a specific roll-off or yard box.

Is Company D's purchase of the curb sorter subject to Wisconsin sales and use tax?

Answer B2: Yes. Company D's purchase of the curb sorter is subject to Wisconsin sales or use tax.

Analysis B2: See Analysis B1 above.

Effective Date B2: See Effective Date B1 above.

Facts and Question B3: Office Complex X purchases receptacles for each office area into which paper, aluminum, glass, plastics, and trash are placed. The receptacles are emptied into larger dumpsters and bins on a daily basis. Once the larger dumpsters and bins are full, Office Complex X contacts a recycling company who comes to Office Complex X's location and hauls away the materials that have been collected in the dumpsters and bins.

Are Office Complex X's purchases of the receptacles, dumpsters, and bins subject to Wisconsin sales and use tax?

Answer B3: Yes. Office Complex X's purchases of the receptacles, dumpsters, and bins are subject to Wisconsin sales and use tax.

Analysis B3: See Analysis B1 above.

Effective Date B3: See Effective Date B1 above.

Facts and Question B4: Company Z is in the business of providing waste collection and disposal services. Company Z purchases a crane which will be mounted on a truck and used to pick up and load bales of recyclable materials onto the truck for transportation to a recycling facility. The crane will also be used to unload the bales of recyclable material from the truck once the truck reaches the recycling facility.

Is Company Z's purchase of the crane subject to Wisconsin sales and use tax?

Answer B4: Yes. Company Z's purchase of the crane is subject to Wisconsin sales and use tax.

Analysis B4: Section 77.54(26m), Wis. Stats., provides an exemption from Wisconsin sales and use tax for machinery and equipment used exclusively and directly in waste reduction and recycling activities that reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

The Wisconsin Court of Appeals, District IV, held in the case of *Wisconsin Department of Revenue v. Parks-Pioneer Corporation*, June 25, 1992, that lugger and roll-off boxes used to collect solid waste and transport it to Parks-Pioneer's facility for further processing did not perform an integral function in waste reduction or recycling activities because the actual recycling took place **after** the materials were collected and transported to Parks-Pioneer's facility.

A crane used to load a motor vehicle that is collecting and transporting recyclable materials to a recycling facility or used to unload the recyclable materials after they have arrived at a recycling facility is not used directly in a waste reduction or recycling activity and does not qualify for the exemption provided in sec. 77.54(26)(m), Wis. Stats. (1999-00).

Effective Date B4: See Effective Date B1 above.

Note: Other similar types of machinery or equipment used to collect and transport garbage and/or recyclable materials would also be subject to Wisconsin sales and use tax. Collection and transportation of solid waste occur prior to waste reduction or recycling activities and, therefore, machinery and equipment used for collection and transportation purposes do not qualify for the exemption provided in sec. 77.54(26m), Wis. Stats.

C. Compactors and Balers

Facts and Question C1: Company E is engaged in the business of collecting and transporting discarded materials, including trash, garbage, and recyclable materials, from its customers' locations to landfills, recycling centers, or material recovery facilities. Company E purchased compactors and balers which it provided at no charge to certain customers, who hired Company E to haul away its trash and recyclable materials. The compactors are used by Company E's customers to compress the waste or recyclable materials into collection containers. The balers compress the waste or recyclable materials and put wire bands around the compressed materials to hold them together. Once the compactor bin is full or sufficient bales have accumulated, Company E will haul the materials away.

Are Company E's purchases of the compactors and balers subject to Wisconsin sales and use tax?

Answer C1: Yes. Company E's purchases of compactors and balers which Company E provides to its customers are subject to Wisconsin sales and use tax. (**Note:** Compactors and balers used at a recycling facility would also be subject to sales and use tax.)

Analysis C1: Section 77.54(26m), Wis. Stats., provides an exemption from Wisconsin sales and use tax for machinery and equipment used exclusively and directly in waste reduction and recycling activities that reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

The Wisconsin Tax Appeals Commission (WTAC) held in the case of *Browning-Ferris Industries of Wisconsin, Inc. v. Wisconsin Department of Revenue*, January 13, 2000, that "...compactors also fail the 'integral function' test and are not 'directly' used for recycling activities because the actual recycling occurred *after* (emphasis in original) the compressed items were hauled away." The WTAC went on to state that "Compressing solid waste does not reduce the amount of solid waste generated into the waste stream; it simply reduces the volume of solid waste already generated...Volume reduction of waste previously generated is not included in the statutory language." This decision was also affirmed by the Dane County Circuit Court on September 28, 2000.

Therefore, based on the above decision of the WTAC and the Dane County Circuit Court, Company E's pur-

chases of compactors and balers used as described above are subject to Wisconsin sales and use tax.

(**Note:** At the time this tax release was published, the Dane County Circuit Court decision in *Browning-Ferris Industries of Wisconsin, Inc. v. Wisconsin Department of Revenue* was on appeal to the Wisconsin Court of Appeals.)

Effective Date C1: This position applies to all prior periods open to adjustment under the statute of limitations and current and subsequent periods.

Facts and Question C2: Company F is a retail department store. Company F purchases a compactor and baler which it uses exclusively to compact and bale recyclable materials. When sufficient recyclable materials have accumulated, Company F contacts Recycler X to come and pick up the compacted and baled recyclable materials. Recycler X may or may not charge Company F for hauling the recyclable materials away. In addition, Recycler X may pay Company F for the recyclable materials.

Are Company F's purchases of the compactor and baler subject to Wisconsin sales and use tax?

Answer C2: Yes. Company F's purchases of the compactor and baler are subject to Wisconsin sales and use tax.

Analysis C2: See Analysis C1 above.

Effective Date C2: See Effective Date C1 above.

Facts and Question C3: Company Y purchases baling twine and baling wire which it uses to bale various recyclable materials. Once baled, the recyclable materials are picked up at Company Y's location by a recycling company who transports the baled materials to its recycling facilities.

Are Company Y's purchases of the baling twine and baling wire subject to Wisconsin sales and use tax?

Answer C3: Yes. Company Y's purchases of the baling twine and baling wire are subject to Wisconsin sales and use tax.

Analysis C3: Section 77.54(26m), Wis. Stats., provides an exemption from Wisconsin sales and use tax for machinery and equipment and parts therefor, used exclusively and directly in waste reduction and recycling activities that reduce the amount of solid waste gener-

ated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

Since the baling twine and baling wire are not machinery, equipment, or parts for the machinery or equipment, purchases of the baling twine and baling wire do not qualify for the exemption provided in sec. 77.54(26m), Wis. Stats. Baling twine and baling wire are “supplies,” and “supplies” are not included within the exemption provided in sec. 77.54(26m), Wis. Stats.

Effective Date C3: See Effective Date C1 above.

Facts and Question C4: Individual A purchases a trash compactor. The trash compactor is used to compact the trash and recyclable materials so that more trash or recyclable materials will fit into a particular bag. Once compacted, the recyclable materials are picked up by a recycling company and transported to the recycling company’s recycling facility. The compacted trash is also picked up by the recycling company, but is transported to a landfill rather than a recycling facility.

Is Individual A’s purchase of the trash compactor subject to Wisconsin sales and use tax?

Answer C4: Yes. Individual A’s purchase of the trash compactor is subject to Wisconsin sales and use tax.

Analysis C4: See Analysis C1 above.

Effective Date C4: See Effective Date C1 above.

D. Road Reclaimers

Facts and Question D1: Company G is a road builder. Company G purchases a machine which (1) cuts existing asphalt on roadways and grinds the asphalt up so that it can be used as a base material for a new road; and (2) adds and mixes cement, lime, and other stabilizing agents with the existing soil on roadways.

Is the purchase of this machine subject to Wisconsin sales and use tax?

Answer D1: No. Company G’s purchase of this machine is not subject to Wisconsin sales and use tax.

Analysis D1: Section 77.54(26m), Wis. Stats., provides an exemption from Wisconsin sales and use tax for machinery and equipment used exclusively and directly in waste reduction and recycling activities that reduce the amount of solid waste generated, reuse solid waste, re-

cycle solid waste, compost solid waste, or recover energy from solid waste.

“Solid waste” is defined to mean garbage, refuse, sludge, or other materials or articles, whether these materials or articles are discarded or purchased, including solid, semisolid, liquid, or contained gaseous materials or articles resulting from industrial, commercial, mining, or agricultural operations or from domestic use or from public service activities.

Since an existing roadway that is being torn up is solid waste, the machine used to mine up the roadway so that the resulting materials can be reused is engaged in a waste reduction or recycling activity. Therefore, Company G’s purchase of this machine qualifies for the sales and use tax exemption provided in sec. 77.54(26m), Wis. Stats.

Effective Date D1: This position applies to all prior periods open to adjustment under the statute of limitations and current and subsequent periods.

Facts and Question D2: Company H purchases a machine which is pulled behind a motor vehicle. The machine breaks up the concrete into a manageable size and dislodges the reinforcing steel from the concrete. Once the reinforcing steel is removed from the concrete, the remaining concrete is hauled to a site where it is crushed. The crushed concrete that results is used by a paver in replacing roadways.

Is Company H’s purchase of the machine used to break up the concrete subject to Wisconsin sales and use tax?

Answer D2: No. Company H’s purchase of the machine used to break up the concrete is not subject to Wisconsin sales and use tax.

Analysis D2: See Analysis D1 above.

Effective Date D2: See Effective Date D1 above.

E. Cleaning and Reusing Solid Waste

Facts and Question E1: Company I operates a metal cutting business. Throughout the metal cutting process, lubricating oil is used to facilitate the cutting process. Company I purchases a machine that will be used exclusively to clean the lubricating oil and remove impurities so that the oil can be reused. Without this machine, the lubricating oil would have a very limited useful life.

However, by using the cleaning machine, the oil may be reused and lasts twice as long before being discarded.

Is Company I's purchase of this oil-cleaning machine subject to Wisconsin sales or use tax?

Answer E1: No. Company I's purchase of this oil-cleaning machine is not subject to Wisconsin sales or use tax.

Analysis E1: Section 77.54(26m), Wis. Stats., provides an exemption from Wisconsin sales and use tax for machinery and equipment used exclusively and directly in waste reduction and recycling activities that reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste.

The oil-cleaning machine reduces the amount of solid waste generated by cleaning the used oil and removing impurities so that the oil may be reused. Without this oil-cleaning machine, Company I would generate twice as much solid waste (i.e., discarded oil). Therefore, Company I may purchase the oil-cleaning machine without tax, based on the exemption provided in sec. 77.54(26m), Wis. Stats.

Effective Date E1: This position applies to all prior periods open to adjustment under the statute of limitations and current and subsequent periods.

F. Other Items Which Qualify for Waste Reduction and Recycling Exemptions

1. Equipment used exclusively to produce fuel cubes from solid waste. The equipment shreds wastepaper and cardboard, removes foreign objects, blends the materials with a binding agent, adds moisture if necessary, and compresses the materials into fuel cubes, which are burned by homeowners or others to replace wood. This equipment recycles solid waste.
2. Furnaces which are used exclusively to burn used motor oil and in turn use the resulting heat produced to heat a building or water.
3. A machine used exclusively to shred tires so that the resulting product may be resold to a third party who burns the shredded tires and uses the heat generated to produce electricity.
4. Vapor recovery systems at a service station which prevents the release of gaseous vapors into the air

and returns the vapors to gasoline through temperature changes.

5. Chippers which are used exclusively to chip branches that have previously been removed from trees into small pieces which will either be left on the ground to compost or blown into the back of a truck for use on future landscaping projects.
6. Machinery and equipment used exclusively to apply sludge to a field for fertilization of the soil.
7. Machinery and equipment used exclusively to burn and screen contaminated soil so that the soil can be reused.
8. Machinery and equipment used exclusively to recover refrigeration from air conditioning units **and** put the refrigerant back into the air conditioning units.
9. Machinery and equipment used exclusively to repair discarded pallets that are solid waste, so that they can be reused or resold. **Note:** Pallets that have not been discarded are not solid waste and therefore, machinery and equipment used to repair a pallet that has not been discarded do not qualify for this exemption.
10. Machinery and equipment used to pulverize standing trees and brush into small pieces which remain on the ground to compost.
11. Machinery and equipment used to grind tree stumps into small chips which are left on the ground to decompose.

Effective Date F: The positions in F.1 through 11 apply to all prior periods open to adjustment under the statute of limitations and current and subsequent periods.

G. Other Items Which Do Not Qualify for the Waste Reduction and Recycling Exemptions

1. Scales used to weigh incoming materials which will be recycled.
2. Crawlers and scrapers used at a landfill to move garbage and rubbish in the landfill.
3. Paper shredders used in an office to shred confidential papers.

4. Forklifts, cranes, end loaders, and similar machinery and equipment used to unload recyclable materials and place them in stockpiles at a recycler's facility.
5. Cranes used exclusively to move scrap metal from stockpiles at a scrap processor's plant to the machinery which processes the scrap.
6. Conveyors used to move solid waste to a storage area prior to processing.
7. Conveyors used to move solid waste from the storage area to the processing area, and conveyors used to move solid waste from the processing area to the shipping area.
8. Conveyors used to carry recyclable materials past a sorting station where the recyclable materials are sorted.
9. Chain saws used to cut down trees or remove branches from standing trees.
10. Shelving in a used book store or other location that sells used merchandise.
11. End loaders and other equipment used to remove contaminated soil from the earth.
12. Gauges installed in underground tanks which detect leaks and monitor the level of the materials in the tank.
13. Machinery and equipment used to remove sludge from a sludge pond, regardless of what happens to the sludge after it is removed from the sludge pond.
14. Lawnmowers which cut and mulch grass.
15. Vending machines which collect, sort, weigh, and crush aluminum cans. The machines pay persons depositing the cans based on the weight of the cans deposited. Since the same machine is used for collection and weighing of recyclable materials in addition to the sorting of the recyclable materials, the machine is not used exclusively and directly in a waste reduction or recycling activity and therefore does not qualify for exemption.

Effective Date G: The positions in G.1 through 14 apply to all prior periods open to adjustment under the statute of limitations and current and subsequent periods. The

position in G.15 applies to purchases made on or after March 1, 2001. [↗](#)

4 Sales of Food and Beverages to Airlines

Statutes: Section 77.55(2), Wis. Stats. (1999-00)

Wis. Adm. Code: Section Tax 11.87(2)(j) (October 1999 Register)

Background: In the case *Bargo Foods North Inc. and Republic Airlines, v. Department of Revenue*, (CCH 202-902, September 24, 1987), the Court of Appeals held that food and beverage kits sold by Bargo Foods to a commercial airline at Mitchell Field in Milwaukee for in-flight use were subject to Wisconsin sales and use tax. Among the uncontested facts was the finding that, during the 1978-1981 audit period, the Civil Aeronautical Board required airlines to provide food and beverage service at no charge. The Court concluded that the meals were transferred by Republic to its customers without valuable consideration and, therefore, the retail sale occurred when Bargo Foods sold the meals to Republic. Republic was the consumer of meals which it provided to its passengers along with the transportation services.

Question: In light of the *Bargo Foods* decision, can sales of food and beverages to an airline in Wisconsin be exempt from Wisconsin sales or use tax under sec. 77.55(2), Wis. Stats. (1999-00)?

Answer: Under certain circumstances, food and beverages sold to an **airline** in Wisconsin are exempt from Wisconsin sales or use tax.

Since *Bargo Foods*, the airlines have been deregulated and no longer are required to provide meal services. However, that change does not necessarily mean that airlines are now selling meals and beverages to their passengers along with their transportation services and can purchase meals and beverages without tax for resale. Nonetheless, the *Bargo* court did not consider an exemption provided in Chapter 77 of the Wisconsin Statutes.

Section 77.55(2), Wis. Stats. (1999-00), provides a sales tax exemption for tangible personal property sold to a common or contract carrier (e.g., airline certified or licensed as a carrier of persons or property), shipped by the seller (supplier of food and beverages) via the purchasing carrier under a bill of lading whether the freight is paid in advance, or the shipment is made freight

charges collect, to a point outside Wisconsin and the property is actually transported to the out-of-state destination for use by the carrier in the conduct of its business as a carrier.

Sales to an airline of food, beverages, and related services in Wisconsin that are transferred by the airline to passengers and/or crew while on board an aircraft, transported to an out-of-state destination, and consumed by passengers outside Wisconsin, qualify for exemption. However, charges for so-called “bank” meals (meals that are prepared and set aside for passengers and/or crew in Wisconsin, but never loaded onto the aircraft) and food and beverages that are not actually transported to an out-of-state destination are subject to Wisconsin sales or use tax.

Example 1: Taxpayer A delivers food and beverage products to Airline B under a bill of lading as required by contract at an airport in Wisconsin. All of the airline’s flights are destined to points outside the boundaries of Wisconsin and proceed as scheduled.

Taxpayer A’s sales of food and beverages to Airline B are exempt from Wisconsin sales or use tax under sec. 77.55(2), Wis. Stats. (1999-00).

Example 2: Assume the same facts as in Example 1, except that Airline B’s flights are destined to another airport in Wisconsin.

Taxpayer A’s sales of food and beverages to the airline, to the extent that the food and beverages were served by the airline to passengers destined for locations within Wisconsin, are taxable as provided in the *Bargo Foods* decision. These sales are not exempt from Wisconsin sales or use tax under sec. 77.55(2), Wis. Stats.

Example 3: Assume the same facts as in Example 1, except that Airline B serves its passengers a meal and beverages while on the ground in Wisconsin due to delays in departure.

Taxpayer A’s sales of food and beverages to the airline, to the extent that the food and beverages were served by the airline to passengers within Wisconsin, are taxable as provided in the *Bargo Foods* decision. These sales are not exempt from Wisconsin sales or use tax under sec. 77.55(2), Wis. Stats. [✎](#)

5 Service Charges on Telephone Bills

Statutes: Sections 77.51(4)(a)2 and 4 and 77.52(2)(a)5, Wis. Stats. (1999-00)

Wis. Adm. Code: Sections Tax 11.26(3)(a) (August 1999 Register) and 11.66(3) and (4) (September 1997 Register)

Background: Section 77.52(2)(a)5, Wis. Stats., (1999-00), imposes the Wisconsin sales tax on the gross receipts from “the sale of telecommunications services that either originate or terminate in this state; except services that are obtained by means of a toll-free number, that originate outside this state and that terminate in this state; and are charged to a service address in this state, regardless of the location where that charge is billed or paid, and the sale of the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code.”

Section 77.51(4)(a), Wis. Stats. (1999-00), provides in part that “‘gross receipts’ means the total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise, without any deduction on account of the following:

...2. The cost of the materials used, labor or service cost, interest paid, losses or any other expense;

...4. Any tax included in or added to the purchase price,...but not including (emphasis added) any tax imposed by the United States, any other tax imposed by this state or any tax imposed by any municipality of this state upon or with respect to retail sales whether imposed upon the retailer or the consumer if that federal, state or municipal tax is measured by a stated percentage of sales price or gross receipts or the federal communications tax imposed upon the services set forth in s. 77.52(2)(a)5.... For the purpose of this subdivision, a tax shall be deemed ‘imposed upon or with respect to retail sales’ only if the retailer is the person who is required to make the payment of the tax to the government unit levying the tax.”

The Federal Telecommunications Act of 1996 authorizes local and long distance telephone companies to recover many of the costs of providing telephone services to their customers. Some telephone companies have recently added these costs to their telephone bills under

names such as: “number portability charges” (to enable customers to retain the same telephone number when changing telephone companies); “universal service charges” (to provide services to areas where the companies would not otherwise be able to provide services at prevailing rates); “subscriber line charges” (costs of local telephone lines), and “presubscribed interexchange carrier charges” (costs long distance companies pay for equipment to connect to local carriers). The charges may appear as a separate “tax” or “other charge” on the customers’ telephone bills.

Question: Are the cost recovery charges added to telephone bills under the above names subject to Wisconsin sales or use tax?

Answer: Yes, provided the telecommunications services to which they relate are subject to Wisconsin sales or use tax.

The charges are considered gross receipts from the sale of telecommunications services. These charges are not federal communications taxes that may be excluded from gross receipts subject to sales tax. The Telecommunications Act of 1996 merely authorizes telephone service providers to pass these costs on to their customers, and does not require the cost recovery charges to be paid to the federal government as taxes.

Additional information about these charges can be obtained by contacting the Federal Communications Commission’s Consumer Information Bureau at 1-888-225-5322, or by visiting their web site at www.fcc.gov/cib/.

Example 1: A church purchases telephone service from its local telephone company and gives the telephone company its Certificate of Exempt Status number claiming exemption from sales tax. The telephone company’s bill to the church includes an amount for “other charges” that is actually the recovery by the telephone company of a subscriber line charge it is passing on to the church.

Since the sale of the telephone service to the church is exempt from sales tax, the “other charges” added to the bill are also exempt.

Example 2: Company A provides a toll-free number for its employees to use when calling Company A’s home office in Wisconsin from outside the state. Each month a number of toll-free calls are made by employees of Company A to the home office from outside Wisconsin. The bill that Company A receives from its telephone service provider includes separate charges for local service, long distance service that originates or terminates in Wisconsin, toll-free services that all originate outside Wisconsin, and “universal service charges” which are 5% of Company A’s bill and are cost recovery charges the service provider is passing on to Company A.

Only those “universal service charges” that apply to the taxable local and long distance telephone services are subject to sales tax. Since the toll-free telephone services that originate outside Wisconsin are not subject to sales tax, the “universal service charges” that apply to such toll-free services are also not subject to sales tax. The telephone service provider must make a reasonable allocation of the “universal service charges” that apply to the local and long distance services, to determine the amount of the “universal service charges” subject to sales tax.

Example 3: Company B provides telephone credit (not prepaid) “calling” cards for its field staff to use in making calls to Company B’s home office in Wisconsin. All of the credit card calls originate or terminate in Wisconsin and are charged to Company B’s service address in Wisconsin. The separate bill that Company B receives from its credit card calling service provider includes an “interexchange carrier charge,” which is a cost recovery charge the service provider is passing on to Company B. Since the entire charge for the credit card calling service is subject to sales tax, the entire “interexchange carrier charge” is also subject to sales tax. [↗](#)