



Wisconsin TAX BULLETIN

www.dor.state.wi.us

Number 124

April 2001



OCUS ON . . .

Sales Tax on Landscaping

(see article, page 1,
court case summary, page 23,
Publication 210, page 43)

New Tax Laws to Be Addressed in Special Issue

The Governor introduced his Budget Bill for the 2001-2003 biennium on February 20, 2001. This bill includes several provisions affecting Wisconsin taxes. Additional bills that affect Wisconsin taxes have also been introduced.

The Wisconsin Legislature is scheduled to complete work on the 2001-2003 Budget Bill by June 29, 2001. If any provisions of the Budget Bill (or other bills) affecting Wisconsin taxes become law, a special issue of the *Wisconsin Tax Bulletin* explaining the new laws will be published. [\[link\]](#)

Information or Inquiries?

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

The listing appears on pages 39 to 42 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. [\[link\]](#)



Landscaping Publication Revised

Wisconsin Publication 210, *Sales and Use Tax Treatment of Landscaping*, has been revised to reflect the recent Wisconsin Tax Appeals Commission decision in the case of *John Taylor Golf, Inc. d/b/a/ The Bog vs. Wisconsin Department of Revenue*. See page 23 of this Bulletin for a summary of the decision. A copy of Publication 210 appears on pages 43 to 46.

The revised Publication 210 with a revision date of “4/01” replaces Publication 210 with a revision date of “12/99.”

The following substantive revisions have been made:

1. The installation of rocks, stones, boulders, bricks, wood timbers, wood ties, and other non-plant material as retaining walls, regardless of whether decorative or ornamental, is **not** a landscaping service.
2. The construction of sand traps, except for the installation of sod revetments around all or part of the sand trap, is **not** a landscaping service.
3. The removing and clearing of sod, brush, and trees, even though in preparation of a real property improvement such as constructing a highway, parking lot, sidewalk, patio, underground swimming pool, basement, or foundation of a building, **are** landscaping services.

The changes in characterization of the services described above apply to all periods open to adjustment.

Sales Prior to May 1, 2001

Items 1 and 2

If you treated the services listed in Items 1 and 2 above as landscaping services and charged your customers Wisconsin sales or use tax based on your selling price of the items (materials and labor), you have two options:

In This Issue

Articles –

New Tax Laws.....	1
Information or Inquiries?	1
Landscaping Publication	1
Lafayette County Tax	3
New Business Seminars	3
Estimated Tax Requirements	4
Focus on Publications: Sales/Use Tax Information.....	4

Use Tax on Internet Purchases?	5
Bulletin Index Available	5
Speakers Bureau.....	5
Tax Publications Available.....	6
Question and Answer	8
Index of Reference Material	8
Voluntary Disclosure.....	9
Father, Son Guilty of Tax, Homestead Schemes.....	10
Filing Fiduciary Returns	11
Filing Estate Tax Returns	12

Farmers Receive \$34 Million	13
------------------------------------	----

Report on Litigation	14
-----------------------------------	-----------

Tax Releases	29
---------------------------	-----------

Private Letter Rulings.....	34
------------------------------------	-----------

Attachments –

Addresses, Telephone Numbers	39
Publication 210	43
Order Blank.....	47

1. Do nothing. The department will not adjust your sales and use tax liability for these items.
2. File a claim for refund for the amount of tax you charged to your customer. However, you would owe Wisconsin use tax based on your purchase price of the materials used in providing your service, unless an exemption applies (e.g., retaining wall timbers installed in construction of a professional sports stadium).

Caution: If tax was collected from buyers, the seller must return the tax and related interest refunded by the Department of Revenue to the buyers from whom the tax was collected. If a seller is unable to return the tax and interest to the buyer, the seller must return the tax and interest to the department.

If you treated the services listed in the above items as real property improvements and paid Wisconsin sales or use tax on your purchase of the items used in making the real property improvements, you do not have to do anything. You have treated the items in a manner consistent with the Commission's decision as reflected in Publication 210 (4/01).

Example 1 — In March of 1999, you installed a boulder retaining wall for \$1,500. You charged your customer Wisconsin sales and use tax ($\$1,500 \times 5\% = \75) on this installation. You did not pay Wisconsin sales or use tax on your purchase price of the materials (\$1,000) used in making this installation.

Since the Commission's decision, as reflected in Publication 210 (4/01), is that the installation of a boulder retaining wall is not subject to Wisconsin sales and use tax, you may file a claim for refund for the sales tax of \$75 which you charged your customer in error. You must return the tax refund and interest to your customer.

However, if you file a claim for refund on your sale of the retaining wall to your customer because the installation is a real property improvement, you would owe Wisconsin use tax ($\$1,000 \times 5\% = \50) on your purchase price of the boulders and other materials (\$1,000) used in the installation of the retaining wall.

Example 2 — In June of 1999, you installed a boulder retaining wall for \$500. You treated the installation as a real property improvement and, therefore, paid Wisconsin sales or use tax based on your purchase price of the materials (\$200) used in the installation of the retaining wall.

Since the Commission's decision, as reflected in Publication 210 (4/01), is that the installation of a boulder retaining wall is not subject to Wisconsin sales and use tax, you do not have to do anything. You have treated the item in a manner consistent with the Commission's decision as reflected in Publication 210 (4/01).

Item 3 (An assumption is made that no tangible personal property is transferred to the customer with the service.)

If you treated the services listed in Item 3 on page one as a real property improvement (position indicated in Publication 210 (12/99)), you have two options:

1. Do nothing. The department will not adjust your sales and use tax liability for these items.
2. Report sales tax on the selling price of the service, unless an exemption applies.

If you treated the services listed in Item 3 as landscaping services (position indicated in Publication 210 (4/01)) and charged your customers Wisconsin sales or use tax based on your selling price of the landscaping service (materials and labor), you do not have to do anything. You have treated the items in a manner consistent with


the department's "revised" position as reflected in Publication 210 (4/01).

Example — In 2001, you are audited by the department for the year 1999. You did not charge Wisconsin sales tax on \$2,000 worth of services for removing trees and other plant materials from a construction site.

Although the department's "revised" position, as reflected in Publication 210 (4/01), is that removing trees

and plants is a landscaping service subject to Wisconsin sales tax, the department will not assess you sales tax on the service (\$2,000).

Sales On or After May 1, 2001

For sales occurring on or after May 1, 2001, the proper amount of Wisconsin sales and use tax must be paid to the department based on the positions reflected in Publication 210 (4/01). 

Reminder: Lafayette County Tax Effective April 1

Beginning April 1, 2001, the 0.5% county sales and use tax is in effect in Lafayette county. Following is a list of the 54 counties that have adopted the county tax, the county code, and the effective date of each county's tax. More information about the county tax can be found on pages 36-42 of Wisconsin Publication 201 (1/01), *Wisconsin Sales and Use Tax Information*.

Counties With County Tax

County	Effective Date	County	Effective Date
Adams (01)	1/1/94	Chippewa (09)	4/1/91
Ashland (02)	4/1/88	Columbia (11)	4/1/89
Barron (03)	4/1/86	Crawford (12)	4/1/91
Bayfield (04)	4/1/91	Dane (13)	4/1/91
Buffalo (06)	4/1/87	Dodge (14)	4/1/94
Burnett (07)	4/1/89	Door (15)	4/1/88

County	Effective Date	County	Effective Date
Douglas (16)	4/1/91	Ozaukee (45)	4/1/91
Dunn (17)	4/1/86	Pepin (46)	4/1/91
Eau Claire (18)	1/1/99	Pierce (47)	4/1/88
Forest (21)	4/1/95	Polk (48)	4/1/88
Green Lake (24)	7/1/99	Portage (49)	4/1/89
Iowa (25)	4/1/87	Price (50)	1/1/93
Iron (26)	4/1/91	Richland (52)	4/1/89
Jackson (27)	4/1/87	Rusk (54)	4/1/87
Jefferson (28)	4/1/91	St. Croix (55)	4/1/87
Juneau (29)	4/1/92	Sauk (56)	4/1/92
Kenosha (30)	4/1/91	Sawyer (57)	4/1/87
LaCrosse (32)	4/1/90	Shawano (58)	4/1/90
Lafayette (33)	4/1/01	Taylor (60)	7/1/99
Langlade (34)	4/1/88	Trempealeau (61)	10/1/95
Lincoln (35)	4/1/87	Vernon (62)	1/1/97
Marathon (37)	4/1/87	Vilas (63)	4/1/88
Marquette (39)	4/1/89	Walworth (64)	4/1/87
Milwaukee (40)	4/1/91	Washburn (65)	4/1/91
Monroe (41)	4/1/90	Washington (66)	1/1/99
Oconto (42)	7/1/94	Waupaca (68)	4/1/89
Oneida (43)	4/1/87	Waushara (69)	4/1/90



Wisconsin Tax Bulletin

Published quarterly by:

Wisconsin Department of Revenue
Income Sales and Excise Tax Division
PO Box 8933
Madison WI 53708-8933

Subscriptions available from:

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

Annual cost \$7.00

New Business Sales and Use Tax Seminars

The Wisconsin Department of Revenue will present a series of sales and use tax seminars in May 2001. These free seminars will provide sales and use tax information that will be beneficial to persons with limited sales and use tax knowledge.

You are invited to attend any of the seminars listed on page 4, free of charge. A morning seminar (8:30 a.m. to 12:00 noon) is for general businesses, and an afternoon seminar (1:00 p.m. to 4:30 p.m.) is for construction contractors. You must register if you wish to attend. Space at each seminar is limited to the first 40 registrants. To register or for more information, call the Department of Revenue's Speakers Bureau at (608) 266-1911.

* * * * *

May 4, 2001 – Pewaukee
Waukesha County Technical College
800 Main Street

* * * * *

May 15, 2001 – Eau Claire
Chippewa Valley Technical College
620 W. Clairemont Ave.

* * * * *

* * * * *

May 18, 2001 – Green Bay
Green Bay State Office Building
200 North Jefferson Street

* * * * *

May 22, 2001 – Baraboo
University of Wisconsin – Baraboo/Sauk County
1006 Connie Rd.

* * * * *



2001 Estimated Tax Requirements for Individuals, Estates, and Trusts

Individuals and fiduciaries that expect to owe \$200 or more of tax (including recycling surcharge) with their 2001 Wisconsin income tax return are required to pay 2001 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 2001 Form 1-ES, Wisconsin Estimated Tax Voucher, is filed with each estimated tax payment.

For calendar year taxpayers, the first estimated tax payment is due on April 16, 2001 (April 15 is a Sunday). Installment payments are also due on June 15, 2001, September 17, 2001 (September 15 and 16 are weekend dates), and January 15, 2002. For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year.

Estates and grantor trusts that are funded on account of a decedent's death are only required to make estimated

tax payments for taxable years that end two or more years after the decedent's death. For example, an individual died on March 28, 2000. A grantor trust that was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 28, 2002.

A trust that is subject to tax on unrelated business income is generally required to pay 2001 Wisconsin estimated tax if it expects to owe \$500 or more (including recycling surcharge) on a 2001 Wisconsin franchise or income tax return (Form 4T). A 2001 Form 4-ES, Wisconsin Corporation Estimated Tax Voucher, is filed with each estimated tax payment. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If a taxpayer does not make the estimated tax payments when required or underpays any installment, interest may be assessed.



Focus on Publications: Sales/Use Tax Information

Who must have a seller's permit? How is sales tax charged to customers, and how do purchasers pay use tax? Answers to these and many other questions are provided in Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*. The publication also provides information about who must have a use tax certificate, how to file returns, how to compute the amount of sales tax that must be remitted to the Department of Revenue, and general information about Wisconsin state, county, and stadium sales taxes and use taxes.

The Department of Revenue has more than 20 publications relating to sales and use taxes. Publication 201 is the general sales and use tax publication, and the others relate primarily to a specific type of business, a particular aspect of use taxes, or some other specific sales tax related subject.

Copies of Publication 201, as well as copies of any of the other department publications, can be obtained at any Department of Revenue office, or by mail, e-mail, fax, or the Internet. See the article titled "Tax Publications Available" on page 6 of this Bulletin for details.

Do You Owe Use Tax on Internet Purchases?

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

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

The “Internet Tax Freedom Act,” signed by President Clinton in October 1998, does not prohibit Wisconsin from imposing a sales or use tax on sales of tangible personal property made via the Internet. Rather, that Act prohibited imposing a sales or use tax on **Internet access charges**, and only if a state was not taxing those charges at the time the Act was passed. Wisconsin was taxing Internet access charges at the time the Act was passed.

In addition, the Act prohibits imposition of sales or use tax on sales made via the Internet if there is multiple taxation or the tax is discriminatory. The imposition of Wisconsin sales or use tax on tangible personal property

or taxable services sold via the Internet is not considered to be discriminatory or to result in multiple taxation because:

- Tangible personal property and taxable services sold over the Internet in Wisconsin are taxed in the same manner as property or services sold by mail order or “over-the-counter.”
- Wisconsin allows a credit against Wisconsin sales or use tax for taxes properly paid to another state.

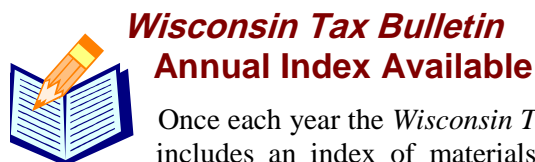
Therefore, use tax applies on purchases made via the Internet. The use tax may be reported as follows:

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

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

- **Others:**

Report use tax on a consumer use tax return, Form UT-5. Individuals may report use tax on their individual income tax return instead of Form UT-5. [☞](#)



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* 123 (January 2001), pages 49 to 79. It includes information for issues 1 to 122 (through October 2000). [☞](#)

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.” [☞](#)

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" and then "Tax 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 (12/00)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (11/00)
- 104 Wisconsin Taxation of Military Personnel (9/00)
- 106 Wisconsin Tax Information for Retirees (1/01)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2000 (11/00)
- 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) (11/00)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/00)
- 121* Reciprocity (2/01)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2000 (11/00)
- 123 Business Tax Credits for 2000 (11/00)
- 125 Credit for Tax Paid to Another State (11/00)
- 126 How Your Retirement Benefits Are Taxed (10/00)
- 600 Wisconsin Taxation of Lottery Winnings (1/01)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/01)

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 (1/01)
- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)
- 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 (10/00)
- 210* Sales and Use Tax Treatment of Landscaping (4/01)
- 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 (11/00)
- 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? (2/01)

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? (4/01)

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 (11/00)

128 Wisconsin Farmland Preservation Credit Situations and Solutions (11/00)

400 Wisconsin's Recycling Surcharge (10/00)

403 Premier Resort Area Tax (2/98)

410 Local Exposition Taxes (2/99)

503 Wisconsin Farmland Preservation Credit (1/01)

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)

515 Non-Statistical Sampling (1/01)

Other Topics

111* How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (2/01)

114 Your Wisconsin Taxpayer Bill of Rights (2/00)

115 Handbook for Federal/State Electronic Filing (12/00)

117* Guide to Wisconsin Information Returns (2/01)

124 Petition for Compromise of Delinquent Taxes (5/00)

130* Fax A Form (12/00)

140 A Tax Practitioner's Guide to Electronic Filing (6/00)

401 Extensions of Time to File (1/99)

500* Tax Guide for Wisconsin Political Organizations and Candidates (3/01)

502* Directory of Wisconsin Tax Publications (3/01)

504 Directory for Wisconsin Department of Revenue (2/00)

509* Filing Wage Statements and Information Returns on Magnetic Media (2/01)

700 Speakers Bureau presenting . . . (6/00)



Question and Answer ?

(Individual Income Tax)

Q I filed my 2000 federal income tax return on time but was unable to file my Wisconsin return on time. Will I be subject to late filing penalties since there is no extension request form for Wisconsin?

A No, not if you file your 2000 Wisconsin income tax return by August 15, 2001 and attach one of the following items to the tax return:

- A statement indicating that you are filing under the federal automatic 4-month extension provision; or
- A copy of federal Form 4868 (only the name, address, and social security number must be completed).

If you owe additional taxes on your 2000 tax return, you were not required to pay the taxes by the April 16, 2001 original due date as a condition for receiving the extension to file your Wisconsin tax return.

(Homestead Credit)

Q I didn't find out about homestead credit until after April 15th. Is it too late to file a 2000 homestead credit claim?

A No. The deadline for filing a homestead credit claim (Schedule H) is four years after the due date of the corresponding income tax return for the same taxable year. Calendar-year income tax filers (and claimants who are not required to file an income tax return) have until April 15, 2005, to file a 2000 Schedule H.

Q I cashed in my IRA in 2000 but put the money back into a different IRA of the same type right

away. Do I have to include that as income on my 2000 homestead credit claim?

A No. Amounts transferred from one retirement plan to another qualified plan (called "rollovers") are not includable in household income. However, you should attach a copy of the information return (federal Form 1099-R) showing the rollover, and write "Rollover" near line 11e of Schedule H.

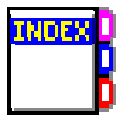
(Sales and Use Tax)

Q I recently purchased vitamins from a mail order company. The company charged me sales tax on the shipping and handling charges as well as the cost of the vitamins. Are shipping and handling charges by a mail order company subject to Wisconsin sales tax on a mail order purchase?

A Yes. The shipping and handling charges that a mail order company charges in conjunction with the sale of a taxable item (i.e., the vitamins) are subject to sales tax.

Q The seller's permit I have posted at my place of business indicates that it expired in 1998. I did renew my business tax registration and paid a \$10 renewal fee, but I did not receive a new seller's permit. My business tax registration now expires in 2001. Is my seller's permit still valid?

A Yes, your seller's permit is still valid. Seller's permits no longer expire, as long as your business tax registration has not expired. Therefore, the Department of Revenue no longer sends registered retailers new seller's permits every two years. You should keep the business tax registration renewal notice as part of your records. [☞](#)



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 47 of this Bulletin. The Index is also on the department's Internet web site at www.dor.state.wi.us. Just click on "Publications." 

Take Advantage of Wisconsin's Voluntary Disclosure Program

The Wisconsin Department of Revenue encourages businesses and individuals who are not in compliance with Wisconsin tax laws to voluntarily come forward. Taxpayers may remain **anonymous** throughout the voluntary disclosure process. Voluntary disclosure applies to all types of taxes administered by the Department of Revenue's Income, Sales, and Excise Tax Division.

Benefits of Voluntary Disclosure

- Written agreement to restrict the statute of limitations.
- Waiver of penalties.
- Possible reduction in number of periods for which returns must be filed.
- Elimination of the risk of being discovered under audit.

Taxpayer Qualifications

To be considered for voluntary disclosure treatment, a taxpayer must meet certain conditions and enter into a written agreement with the department. The following conditions must be met for a taxpayer to qualify for voluntary disclosure treatment:

- No tax returns filed for the period in question.
- No registration for the type of tax involved during the period in question.
- No contact by the department within the last 6 years regarding a registration/filing requirement or an assessment/audit assignment.

How to Apply

A taxpayer or the taxpayer's representative may request voluntary disclosure treatment by submitting a written request to the department for consideration. The request must include the following information:

- Description of Wisconsin activities for the years involved.
- List of property owned or leased in Wisconsin.
- Taxable year-end.

- Date taxable activities began in Wisconsin.
- Whether the tax involved has been collected or withheld, and if so, for what periods.
- Prior contacts by the Department of Revenue.
- Other types of tax returns currently being filed with the department.
- Whether the taxpayer is registered with the Wisconsin Department of Financial Institutions (formerly the Secretary of State) to transact business in Wisconsin.

Taxpayer Responsibilities

- File all returns for the periods agreed upon within ninety days.
- Pay all tax, late filing fees, and interest according to the agreement.
- Make books and records available to the department.

Department Rights

All voluntary disclosure agreements include provisions reserving the department's right to:

- Audit factual representations made as part of the agreement.
- Audit the taxpayer and any returns filed.
- Void the agreement if factual misrepresentations have been made by the taxpayer and assess additional tax, penalties, and interest, as appropriate.

Confidential Inquiries About Voluntary Disclosure

Information regarding Wisconsin's Voluntary Disclosure Program can be found on the department's Internet web site at www.dor.state.wi.us. If you prefer, you may submit any questions you may have, by phone at (608) 266-3969, by e-mail at wivoldis@dor.state.wi.us, or by letter. Send written requests to the following address:

Voluntary Disclosure Program
Wisconsin Department of Revenue
2135 Rimrock Road
PO Box 8933
Madison WI 53708-8933.



Father, Son Guilty of Tax, Homestead Schemes

Thomas Swanson, Jr., 34, an inmate at Racine Correctional Institute, was sentenced in March 2001, on three felony counts of filing false homestead credit claims. Racine County Circuit Court Judge Stephen A. Simanek sentenced him to five years in prison on the first count and withheld sentence on the other two counts. The judge also placed Swanson, Jr. on probation for five years and ordered him to make restitution to the State of Wisconsin of \$15,338.

According to the criminal complaint, Swanson, Jr. filed fraudulent income tax returns, which included fraudulent homestead credit and earned income credit claims, for himself and his father. He also allegedly filed fraudulent homestead credit and earned income credit claims for other inmates while he was incarcerated.

Also in March, Thomas Swanson, Sr., 57, Salem, who is Swanson, Jr.'s father, pleaded guilty to tax fraud. As part of a plea agreement, he was ordered to pay back the \$2,898 in tax refunds he received improperly. The agreement also requires the prosecutor to recommend probation and up to 120 days in jail, in addition to the restitution (the judge is not bound by the recommendation). The plea bargain forbids certain other charges from being filed but allows the judge to consider them for sentencing and restitution purposes. The charges that would not be filed include claiming a false dependent and a false earned income credit, and underreporting his income by more than \$10,000.

The charges for both of the Swansons were initiated following an investigation by the Wisconsin Department of Revenue's Fraud Unit. Filing a fraudulent homestead credit claim is a felony punishable by up to five years imprisonment and up to \$10,000 in fines. In addition, substantial civil penalties can be imposed. Assessment and collection of the taxes, penalties, and interest due follows a conviction for criminal violations.

Carmen Chuquin, 52, Madison, was sentenced in March 2001, on both federal and state tax charges. The charges were the result of a joint investigation by the Madison office of the Internal Revenue Service and the Wisconsin Department of Revenue.

Chuquin, the owner of several Indian specialty shops in the Midwest, was sentenced to one year in federal prison and fined more than \$30,000 on the federal charges of failing to report more than \$2.7 million in

earnings to the Internal Revenue Service. Chuquin will also be supervised for one year following her release.

In Dane County Circuit Court, Chuquin was placed on probation for three years and ordered to pay \$182,600 to the state within 90 days, as part of a complex plea bargain. She was charged with 21 counts of failing to remit the 5% sales tax she collected from customers in Wisconsin. She entered a guilty plea on one count, and the remaining 20 counts will be held in abeyance and dropped if she makes a full and timely payment. If she does not, the other 20 counts, each of which carries a maximum 10-year prison term, will go to trial. Chuquin must also repay the state for the remainder of the sales taxes she collected but did not remit.

Amy C. Banks, 31, Evansville, was found guilty in March 2001, on three felony counts, two of theft in a business setting and one of income tax evasion. Dane County Circuit Court Judge Steven Ebert pronounced Banks guilty after she pled guilty to one of the theft counts and no contest to the other two counts.

Banks is the former bookkeeper of Regent Mental Health Group in Madison. She faces a maximum penalty of up to 27 ½ years in prison and fines of up to \$30,000, or both, together with the cost of prosecution.

In February 2001, Sandra E. Maddern, 58, Racine, was charged with 12 counts of filing false state sales tax returns for a bingo operation run by New Day Drum and Bugle Corps.

According to the criminal complaint, Maddern evaded over \$13,000 in state sales tax by underreporting bingo receipts on the sales tax returns for each month of 1998. She also falsified returns for 1995, 1996, and 1997.

The sales tax investigation was started after it was discovered that Maddern reported substantially greater bingo receipts in reports to the Wisconsin Gaming Commission than in the sales tax returns to the Department of Revenue. If convicted, she could face up to one year in jail, up to \$6,000 in fines, or both.

Also in February, Paul A. Neyhard, Oshkosh, was fined \$700 and sentenced to 30 days in jail, for operating Old Mill Furniture Refinishing without a valid seller's permit. He was found guilty in Winnebago County Circuit Court, in September of 2000. [!\[\]\(235bfe13ebf007ce2eea9e689707fac7_img.jpg\)](#)

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

Who Must File

Estates:

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

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

Trusts:

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

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

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

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

Trusts must file on a calendar-year basis, and the due date is the following April 15 (April 16 in 2001, since April 15 is a Sunday). (Exception: a limited number of charitable trusts may file on a fiscal-year basis.)

Qualified Funeral Trust (QFT)

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

Electing Small Business Trust (ESBT)

For taxable years beginning on or after January 1, 1997, electing small business trusts (ESBTs) may be S corporation shareholders. The portion of an ESBT that consists of stock of one or more S corporations is treated as a separate trust. The separate trust is subject to Wisconsin income tax at the highest rate under sec. 71.06(1), (1m), (1n), or (1p), Wis. Stats. (1999-00).

Closing Certificates

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

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

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

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

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

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

For the fiscal year ending June 30, 2000, the department issued 10,466 Closing Certificates for Fiduciaries. [\[Link\]](#)

Filing Wisconsin Estate Tax Returns (Form W706)

Filing Requirement

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

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

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

Due Date

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

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

Payment of Tax

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

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

Examples:

1. The decedent died February 15, 2000. An extension of time to file the federal estate tax return was obtained from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on December 31, 2000, which was within the extension period. Tax of \$1,200 was due. The total amount due is \$1,326, computed as follows:

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

2. The decedent died February 15, 2000 and did not obtain an extension to file from the IRS. The Wisconsin estate tax return was filed December 31, 2000, and showed no tax due. This estate owes the minimum penalty of \$25.

Installment Payments

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

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

If an estate fails to make an installment payment of tax or interest under sec. 72.225, Wis. Stats. (1999-00), when it is due, the entire remaining balance of tax and interest due must be paid upon notice by the Department of Revenue.

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

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

Distributees of real estate must provide to the department a certified copy of a lien for unpaid taxes and interest on the property to secure payment, and record the lien in the office of the register of deeds of the county in which the property is located. Distributees of personal property must provide either a lien or a finan-

cial guarantee bond equal to the estimated tax and interest, if the tax has not been determined. Upon determination of the tax, distributees of personal property must either provide a lien or a financial guarantee bond sufficient to secure payment of the tax and interest, or pay the excess over the amount of tax and interest secured by the bond.

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

Certificate Determining Estate Tax

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

(Note: The Wisconsin estate tax replaced the Wisconsin inheritance tax, effective for deaths occurring on or after January 1, 1992.) [✎](#)

Farmers Receive More Than \$34 Million in Farmland Credits

Direct benefits of approximately \$34.2 million were distributed to Wisconsin farmers in 2000, primarily for the 1999 tax year, through the farmland preservation credit program and the farmland tax relief credit program. These credits are paid as a reduction in Wisconsin income tax, or as a cash refund if the credits exceed income tax due. The total amount of farmland preservation and farmland tax relief credits may not exceed 95% of the farm property taxes.

Farmland Preservation Credit Program

About 22,000 farmers, including about 500 corporations, claimed farmland preservation credits totaling \$18.2 million in 2000. The credit averaged \$823 per claimant.

The goals of the farmland preservation credit program are twofold –

- To preserve Wisconsin farmland by means of local land use planning and soil conservation practices. To qualify for the credit, farmland must either be

zoned for exclusive agricultural use (about 78% of claims), or be subject to a farmland preservation agreement between the farmland owner and the state (about 22% of claims). In addition, participants must comply with soil and water conservation standards set by the state Land Conservation Board.

- To provide property tax relief to farmland owners. About 38% of farm owners with 35 or more acres claimed the credit in 2000. Farmland preservation credits equaled about 22% of claimants' average property tax bills.

Farmland Tax Relief Credit Program

About 58,400 farmers, including about 1,000 corporations, claimed farmland tax relief credits totaling \$16 million in 2000, for an average credit of \$274. Farmland owners were required to have at least 35 acres of farmland to qualify for farmland tax relief credit.

The credit for 1999 claims equaled 13% of the first \$10,000 of property taxes on farmland. For the 2000 tax year (credits claimed in 2001), the credit is equal to 11% of the first \$10,000 of property taxes. [✎](#)



Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

The following decisions are included:

Individual Income Taxes

Alimony	
<i>Donald R. and Kristen E. Jensen</i>	14
Business expenses - employee business expense	
Bad debts	
<i>Philip and Patricia Sunich</i>	15
Business expenses - substantiation	
Personal residence, sale of - cost basis substantiation	
<i>Thomas E. Zablocki</i>	15
Estimated Assessments	
<i>George F. Reif</i>	16
Interest - assessments	
Interest - underpayment	
<i>Edward Staacke</i>	16
Interest income, municipal bonds	
<i>Michael and Betty C. Borge</i>	17
Native Americans - income earned off the reservation	
<i>Eugene and Patricia Danforth</i>	17
Nonresidents - nonresident alien	
Appeals - frivolous	
<i>Ross L. Bosetti and Brenda Bosetti</i>	17
Penalties - retirement plan early withdrawals	
Appeals - jurisdiction	
<i>Laura Darne</i>	18
Retirement benefits - situs of income;	
Appeals - frivolous	
<i>Robert J. and Ruth I. Quinnell</i>	19

Homestead Credit

Homestead credit - household income - retirement plan distribution	
<i>Efrim V. Fudim</i>	19

Corporation Franchise and Income Taxes

Accounting - change in method	
<i>Babcock & Wilcox Company (The)</i>	20
Business loss carryforward - reorganization	
<i>Caterpillar, Inc.</i>	21
Underpayment interest	
Interest on underpayment interest	
<i>General Casualty Company of Wisconsin and Regent Insurance Company</i>	21

Sales and Use Taxes

Admissions - theater performances	
<i>Milwaukee Repertory Theater, Inc.</i>	22
Services subject to the tax - landscaping	
<i>John Taylor Golf, Inc. d/b/a The Bog</i>	23
Services subject to the tax - transient lodging	
<i>Ronald J. Hergert d/b/a Aero Expo Corporate Service</i>	24

Withholding of Taxes

Officer liability	
<i>Steven T. Rich</i>	25
Officer liability	
<i>Roland F. Sarko</i>	25

Sales and Use Taxes, and Withholding of Taxes

Officer liability	
<i>James R. Werner</i>	26

Drug Taxes

Drug tax - constitutionality	
Appeals - jurisdiction	
<i>Jon P. Craven</i>	27
Drug tax - retroactive rehabilitation of assessment	
<i>Cooper D. Collins</i>	27
Drug tax - retroactive rehabilitation of assessment	
<i>Elaine K. Schmitz</i>	28
Drug tax - retroactive rehabilitation of assessment	
<i>Eugene D. Schmitz</i>	28

INDIVIDUAL INCOME TAXES

Alimony. *Donald R. and Kristen E. Jensen vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 20, 2000). The issue in this case is whether alimony payments received by Kristen E. Jensen from her former husband in 1996 and 1997 are subject to Wisconsin income tax, even though her former husband, a nonresident of Wisconsin, did not claim a deduction for the payments on a Wisconsin income tax return.

The taxpayers jointly filed a Form 1A Wisconsin income tax return for 1996, and a copy of their federal tax return was not attached. On their Wisconsin return they did not include alimony payments received by Kristen E. Jensen ("the taxpayer") from her former husband, Perry R. Fritz.

In July 1999, the department sent a letter to the taxpayers regarding the alimony payments. In August 1999,


the taxpayers sent a reply, which stated that alimony payments were made by the taxpayer's former husband, and asserting that the payments are reportable to the federal government but not to Wisconsin.

The taxpayers also jointly filed a 1997 Wisconsin income tax return that did not include alimony payments the taxpayer received that year.

The taxpayers allege that the alimony payments the taxpayer received in 1996 and 1997 were not reported because the taxpayer's former spouse was a nonresident of Wisconsin in those years and could not claim the payments as a deduction for Wisconsin income tax purposes.

The Commission concluded that the alimony payments the taxpayer received from her former husband in 1996 and 1997 are includable in the taxpayers' Wisconsin taxable income. Because alimony is subject to the federal income tax, it is also subject to Wisconsin income tax, because Wisconsin statutes rely on the Internal Revenue Code's definition of "gross income" to identify what types of income are taxable. There is no provision in Wisconsin law to exclude alimony payments if there is no Wisconsin tax deduction available to the alimony payer.

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


 **Business expenses - employee business expense; Bad debts.** *Philip and Patricia Sunich vs. Wisconsin Department of Revenue* (Circuit Court for Kenosha County, June 28, 2000). This is an appeal from a September 14, 1999, decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 118 (January 2000), page 26, for a summary of the Commission's decision. The issues on appeal are:

A. Whether the taxpayers substantiated the unreimbursed employee vehicle expense deductions claimed on their 1991 to 1994 Wisconsin income tax returns.

B. Whether they substantiated a worthless debt, deductible as a short-term capital loss, on their 1993 and 1994 tax returns, as required by the Internal Revenue Code.

The department made a motion to dismiss the case, and the Circuit Court issued an oral decision dismissing the action, on May 24, 2000. On June 28, 2000, the Circuit Court ordered and adjudged that the action be dismissed, for the reasons stated in its earlier oral decision.

The taxpayers have not appealed this decision and order. [✎](#)

 **Business expenses - substantiation; Personal residence, sale of - cost basis substantiation.** *Thomas E. Zablocki vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 18, 2000). The issue in this case is whether the taxpayer submitted sufficient substantiation to prove that the department's assessment against him was incorrect.

The taxpayer was a lawyer during 1992, 1993, and 1994 (the period under review), and he also operated a real estate business in 1994. The department audited his tax returns for the period under review and subsequently issued an assessment for those years.


The taxpayer's business expenses relating to his law practice and his real estate business were reduced, and a gain on the sale of his personal residence in 1993 was added. The taxpayer's self-employment tax deductions, homestead credit, and other credits were also reduced.

The taxpayer filed a petition for redetermination, and the department modified the assessment based on additional substantiation submitted. The taxpayer timely appealed the remaining assessment to the Commission.

In his appeal, the taxpayer presented only his own testimony and one exhibit to support his claim that the department improperly assessed him. He submitted no substantiation to overcome the presumptive correctness of the department's assessment. The department filed a motion to dismiss the case on the ground that the taxpayer had shown no right to relief.

The Commission concluded that since the taxpayer failed to substantiate any of the claimed business expenses or real estate cost basis items disallowed by the department, the department's motion to dismiss the case is granted.

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

 **Estimated assessments.** *George F. Reif vs. Wisconsin Department of Revenue* (Circuit Court for Menominee/Shawano Counties, January 31, 2001). This is an appeal from a September 1, 2000, decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 123 (January 2001), page 23, for a summary of the Commission's decision.

The issue in this case is whether the taxpayer's petition for review of the department's estimated assessments against him state a claim against which relief can be granted. In July 1999, the department issued two estimated assessments against the taxpayer because he failed to file income tax returns for 1993 to 1997. The taxpayer filed timely petitions for redetermination, and the department denied them. The taxpayer then filed petitions for review with the Commission.


In the petitions for review, the taxpayer indicated that he did not give his consent "to be governed by any tyranny nor any depotism," and that "I simply do not owe any

tax to any government that refuses to recognize me as its free and equal citizen." In response the Commission requested a clear and concise statement of the facts in the case and the taxpayer's specific objections to the department's action. The taxpayer did not respond to the notice, and the Commission held that the taxpayer failed to state a claim against which relief can be granted.

In its memorandum decision, the Circuit Court stated that "...WHEREAS petitioner makes passionate, but groundless and frivolous arguments about his 'right' not to pay taxes, his arguments are not relevant to the facts..."

The Circuit Court concluded that the department's brief correctly states the law applicable to this fact situation, and it therefore affirmed the Commission's Ruling and Order in all regards.

The taxpayer has not appealed this decision. [!\[\]\(3e2231b1ad3ca8da8658228c00dd08e0_img.jpg\)](#)

 **Interest - assessments; Interest - underpayment.** *Edward Staacke vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 10, 2001). The issue in this case is whether the taxpayer should be required to pay the interest and "penalties" imposed on an income tax assessment for the years 1995, 1996, and 1997.

The department issued an assessment to the taxpayer for the years 1995, 1996, and 1997. The assessment, which included additional tax, interest, and "penalties," disallowed the taxpayer's deductions for child support and maintenance paid to his former wife.

The taxpayer filed a petition for redetermination with the department. The department denied the petition, and the taxpayer then filed a petition for review with the Commission. The department filed a motion to dismiss the taxpayer's petition for review, because it fails to state a claim on which relief can be granted.

The taxpayer did not dispute the additional tax but objected only to the interest and "penalties," because he stated he was only following what the Waukesha County

Circuit Court instructed him to do. A 1995 divorce judgment entered in that Court stated that the taxpayer may deduct his payments from his income.

The Commission concluded that the taxpayer's petition for review fails to state a claim on which it can grant relief. Even if the taxpayer had objected to the department's disallowance of the deductions for child support and maintenance, the language in the divorce decree relating to the deductibility of the payments may not override income tax law. The Commission therefore granted the department's motion to dismiss the petition for review.

The Commission further held that the assessment imposes interest (not "penalties") under two statutes, and the characterization by both the department and the taxpayer as "penalty" is incorrect. These statutory impositions of interest are mandatory, and neither the department nor the Commission has the authority to waive their imposition.

The taxpayer has not appealed this decision. [!\[\]\(b64b40baaee5acddc1eab8538ba84754_img.jpg\)](#)

**Interest income, municipal bonds.**

Michael and Betty C. Borge vs. Wisconsin Tax Appeals Commission and Wisconsin Department of Revenue (Circuit Court for Dane County, November 29, 2000). This is an appeal from a May 22, 2000, decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 122 (October 2000), page 23, for a summary of the Commission's decision.

The issue on appeal 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.

Without an explanation in its written decision and order of November 29, 2000 ("for the reasons expressed on the record"), the Circuit Court affirmed the May 22, 2000, Commission decision.

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

**Native Americans - income earned off the reservation.**

Eugene and Patricia Danforth vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 24, 2000). The issue in this case is whether income earned by Eugene Danforth from an employer located off the reservation where he resided is taxable for Wisconsin income tax purposes.

Eugene Danforth ("the taxpayer") is an enrolled member of the Oneida Indian Nation. At all times relevant to this case, both he and Patricia Danforth ("the taxpayers") resided on the Oneida reservation. During 1995, the taxpayer was employed by a company whose facility was not located on the Oneida reservation.

When the taxpayers filed their 1995 Wisconsin income tax return, they asserted that the taxpayer's income from the company where he was employed was not subject to the Wisconsin income tax. Their position is based on the assertion that the company's facility is located on land that was once part of the Oneida reservation.

In June 1999, the department issued an assessment rejecting the claim that the taxpayer's income from the company is not taxable for Wisconsin tax purposes. The taxpayers filed a petition for redetermination, the department denied it, and the taxpayers then filed a timely petition for review with the Commission.

The Commission concluded that the taxpayer's income from the company where he was employed is subject to taxation by the State of Wisconsin, because it was not earned on the Oneida reservation. Even if the facility is located on land that was once part of the Oneida reservation (no documentation was submitted to prove this), it would not matter because it was not on the reservation when the taxpayer earned the income.

The taxpayers have not appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. [↗](#)

**Nonresidents - nonresident alien; Appeals - frivolous.**

Ross L. Bosetti and Brenda Bosetti vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 16, 2000). The issues in this case are:

- A. Whether the taxpayers were nonresident alien individuals during the years at issue.
- B. Whether the taxpayers' arguments that the Wisconsin income tax did not apply to them for the years at issue were frivolous and groundless, thereby subjecting them to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

Mr. Bosetti timely filed his 1996 Wisconsin income tax return as an unmarried "head of household." The taxpayers filed timely joint Wisconsin income tax returns for 1997 and 1998. All of the returns listed a Wisconsin address and contained documents listing their address as a Wisconsin address.

In September 1999, both Mr. and Mrs. Bosetti filed with the department claims for refund for all income taxes he paid with his 1996 Wisconsin income tax return, and all income taxes they paid with their 1997 and 1998 Wisconsin income tax returns. The claims for refund made the following assertions:

- (1) The taxpayers are nonresident aliens and are thus not obligated to pay Wisconsin income tax;
- (2) They revoke their prior election to pay income taxes under an election nonresident aliens have pursuant to the Internal Revenue Code (IRC) and request refunds of the Wisconsin income taxes paid with their 1996 to 1998 income tax returns;
- (3) There is a “nexus” between the IRC and Wisconsin tax laws that excuses them from paying Wisconsin income taxes because they are nonresident alien individuals and the tax laws do not apply to them; and
- (4) The Wisconsin Statutes do not define “income.”

In separate notices, the department denied the claims for refund. Each taxpayer filed a petition for redetermination with the department, which the department denied. They then each filed a timely petition for review with the Commission. The department subsequently filed a motion for summary judgment, on the basis that there is no genuine issue as to any material fact in this case.

The Commission concluded as follows:

- A. Mr. Bosetti was not a nonresident alien individual for 1996 Wisconsin income tax purposes, nor were both taxpayers nonresident alien individuals for 1997 and 1998 Wisconsin income tax purposes. Their claims for refund of taxes paid in those years were properly denied by the department.
- B. The taxpayers’ arguments that the Wisconsin income tax did not apply to them from 1996 to 1998 are frivolous and groundless, thereby subjecting them to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

Finding that there is no genuine issue as to any material fact in this case, the Commission granted the department’s motion for summary judgment. In addition, the Commission assessed an additional \$500, pursuant to the cited statute.

The taxpayers have not appealed this decision. [!\[\]\(830769b31eeeaca920791081939ff8ba_img.jpg\)](#)



Penalties - retirement plan early withdrawals; Appeals - jurisdiction.

Laura Darne vs. Wisconsin Department of Revenue (Circuit Court for Milwaukee County, December 7, 2000). The taxpayer seeks review of a September 1, 2000, decision of the Wisconsin Tax Appeals Commission, as well as various other decisions of the Commission and the department. The Commission decision was not previously summarized in the *Wisconsin Tax Bulletin* but is briefly summarized below.

The issue on appeal is whether the department may impose a penalty on the taxpayer’s early withdrawal of funds from her retirement plans in 1998, equal to 33% of the income tax penalty on her 1998 federal return.

In August 1999, the department issued an assessment to the taxpayer, consisting of the Wisconsin early withdrawal penalty, plus interest. The taxpayer filed a petition for redetermination, which the department denied. She then filed a timely petition for review with the Commission, and the department filed a timely answer to the petition. The taxpayer filed with the Commission a motion to dismiss the department’s answer, as well as several additional motions and counter-motions.

The Commission held that the department’s action was proper. In addition, the Commission held that the taxpayer’s position before the Commission was frivolous and groundless, and it thus assessed the taxpayer an additional \$500 penalty.

On appeal, the taxpayer seeks a declaration that the Wisconsin statute providing for the early withdrawal penalty is invalidated by federal ERISA provisions and therefore seeks a permanent injunction barring its enforcement. The department seeks dismissal of the appeal on the grounds that the taxpayer did not comply with statutory appeal procedures. The taxpayer served the Attorney General rather than the department as required.

The Circuit Court concluded that it lacks subject matter jurisdiction over the matter because the taxpayer failed to serve a copy of her petition for review upon the department as required by statute. The Court therefore granted the department’s motion and dismissed the taxpayer’s petition for review.

The taxpayer has appealed this decision to the Court of Appeals. [!\[\]\(7bc43b319a082987e20f7bf78f4bab80_img.jpg\)](#)

**Retirement benefits - situs of income; Appeals - frivolous.**

Robert J. and Ruth I. Quinnell vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 20, 2001). The issues in this case are:

- A. Whether the department correctly added pension income received by Robert J. Quinnell (“the taxpayer”) to the income of the taxpayers for tax years 1993 through 1997 (“the period under review”).
- B. Whether the taxpayers’ assertions that the pension income is not taxable are frivolous and groundless, thereby subjecting them to an additional assessment.

The taxpayers were Wisconsin residents and filed Wisconsin resident income tax returns for each of the years in the period under review. On each return they did not list pension income that the taxpayer received from a Wisconsin corporation.

The department issued two assessments to the taxpayers, one in May 1999 covering tax years 1995, 1996, and 1997, and another in January 2000 covering tax years 1993 and 1994. Both assessments added the taxpayer’s pension income to the taxpayers’ income for each tax year. The taxpayers filed timely petitions for redetermination with the department, the department denied them, and the taxpayers then filed timely petitions for review with the Commission.

The taxpayers argued that there is no statutory authority to impose the Wisconsin income tax on the taxpayer’s pension income, and that it is not taxable because it is not attributable to property located in Wisconsin and is not from business transacted in Wisconsin. The taxpayers

further argued that the pension income is not taxable by Wisconsin because it is available to them as federal reserve notes, which are included in the definition of “obligation or other security of the United States.”

The Commission concluded as follows:

- A. The department correctly added pension income received by the taxpayer to the income of the taxpayers for tax years 1993 through 1997, as the taxpayers were Wisconsin residents when the income was received. Since the pension income is taxable under the federal Internal Revenue Code, it is includable as Wisconsin adjusted gross income under sec. 71.01(13), Wis. Stats. Since the taxpayers were Wisconsin residents the pension income is taxable under sec. 71.02(1), Wis. Stats., which imposes Wisconsin tax on all income, regardless of its source.
- B. The taxpayers’ assertions that the pension income is not taxable are frivolous and groundless, thereby subjecting them to an additional assessment. The taxpayers’ written submissions do nothing to disprove the accuracy of the department’s assessments; instead, they amount to frivolous arguments that have no chance of prevailing.

Because the Commission concluded that the taxpayers’ position in the proceedings is frivolous and groundless, the Commission assessed an additional \$500 under sec. 73.01(4)(am), Wis. Stats.

The taxpayers have appealed this decision to the Circuit Court. [↗](#)

HOMESTEAD CREDIT**Homestead credit - household income-retirement plan distribution.**

Efrim V. Fudim vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 1, 2001). The issue in this case is whether a retirement plan distribution received by the claimant in 1998 and included as part of his federal and Wisconsin adjusted gross income could be subtracted in determining household income for homestead tax credit purposes.

The claimant’s 1998 federal income tax return included a taxable distribution from a Roth IRA, which was then included on his Wisconsin income tax return as a component of federal adjusted gross income. He also filed a

homestead credit claim (Schedule H) for 1998. He subtracted the IRA distribution from his household income because it had been included in (added back to) household income in 1993 and 1994. It was a required addition in those years because it was household income that had been deducted in determining federal adjusted gross income. The subtraction on the claimant’s 1998 Schedule H was made pursuant to sec. 71.52(6), Wis. Stats., which states, in part:

...Amounts not included in adjusted gross income but added to “income” in a previous year and repaid may be subtracted from income for the year during which they are repaid. ...


The Commission concluded that the retirement plan distribution could be subtracted from the claimant's household income for 1998, because a) in 1993 and 1994 it was not included in adjusted gross income but was added for homestead credit purposes, and b) it was "repaid" to the claimant and included in adjusted gross income in 1998.

The department has not appealed this decision and order but has adopted a position of nonacquiescence in regard to the decision or order. The effect of this action is that,

although it is binding on the parties in this case, the Commission's conclusions of law, the rationale, and the construction of statutes in this case are not binding upon or required to be followed by the department in other cases.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. [!\[\]\(339a16584d5da0f0a3ca4e9ec17bf6a1_img.jpg\)](#)

CORPORATION FRANCHISE AND INCOME TAXES

 **Accounting - change in method.** *Babcock & Wilcox Company (The) vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, November 9, 2000). This is an appeal from an order of the Circuit Court for Dane County dated December 16, 1999. See *Wisconsin Tax Bulletin* 119 (April 2000), page 17, for a summary of that decision.

The issue in this case is whether the taxpayer properly changed its method of accounting when it filed amended state income tax returns for taxable years ending in 1981, 1982, and 1983, thereby assigning to the taxpayer's predecessor a portion of \$600 million in deferred income of the predecessor.

The taxpayer's predecessor ("Old B&W") had ongoing, multi-year contracts at the time of a corporate reorganization in 1978. The taxpayer ("New B&W") reported all of the income earned on those contracts in the years it completed them. New B&W later filed amended state income tax returns to exclude income it asserted to be allocable to Old B&W. The department denied the refunds, and the Tax Appeals Commission and Circuit Court affirmed the department's actions.

As a result of the reorganization, New B&W acquired all of the assets and liabilities of Old B&W and began carrying on the same business as Old B&W, with the same management. The nature of the manufacturing business of Old B&W and New B&W required them to enter into long-term contracts covering several years. This required both corporations to use special rules and


procedures to account for the income generated by these contracts. The methods used by both were "percentage of completion" accounting for financial reporting purposes, and "completed contract" accounting for tax reporting purposes.

The use of completed contract accounting for tax purposes by Old B&W meant that, at any given time, there was a substantial amount of income generated that was not contemporaneously recognized for income tax purposes. The reporting of the income was deferred until the completion of the entire contract. At the time of the merger in 1978 there was approximately \$600 million of deferred income earned but not reported. All of the deferred income was reported by New B&W in the years following the merger, consistent with the completed contract method of accounting used by Old B&W. New B&W later filed amended state income tax returns to exclude income it asserted to be allocable to Old B&W.

New B&W argued that it did not change its method of accounting when it filed its amended tax returns. The amended returns merely excluded the percentage of profit it claimed was allocable to Old B&W.

The Court of Appeals affirmed the order of the Circuit Court and concluded that the Commission's ruling in affirming the department's actions was reasonable. The Court further concluded that the taxpayer's actions on its amended returns did constitute a change in accounting method, and that at the time of the reorganization New B&W assumed the responsibility for the contracts of Old B&W, both to complete the contracts and to report the income on those contracts.

The taxpayer has not appealed this decision. [!\[\]\(f1c5da15572e3e09d343161be98f508d_img.jpg\)](#)

 **Business loss carryforward - reorganization.** *Wisconsin Department of Revenue vs. Caterpillar, Inc.* (Court of Appeals, District IV, January 11, 2001). This is an appeal from a December 15, 1999, decision of the Circuit Court, which affirmed a March 25, 1999, decision of the Wisconsin Tax Appeals Commission. The Circuit Court decision was not summarized in the *Wisconsin Tax Bulletin*. See *Wisconsin Tax Bulletin* 114 (July 1999), page 14, for a summary of the Commission's decision.

The issue on appeal is whether Wisconsin net business losses for tax years 1982 through 1984, sustained by Caterpillar Tractor Co. prior to its merger into the taxpayer in 1986, may be carried forward to tax years 1987 through 1990, pursuant to sec. 71.26(4), Wis. Stats. (1987-88).

Caterpillar Tractor Co. was incorporated in California in the 1920s. In 1986 the company changed its name and incorporated a new entity, Caterpillar, Inc., in Delaware as a wholly owned subsidiary of the existing entity, which immediately merged into the taxpayer, effective May 8, 1986. There was no change in ownership, and all shares of common stock were converted to shares of the taxpayer's common stock.

The officers and directors remained the same for both corporations. No distribution of any property was made by reason of the reorganization. The taxpayer succeeded to all assets, liabilities, rights, privileges, and duties, without limitation, of those formerly held by Caterpillar Tractor Co., and the taxpayer maintained the same federal taxpayer identification number.

For federal income tax purposes, the reorganization constituted a nontaxable reorganization under Internal Revenue Code (IRC) sec. 368(a)(1)(F), and the taxpayer


succeeded to all the tax attributes of Caterpillar Tractor Co., pursuant to IRC sec. 381.

Caterpillar Tractor Co. sustained Wisconsin net business losses in 1982, 1983, and 1984. It carried forward and used part of the loss in 1985 and carried forward the balance to 1986. The taxpayer used part of the carryover losses on each of its 1986 through 1990 Wisconsin corporate franchise tax returns. The department disallowed the carryover losses for the portion of 1986 after the reorganization, and for all of 1987 through 1990.

The Commission held that the taxpayer was not entitled to deduct carryover losses for the portion of 1986 after the reorganization, because the taxpayer is not the corporation that incurred the losses, as required under Wisconsin law for 1986; the federalization of Wisconsin's corporate and franchise tax took effect the following year. The Commission further held that the taxpayer may deduct the carryover losses for 1987 through 1990, because the federalization of IRC sec. 381 is not limited to corporate reorganizations occurring after January 1, 1987, as contended by the department. The portion of the decision relating to 1986 was not appealed, but the department appealed the portion of the decision relating to 1987 through 1990.

The Court of Appeals concluded that sec. 71.26(4), Wis. Stats. (1987-88), the renumbered successor to sec. 71.06(1), Wis. Stats. (1985-86), permitted the taxpayer to make the net operating loss carry-forwards in 1987 through 1990. The Court thus affirmed the decision of the Circuit Court.

The department has appealed the decision to the Wisconsin Supreme Court. [!\[\]\(4fe57c3593bf1b21d272ae7ac8dfaf77_img.jpg\)](#)

 **Underpayment interest; Interest on underpayment interest.** *General Casualty Company of Wisconsin and Regent Insurance Company vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 25, 2001). The issue in this case is whether the department properly imposed underpayment interest, plus additional interest on the underpayment interest, on assessments it issued to the taxpayers.

Both taxpayers are corporations organized and existing under laws of Wisconsin, as they were from May 1, 1990 through December 31, 1995 (the "audit period"). Regent Insurance Company ("Regent") is a wholly

owned subsidiary of General Casualty Company of Wisconsin ("General Casualty"). In 1990, Winterhur U.S. Holdings, Inc. ("Winterhur") acquired the stock of both companies, and Regent remained a subsidiary of General Casualty.

In February 1997, Winterhur entered into a settlement agreement with the Internal Revenue Service. The agreement required both taxpayers to amortize the intangible assets that were included in the asset acquisition by Winterhur, over 15 years. The use of the 15-year amortization period increased both taxpayers' Wisconsin franchise tax liability for the tax years included in the audit period.

The department issued field audit assessments to Regent on July 23, 1997, and to General Casualty on August 1, 1997. Both assessments consisted of franchise tax, interest, interest for the underpayment of estimated taxes, and interest on the underpayment interest. Both taxpayers paid the tax and regular interest portions of the assessments. Both taxpayers filed timely petitions for redetermination on August 8, 1997, objecting to the underpayment interest and the interest on the underpayment interest.

Both taxpayers and the department agreed to extensions of the period for the department to act on the petitions for redetermination. The department denied both petitions on August 6, 1999, and issued a Notice of Amount Due to each taxpayer. Both taxpayers timely deposited the amounts due with the department and filed timely appeals with the Commission.

During the audit period, the tax returns of both taxpayers were filed on a calendar-year basis and had an

unextended due date of March 15, 1991 through March 15, 1996, respectively. On each due date the taxpayers had paid at least 90% of the tax stated on each return filed (as required under sec. 71.84(2)(a), Wis. Stats.). However, after the returns were adjusted, the taxpayers had not paid at least 90% of the adjusted tax due. The taxpayers argued that “90% of the tax shown on the return” as stated in the statute refers to the tax shown on the originally filed tax return.

The Commission concluded that the department “correctly imposed delinquent interest on the regular interest assessed on the additional estimated taxes due in its assessment” to each taxpayer. The taxpayers’ interpretation of the meaning of “90% of the tax shown on the return” would lead to the absurd result that if, after an audit, the taxes were increased, no interest could be imposed on the additional taxes.

Both taxpayers have appealed this decision to the Circuit Court. [☞](#)

SALES AND USE TAXES

Admissions - theater performances.

Milwaukee Repertory Theater, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, December 15, 2000). The issue in this case is whether admissions to performances in theaters operated by Milwaukee Repertory Theater, Inc. are subject to the Wisconsin sales and use tax.

During the years 1991 through 1994, the taxpayer, a Wisconsin nonprofit corporation organized and operated exclusively for educational purposes, operated and produced performances at theaters in Milwaukee. Over 500 performances were presented by the taxpayer each year. The taxpayer holds a Wisconsin seller’s permit for sales of food and other items, as well as its activities at several of the theaters that are not at issue.

The taxpayer produces and presents public theatrical performances primarily for adult audiences. The mission of the taxpayer is to create theatrical experiences that explore and illuminate the human condition. The sole consideration in selection of performances by the taxpayer is whether a performance will fulfill the taxpayer’s mission rather than whether the performance will be entertaining or profitable. Revenue from ticket sales never exceeds expenses.

The taxpayer engages in the following activities to educate and familiarize audiences with its productions:

- Printed materials: *Prologue* newsletter; *Footlights* program magazine; *Study Guides* and *Play Guides*; and Lobby exhibitions;
- Presentations: “First-Nighter” opening night presentation series; “Talkback” discussion sessions following performances; “Backstage Briefing” and “Sunday Brunch” pre-show discussions;
- Intern Acting Program: A training program for unpaid interns;
- The taxpayer’s Community Education Department: Responsible for developing programs and instructional materials that assist members of the community in having greater access to the activities and programs of the taxpayer.


The taxpayer advertises its shows in newspapers and magazines, and on radio, creating its own graphics and other advertising materials. Newspaper and magazine advertisements produced by the taxpayer refer to its performances as entertaining, using such phrases as: “magic,” “fun,” “enjoyment,” “exciting,” “entertaining,” “fascinating,” “powerful and alluring,” “will thrill our audiences,” and “wonderfully funny.”

Tickets for the taxpayer's performances are sold only at the taxpayer's main box office. A subscriber discount is provided to purchasers of multiple ticket packages. The taxpayer strives to set ticket prices at a level that maximizes attendance. The taxpayer also conducts special promotional shows, benefits, and parties to attract potential ticket purchasers and benefactors.

The Commission concluded that the sale of admissions to the taxpayer's performances were taxable sales of

admissions to "amusement" or "entertainment" events or places, within the meaning of sec. 77.52(2)(a)2, Wis. Stats., and that the taxpayer was a "retailer" under sec. 77.51(13), Wis. Stats., with respect to ticket sales to its performances.

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

 **Services subject to the tax - landscaping.** *John Taylor Golf, Inc. d/b/a/ The Bog vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, interim decision dated November 16, 2000, and final decision dated February 28, 2001). The issues in this case are:

- A. Whether the services purchased by the taxpayer for the design, development, and construction of The Bog golf course were landscaping services within the meaning of sec. 77.52(2)(a)20, Wis. Stats.
- B. Whether the department properly assessed sales and use tax on all or certain portions of the disputed services as landscaping services under sec. 77.52(2)(a)20, Wis. Stats.

The taxpayer is a Wisconsin corporation engaged in the development, design, construction, and operation of The Bog golf course.

The taxpayer contracted with Palmer Course Design Company (Palmer) for architectural and design services for the golf course, which included:

- Preparation of land use plans such as course routing, site location for the clubhouse, maintenance area, practice facilities, and related amenities, including cost estimates.
- Participation in zoning meetings.
- Preparation of construction plans and specifications for all features of the golf course, including tees, fairways, roughs, greens, mounds, swales, bunkers, grading cut and fill calculations, grassing and/or seeding plans, and plans for irrigation systems.
- Preparation of bid documents, including preparation of bid packages, evaluation of bids, selection of contractors, construction scheduling and program-

ming for the 18 holes, and assistance in the administration of the course construction.

- Inspection and monitoring of the construction work.
- Coordination with the landscape architect in the location of trees for strategic and aesthetic purposes, rain and comfort stations, water fountains, and other amenities.
- Coordination with the construction manager to ensure timely construction.
- Approval of construction bills.

Palmer prepared drawings depicting the master plan for the golf course, the features of each golf hole, including the greens complex, and the practice facility. The detail drawings included information regarding tee boxes, grade elevations, locations of fairways, bunkers, hazards, native areas, greens, cart paths, bridges, retaining walls, and natural elements adjacent to the specific golf hole.

The taxpayer contracted with Golf Course Consultants (GCC) and others for the construction of the golf course. The contract with GCC stated that it would supply all the necessary equipment, skilled equipment operators, and laborers required to construct the golf course. GCC also provided project superintendents, assisted in supervising and sequencing all other contractors, and various on-site management services. GCC's contract provided a schedule of specific services, including:

- Silt fencing.
- Greens, tee, bunker construction.
- Finish grading.
- Rock wall construction.

- Seedbed preparation.
- Seeding and sodding.

Construction of The Bog changed and modified the natural features of the land and ornamented the natural landscape by altering the plant cover to incorporate the various golf course features, including tee boxes, fairways, roughs, greens, mounds, swales, bunkers, and cart paths. Features of the golf course were designed into the course by Palmer, based on strategies of the game of golf and the playability of the golf course.

In its interim decision of November 16, 2000, the Commission concluded as follows:

- A. With the exception of silt fencing and rock wall construction, the services purchased by the taxpayer and assessed by the department for the design, development, and construction of The Bog golf course were subject to sales tax as landscaping services within the meaning of sec. 77.52(2)(a)20, Wis. Stats. Silt fencing and rock wall construction are not landscaping services within the meaning of that statute.

The Commission reached this conclusion on the basis that construction of The Bog involved changing the natural landscape to fairways, roughs, greens,

bunkers, and other golf course features with different vegetation.

In determining what activities were considered landscaping, the Commission referred to various dictionary definitions, including one found in *Webster's Ninth New Collegiate Dictionary* (1991), which defines landscaping as: "to modify or ornament (a natural landscape) by altering the plant cover..." Using these definitions, the Commission determined that landscaping involves *changing the natural landscape by altering the plant cover, whether for beautification or otherwise.*

- B. Determination of whether the amounts assessed by the department for each landscaping item were proper will be made at a subsequent hearing, pursuant to a prior stipulation of the parties.

With regard to Issue B, the parties reached a settlement as to the amounts to be assessed in this matter, and pursuant to that settlement the Commission, on February 28, 2001, ordered that the interim Decision and Order of November 16, 2000, is a final Decision and Order.

Neither the department nor the taxpayer has appealed this decision, since it was based on the settlement reached by both parties. [Ⓜ](#)



Services subject to the tax - transient lodging.

Ronald J. Hergert d/b/a Aero Expo Corporate Service vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 8, 2001). The issue in this case is whether the taxpayer is liable for sales tax on receipts for furnishing accommodations to the public under sec. 77.52(2)(a)1, Wis. Stats.

During the years 1993 through 1997, the taxpayer advertised in aviation trade magazines to solicit persons who were interested in renting homes in the Oshkosh area during the annual Oshkosh Experimental Aircraft Association Fly In (the "Fly In"). The taxpayer solicited homeowners in the Oshkosh area who were interested in renting their homes out during the week of the Fly In, and he advertised his service as the "Oshkosh Fly In Housing Specialists."

The taxpayer developed forms using his own stationery, for use as rental contracts between homeowners and renters, in which the taxpayer was listed as a signatory and often as a party to the contract. Homeowners and renters each signed individual forms with the taxpayer

prior to signing rental contracts through the taxpayer that contained the signatures of the taxpayer, homeowner, and renter.

No direct negotiations occurred between homeowners and renters concerning the terms of rental contracts. The taxpayer negotiated the rental amounts with homeowners and renters. For additional fees the taxpayer would provide services such as: catered food, commercial shipping services, facsimile and copy machines, rental cars, rollaway beds, and maid services. The taxpayer unilaterally determined the fee he would charge and retain as part of each rental contract.

The taxpayer obtained signatures of homeowners and renters through individual contact with each party. In almost every case homeowners and renters did not know each other and never met face-to-face. The taxpayer met with renters to provide them with rental home keys, which in most cases were returned to the taxpayer, although on occasion the renter would leave the keys at the rental home.

Each renter paid the taxpayer the total amount of the rental price, and the taxpayer paid each homeowner an agreed upon amount for the rental. During the years 1993 through 1997, the taxpayer paid the cost of one refund, and he was not reimbursed by the homeowner.


In 1996, the taxpayer added a “no compete” clause to his rental contracts, which required a \$500 penalty if the homeowner and renter made independent rental arrangements with each other within 3 years of the taxpayer’s contract with the homeowner and renter. If

homes required repair during the rental period, the renter was instructed to contact the taxpayer.

The Commission concluded that the taxpayer’s contracts with renters were subject to the sales tax under sec. 77.52(2)(a)1, Wis. Stats., because the taxpayer furnished accommodations to the public and made lodging available to transients.

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

WITHHOLDING OF TAXES

 **Officer liability.** *Steven T. Rich vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 26, 2001). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid withholding taxes of Mark VII of Wisconsin (“Mark VII”) under sec. 71.83(1)(b)2, Wis. Stats., for the calendar year 1995.

The taxpayer was employed by Mark VII to manage its operations from July 1993 until November 1995.


The taxpayer had authority to sign checks drawn on Mark VII’s checking account and had physical possession of the checkbook. Although three other individuals also had authority to sign checks drawn on Mark VII’s checking account, the taxpayer was the only person to sign checks drawn on this account prior to his termination on November 14, 1995.

Prior to sometime in 1994, an independent payroll service prepared withholding tax forms and checks for Mark VII’s payroll. In 1994, the taxpayer insisted on taking over the preparation of the withholding tax returns and checks to eliminate the expense paid to the independent payroll service. The taxpayer also prepared and signed sales and use tax returns on behalf of Mark VII.

In 1995, the taxpayer prepared and filed at least one withholding tax return and paid at least one withholding tax payment to the department. He also prepared and signed at least 19 payroll checks on behalf of Mark VII, including seven to himself. The taxpayer signed checks for amounts between \$10,077.44 and \$101,184.47 during June through September 1995, during which time Mark VII’s checking account had monthly ending balances of more than \$5,000.00. Mark VII’s withholding taxes for 1995 were underpaid by \$3,236.37, most of which was attributable to the first nine months of 1995.

The Commission concluded that the taxpayer was a person responsible for the 1995 withholding tax liability of Mark VII under sec. 71.83(1)(b)2, Wis. Stats. The taxpayer actively sought the ability to make withholding tax payments and possessed the **authority** to write checks on the Mark VII checking account. As manager, he was responsible for directing payment of more than \$145,000.00 to creditors of Mark VII from June to September of 1995. The taxpayer had a **duty** to pay the withholding taxes of Mark VII because he knew of the obligation to make the payments when he took over the payroll reporting responsibilities. The taxpayer **intentionally breached his duty** to pay the withholding taxes when he made payments to other creditors while the withholding taxes went unpaid.

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

 **Officer liability.** *Roland F. Sarko vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 8, 2001). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid withholding taxes of R. F. Sarko and Associates, Inc. (“the corporation”) under sec. 71.83(1)(b)2, Wis. Stats., for the period beginning

with the year-end reconciliation for 1988 and various periods through the month of April 1995.

Until May 1991, the taxpayer was president and treasurer of the corporation and owned 70% of the corporation’s stock. Beginning May 1991, the taxpayer held the offices of president, vice president, secretary,

and treasurer of the corporation and was the corporation's sole director and shareholder.

The taxpayer signed all of the corporation's monthly and annual withholding tax returns, most of which were filed late and without payment of the tax due.

The taxpayer was one of two authorized signatories of the corporation's business checking accounts. He signed checks drawn on those accounts to pay other creditors, including himself and other employees of the corporation, while knowing the withholding taxes were unpaid.

The taxpayer represented the corporation in entering into agreements with department representatives to pay the withholding taxes due.

On behalf of the corporation, the taxpayer signed a Second Amended Plan of Reorganization in bankruptcy in


1994, which provided that he "will retain ownership and management of the company."

The Commission concluded the taxpayer was a person responsible for the withholding tax liability of the corporation under sec. 71.83(1)(b)2, Wis. Stats.

The taxpayer was the corporation's president and treasurer, had the ability to make withholding tax payments, and possessed the **authority** to write checks on the corporation's checking account. As the corporation's president and treasurer, the taxpayer had a **duty** to pay the withholding taxes of the corporation and knew they were not being paid. The taxpayer **intentionally breached his duty** to pay the withholding taxes when he made payments to other creditors while the withholding taxes went unpaid.

The taxpayer has not appealed this decision. [!\[\]\(870f5d5e9c0d57485634be3ecf52f3ca_img.jpg\)](#)

SALES AND USE TAXES, AND WITHHOLDING OF TAXES

 **Officer liability.** *Wisconsin Department of Revenue vs. James R. Werner* (Circuit Court for Dane County, December 8, 2000). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated June 16, 2000. See *Wisconsin Tax Bulletin* 122 (October 2000), page 28, for a summary of the Commission's decision. 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, 1992 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.

Starting July 15, 1990, the Board of Directors of Ceille Industries hired the taxpayer to manage a restaurant known as Country Gardens. Five Ceals held the liquor license for the bar on the premises of Country Gardens.

The taxpayer was in charge of the restaurant's day-to-day operation. He had check writing authority on the business checking account of Ceille Industries, which was also used to pay obligations of Five Ceals, but the Board of Directors limited his authority in directing payments to vendors and creditors of Ceille Industries. The taxpayer had no other position or office associated with Ceille Industries and was not a shareholder of Ceille Industries.

The Board of Directors authorized the taxpayer to pay some back taxes due from a time prior to his hiring. The taxpayer did not pay all sales and use taxes while he was the manager, nor did he pay all withholding taxes due to the department, although taxes were withheld from employees' wages and the restaurant did collect sales taxes on substantial monthly receipts. The taxpayer was aware that creditors other than the department were being paid, but decisions concerning payments to other vendors and creditors were made by the Board of Directors, which required the taxpayer to report to them on a monthly basis.

The Circuit Court concluded as follows:

- A. The taxpayer is not a responsible person who is liable for the unpaid sales taxes of Ceille Industries under sec. 77.60(9), Wis. Stats.
- B. The taxpayer is not a responsible person who is liable for the unpaid withholding taxes of Ceille Industries under sec. 71.83(1)(b)2, Wis. Stats.


- C. The taxpayer is not a responsible person who is liable for the unpaid sales taxes of Five Ceals under sec. 77.60(9), Wis. Stats.

In affirming the Commission, the Circuit Court gave great deference to the Commission's decision. For each

issue, the Circuit Court held that the taxpayer lacked the authority to direct payment of the unpaid taxes.

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

DRUG TAXES

 **Drug tax - constitutionality; Appeals - jurisdiction.** *Jon P. Craven vs. Wisconsin Department of Revenue* (Circuit Court for Outagamie County, January 11, 2001). This is an action for review of a March 10, 2000, decision of the Wisconsin Tax Appeals Commission, which dismissed the taxpayer's controlled substances tax refund claim. The Commission held that it did not have jurisdiction because the refund claim was not made within two years following the assessment, as required by sec. 71.75(5), Wis. Stats. The Commission decision was not summarized in the *Wisconsin Tax Bulletin*.

The department issued a controlled substances tax assessment against the taxpayer in March 1991, pursuant to sec. 139.93(1), Wis. Stats. The taxpayer did not contest the assessment, and the department subsequently collected some funds from the taxpayer.


In January 1997, the Wisconsin Supreme Court held in *State v. Hall*, 207 Wis. 2d 54, 557 N.W.2d 778 (1997), that the controlled substances tax affix and display provisions are unconstitutional. The taxpayer filed a claim

for refund with the department in September 1997, based on the *Hall* decision. The department denied the claim for refund, as well as the taxpayer's petition for redetermination. The taxpayer appealed to the Commission, which determined that it lacked jurisdiction as explained above.

On appeal, the taxpayer contends that because the drug tax stamp law was declared unconstitutional, the assessment against him is void and the assessment should be vacated. The department maintains that the refund claim is barred because timely exhaustion of administrative remedies is mandated by the legislature in proceedings for the recovery of state taxes.

The Circuit Court concluded that the taxpayer failed to exhaust all administrative remedies mandated by the legislature for recovery of state taxes. The remedies prescribed under secs. 71.75 and 71.88, Wis. Stats., are exclusive and apply to refund claims based upon the constitutionality of a taxing statute. The doctrine of sovereign immunity bars the refund claim.

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

 **Drug tax - retroactive rehabilitation of assessment.** *Cooper D. Collins vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 16, 2000). The issue in this case is whether an assessment of a controlled substances tax that was declared unconstitutional can be rehabilitated after the Wisconsin Legislature retroactively reimposed the tax in an amended form, in accord with the Wisconsin Supreme Court "unconstitutional" decision.

In July 1994, the department issued a controlled substances tax against the taxpayer, pursuant to sec. 139.87 *et. seq.*, Wis. Stats. The taxpayer filed a timely petition for redetermination with the department in September 1994. In January 1997, the Wisconsin Supreme Court declared the controlled substances tax unconstitutional. *State v. Hall*, 207 Wis. 2d 54 (1997).

On October 13, 1997, the Wisconsin Legislature "retroactively reimposed" the controlled substances tax after

amending the tax in accord with the Supreme Court decision in *Hall*. The department denied the taxpayer's petition for redetermination on October 24, 1997. The taxpayer appealed to the Commission, and subsequently both the taxpayer and the department moved for summary judgment.

The Commission concluded that the department's assessment was void *ab initio* and could not be rehabilitated by the Legislature's re-enactment of the controlled substances tax. Because the controlled substances tax was unconstitutional, it had no legal effect, and any assessments made pursuant to it are void and have no existence or legal effect.

The department has appealed this decision to the Circuit Court. On January 23, 2001, the Circuit Court issued an order staying further proceedings, pending the final out-

come, including any subsequent appeals, of the decision in *David L. Gilbert v. Wisconsin Department of Revenue*, Ct. App., Dist. II, No. 00-2154. [🔗](#)



Drug tax - retroactive rehabilitation of assessment.

Elaine K. Schmitz vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 16, 2000). The issue in this case is whether an assessment of a controlled substances tax that was declared unconstitutional can be rehabilitated after the Wisconsin Legislature retroactively reimposed the tax in an amended form, in accord with the Wisconsin Supreme Court “unconstitutional” decision.

In November 1995, the department issued a controlled substances tax against the taxpayer, pursuant to sec. 139.87 *et. seq.*, Wis. Stats. The taxpayer filed a timely petition for redetermination with the department in December 1995. In January 1997, the Wisconsin Supreme Court declared the controlled substances tax unconstitutional. *State v. Hall*, 207 Wis. 2d 54 (1997).

On October 13, 1997, the Wisconsin Legislature “retroactively reimposed” the controlled substances tax after amending the tax in accord with the Supreme Court de-

cision in *Hall*. The department denied the taxpayer’s petition for redetermination on October 24, 1997. The taxpayer appealed to the Commission, and subsequently both the taxpayer and the department moved for summary judgment.

The Commission concluded that the department’s assessment was void *ab initio* and could not be rehabilitated by the Legislature’s re-enactment of the controlled substances tax. Because the controlled substances tax was unconstitutional, it had no legal effect, and any assessments made pursuant to it are void and have no existence or legal effect.

The department has appealed this decision to the Circuit Court. On January 23, 2001, the Circuit Court issued an order staying further proceedings, pending the final outcome, including any subsequent appeals, of the decision in *David L. Gilbert v. Wisconsin Department of Revenue*, Ct. App., Dist. II, No. 00-2154. [🔗](#)



Drug tax - retroactive rehabilitation of assessment.

Eugene D. Schmitz vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 16, 2000). The issue in this case is whether an assessment of a controlled substances tax that was declared unconstitutional can be rehabilitated after the Wisconsin Legislature retroactively reimposed the tax in an amended form, in accord with the Wisconsin Supreme Court “unconstitutional” decision.

In September 1993, the department issued a controlled substances tax against the taxpayer, pursuant to sec. 139.87 *et. seq.*, Wis. Stats. The taxpayer filed a timely petition for redetermination with the department in October 1993. The department denied the petition for redetermination in October 1994, and the taxpayer filed a petition for review with the Commission. Action on the petition for review was held in abeyance pending the outcome of litigation challenging the constitutionality of the controlled substances tax statute.

In January 1997, the Wisconsin Supreme Court declared the controlled substances tax unconstitutional. *State v. Hall*, 207 Wis. 2d 54 (1997).

In October 1997, the Wisconsin Legislature “retroactively reimposed” the controlled substances tax after amending the tax in accord with the Supreme Court decision in *Hall*.

The Commission concluded that the department’s assessment was void *ab initio* and could not be rehabilitated by the Legislature’s re-enactment of the controlled substances tax. Because the controlled substances tax was unconstitutional, it had no legal effect, and any assessments made pursuant to it are void and have no existence or legal effect.

The department has appealed this decision to the Circuit Court. On January 23, 2001, the Circuit Court issued an order staying further proceedings, pending the final outcome, including any subsequent appeals, of the decision in *David L. Gilbert v. Wisconsin Department of Revenue*, Ct. App., Dist. II, No. 00-2154. [🔗](#)



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 releases are included:

Sales and Use Taxes –

1. Charge for Credit Insurance in Connection With a Lease..... 29
2. Trade-ins 30

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 Charge for Credit Insurance in Connection With a Lease

Wis. Adm. Code: Section Tax 11.79(2)(d), (3), and (4)(a), Wis. Adm. Code (June 1991 Register).

Background: Section Tax 11.79(2)(d) and (3), Wis. Adm. Code (June 1991 Register), provides that a lessor may deduct from gross receipts the cost of public liability insurance furnished by the lessor solely for the protection of the lessee, but not including collision and comprehensive coverage, if:

- (a) The charge is reasonable.
- (b) The charge is separately stated in the lease agreement, billing, or invoice.
- (c) The lessor is willing and able to lease the motor vehicle or mobile equipment without providing the insurance (that is, the insurance is optional).

- (d) The deduction is limited to the lessor’s cost of the insurance.

Section Tax 11.79(4)(a), Wis. Adm. Code (June 1991 Register), provides, in part, that amounts spent for the lessor’s own protection or for the protection of leased property, including collision or other insurance protection, may not be deducted from a lessor’s taxable gross receipts.

Facts:

- Customer A leases an automobile from Lessor B.
- Pursuant to the terms of the lease agreement, Customer A purchases optional credit life and credit accident and health insurance.
- The charge for the insurance is separately stated in the lease agreement.
- The charge is capitalized (that is, it becomes a component of the capitalized cost of the vehicle, which is the base for computing the monthly lease payment).
- The insurance provides that in the event of the death or disability of Customer A, the payments to Lessor B will be made on behalf of Customer A by the insurer. (Lessor B is the first beneficiary under the policy.)

Question: Is Lessor B’s charge for credit life and credit accident and health insurance in connection with the lease to Customer A subject to Wisconsin sales or use tax?

Answer: No, because:

- A. The charge for the insurance is separately set forth in the lease agreement given by the lessor to the lessee; and
- B. The credit life and credit accident and health insurance is considered for the protection of the lessee (that is, Customer A), because:

- 1) the insurance company assumes Customer A's lease payments in the event of death or disability, and
- 2) the insurance is purchased by Customer A at Customer A's option, even though Lessor B may be named as the first beneficiary.

Since the credit life and credit accident and health insurance is for the protection of the lessee rather than the lessor, the insurance is not excluded as a deduction from gross receipts under sec. Tax 11.79(4)(a), Wis. Adm. Code (June 1991 Register). [§](#)

2 Trade-ins

Note: This tax release does not include examples of motor vehicle transactions involving trade-ins, which are provided in Wisconsin Publication 202, *Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs*. However, the statutes and examples listed generally apply to all transactions, including motor vehicles.

Statutes: Sections 77.51(4)(b)3 and (15)(b)4, 77.52(1), and 77.53(1), Wis. Stats. (1999-00)

Wis. Adm. Code: Section Tax 11.32(7), Wis. Adm. Code (August 1999 Register)

Background: Section 77.52(1), Wis. Stats. (1999-00), imposes sales tax on all retailers at the rate of 5% of the gross receipts from the sale, lease, or rental of tangible personal property.

Section 77.51(4)(b)3, Wis. Stats. (1999-00), in defining "gross receipts," provides that in all transactions in which an article of tangible personal property is traded toward the purchase of an article of greater value, except those transactions involving manufactured buildings where the gross receipts have been reduced under sec. 77.51(4)(b)7, Wis. Stats. (1999-00), the gross receipts shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.

Section 77.53(1), Wis. Stats. (1999-00), imposes use tax on the storage, use, or other consumption of tangible personal property in this state at the rate of 5% of the sales price of the tangible personal property.

Section 77.51(15)(b)4, Wis. Stats. (1999-00), in defining "sales price," provides that in all transactions in which an article of tangible personal property is traded toward the purchase of an article of greater value, except those transactions involving manufactured buildings where the gross receipts have been reduced under sec. 77.51(15)(b)6, Wis. Stats. (1999-00), the sales price shall be only that portion of the purchase price represented by the difference between the full purchase price of the article of greater value and the amount allowed for the article traded.

Examples: The following examples illustrate whether a trade-in allowance may be used to reduce the gross receipts or sales price from the sale of an article of tangible personal property. In all examples it is presumed that no exemption applies.

Index to examples

- Example 1 - Single transaction
- Example 2 - Delayed delivery
- Example 3 - Two transactions
- Example 4 - Two transactions - delayed delivery
- Example 5 - Replacement discount
- Example 6 - Even trade
- Example 7 - Tangible personal property traded for real property
- Example 8 - Debt assumed
- Example 9 - Trade down
- Example 10 - Insurance proceeds
- Example 11 - Different types of tangible personal property traded
- Example 12 - Property with a service contract
- Example 13 - Leased property
- Example 14 - Services traded for property
- Example 15 - Intangible traded for property
- Example 16 - Property taken from inventory and traded – use tax due
- Example 17 - Multiple items

Example 1 - Single transaction: Camper Dealer sells a new camping trailer to Camper for \$5,000. The trailer is not required to be licensed. Camper has an older trailer valued at \$2,000, which Camper Dealer allows Camper to trade in toward the purchase of the new camper.

Camper Dealer's gross receipts subject to sales tax are \$3,000 (\$5,000 selling price less the \$2,000 allowed for the traded camper).

Example 2 - Delayed delivery: Equipment Dealer sells a new machine to Contractor for \$50,000, which

Equipment Dealer agrees to deliver on a specified future date. Contractor has a used machine valued at \$10,000, which Equipment Dealer allows Contractor to trade in toward the purchase of the new machine. Contractor delivers the used machine to Equipment Dealer upon signing the contract. Equipment Dealer later delivers the new equipment on the future date.

Equipment Dealer's gross receipts subject to sales tax are \$40,000 (\$50,000 selling price less the \$10,000 trade-in allowance). The delayed delivery does not affect the allowance of the trade-in because it is still part of the same transaction.

Example 3 - Two transactions: Cyclist sells a used bicycle to a friend for \$200. Cyclist immediately applies the \$200 toward the \$500 purchase of a new bicycle from Bicycle Shop.

Bicycle Shop's gross receipts subject to sales tax are \$500. The two sales (i.e., Cyclist's sale to a friend and Bicycle Shop's sale to Cyclist) are separate transactions and do not qualify as a trade-in.

Example 4 - Two transactions – delayed delivery: Computer Dealer sells a computer to Business A for \$10,000. Business A has a used computer valued at \$2,000, which Computer Dealer allows Business A to trade in and use as a deposit toward the purchase of the new computer. The new computer is not available for immediate delivery by Computer Dealer to Business A. Business A delivers the used computer, but no other payment, to Computer Dealer upon signing the contract. Because of production delays, Computer Dealer later determines it cannot confirm a delivery date for the new computer. Computer Dealer issues a check to Business A for the \$2,000 value of the used computer, along with an exemption certificate claiming resale on Computer Dealer's purchase of the used computer. The new computer is later delivered to Business A for \$10,000.

Computer Dealer's gross receipts subject to sales tax are \$10,000, because this constitutes a new second transaction. When Computer Dealer made payment of \$2,000 for the used computer, the first transaction was completed. The two sales (i.e., Computer Dealer's delayed sale to Business A and Business A's sale of the used computer to Computer Dealer) are separate transactions and do not qualify as a trade-in.

Example 5 - Replacement discount: Cellular Dealer sells a cellular telephone to Customer A, for \$300. Cellular Dealer allows a "replacement discount" of \$100 to

Customer A, because Customer A is replacing an existing cellular telephone. In order to receive the "replacement discount," Customer A is required to provide Cellular Dealer with the handset from the "old" cellular telephone being replaced. Cellular Dealer is not reimbursed by a third party for the replacement discount given to Customer A (i.e., the \$100 "replacement discount" is not considered a rebate).

Cellular Dealer's gross receipts subject to the tax are \$200 (\$300 selling price less the \$100 "replacement discount" allowed as a trade-in).

Example 6 - Even trade: Electronics Dealer sells a new digital telephone to Customer B for \$500. Customer B has a used computer valued at \$500, which Electronics Dealer allows Customer B to trade in toward the purchase of the digital telephone.

Electronics Dealer has zero gross receipts from the sale (\$500 less the \$500 allowed for the traded computer).

Example 7 - Tangible personal property traded for real property: Company A sells and installs a new furnace for Customer C, for \$2,000. Company A allows Customer C to trade in a used lawn mower valued at \$900. Customer C does not make any other sales of tangible personal property or taxable services.

Company A's gross receipts from the sale to Customer C are not subject to tax because Company A is selling a real property improvement. Company A's cost of materials used in the furnace installation may not be reduced by the \$900 allowed as a trade-in, because the transaction involves a real property improvement rather than a sale of tangible personal property. Customer C's transfer of the lawn mower to Company A is an exempt occasional sale under sec. 77.54(7), Wis. Stats. (1999-00), because Customer C does not make any other sales of tangible personal property or taxable services.

Example 8 - Debt assumed: Boat Dealer sells a new boat to Customer D, for \$14,000. Customer D owns a used boat valued at \$9,000. Boat Dealer assumes a \$4,000 outstanding debt owed by Customer D on the used boat. Because Boat Dealer assumed the debt, Boat Dealer allows Customer D a \$5,000 trade-in toward the purchase of the new boat rather than allowing a \$9,000 trade-in.

Boat Dealer's gross receipts subject to the tax are \$9,000 (\$14,000 selling price less \$5,000 allowed for the used boat traded in). The \$4,000 of debt assumed by

Boat Dealer is not taken into account in determining the gross receipts (even though it is considered by Boat Dealer in determining the amount of the trade-in).

Example 9 - Trade down: Music Dealer is selling a musical instrument to Musician for \$500. Musician, who is not a retailer, owns a used musical instrument valued at \$600. Music Dealer allows Musician to trade in the used instrument toward the purchase of the new instrument and pays Musician \$100. Musician does not make any other sales of tangible personal property or taxable services.

Music Dealer's gross receipts as a result of the transaction are zero (\$500 selling price less the \$600 trade-in). The trade-in by Musician is actually a sale of the used instrument to Music Dealer resulting in gross receipts of \$100. Since Musician does not make any other sales of tangible personal property or taxable services, the sale to Music Dealer is an exempt occasional sale under sec. 77.54(7), Wis. Stats. (1999-00). Music Dealer could also have issued an exemption certificate to Musician claiming resale.

Example 10 - Insurance proceeds: Claimant has a video recorder stolen during a burglary. Claimant's insurance company reimburses Claimant \$200 for the stolen video recorder. Claimant immediately applies the \$200 insurance reimbursement toward the \$400 purchase of a new video recorder.

Since no article of tangible personal property is traded in to the seller of the new video recorder, the seller's gross receipts subject to sales tax are \$400.

Example 11 - Different types of tangible personal property traded: Clean Linen Company rents linens to Restaurant for a \$200 monthly fee. For its rent, Clean Linen Company receives \$100 cash plus meals at Restaurant each month valued at \$100.

Clean Linen Company's gross receipts subject to the sales tax are \$100. Clean Linen Company is considered to be renting tangible personal property in the form of linens. However, the gross receipts are reduced by the value of meals provided by Restaurant. Restaurant is subject to use tax on the food products used in preparing the meals traded to Clean Linen Company for which an exemption does not apply (e.g., soda water beverages). There is no requirement for the properties sold, rented, or traded in to be the same type of property, as long as they are tangible personal property.

Example 12 - Property with a service contract: RV Dealer sells Customer E a new travel trailer priced at \$6,000, plus a separately stated service contract priced at \$600, for a total price of \$6,600. RV Dealer allows Customer E an even trade-in for Customer E's used trailer.

RV Dealer's gross receipts subject to the sales tax are \$600. The trade-in allowance does not apply to the service contract because it is a sale of a service, not tangible personal property. There is no provision that allows a trade-in to reduce gross receipts from services.

Example 13 - Leased property: Office Company sells Manufacturer a copier for \$7,000. Manufacturer has been leasing a copier from Lessor, which Office Company allows Manufacturer to trade in toward the purchase of the new copier. The current leased copier is valued at \$3,000. The pay-off of the lease is \$4,000. Office Company pays Lessor \$4,000 for the leased copier giving Lessor an exemption certificate claiming resale. Manufacturer pays Office Company \$7,000 for the new copier, plus \$1,000 for the difference between the value of the leased copier and the pay-off of the leased copier.

Lessor is not subject to sales tax on the sale of the leased copier to Office Company, because Office Company gave Lessor an exemption certificate claiming resale. Office Company is subject to sales tax on the sale of the new copier to Manufacturer, which Office Company may collect from Manufacturer. Office Company has gross receipts subject to sales tax of \$8,000 (\$7,000 selling price of new copier plus the \$1,000 paid by Manufacturer for the difference between the value of the leased copier and the payoff of the leased copier).

Additional examples of transactions involving *leased property* can be found in Wisconsin Publication 202.

Example 14 - Services traded for property: Material Supplier sells topsoil to Architect for \$1,000. Material Supplier dumps the topsoil, and Architect spreads it in its final resting place. In exchange for the topsoil, Material Supplier receives architectural services valued at \$500 from Architect and \$500 cash.

Material Supplier's gross receipts subject to the sales tax are \$1,000. No reduction in taxable receipts is allowed for the trade-in of a service.

Example 15 - Intangible traded for property: Lighting Company sells light fixtures (uninstalled) to Software Company for \$20,000. Lighting Company receives

custom computer programs valued at \$10,000 and \$10,000 cash from Software Company for the light fixtures.

Lighting Company's gross receipts subject to sales tax are \$20,000. No reduction in gross receipts is allowed for the trade-in of intangible property.

Example 16 - *Property taken from inventory and traded – use tax due:* Building Supply Company sells ceiling tile (uninstalled) to Carpet Company for \$5,000. Building Supply Company needs carpeting for its offices, so Carpet Company removes from inventory and trades carpeting (uninstalled) worth \$5,000 for the ceiling tile. Building Supply Company had originally purchased the ceiling tile without tax, for resale. Carpet Company had originally purchased the carpeting without tax, for resale.

Building Supply Company has zero gross receipts and Carpet Company has zero gross receipts from this transaction because it is an even trade. However, Building Supply Company owes use tax on its purchase price of the ceiling tile traded, and Carpet Company owes use tax on its purchase price of the carpeting traded.

Example 17 - *Multiple items:* Outboard Motor Dealer sells a new motor to Boater for \$1,000. Boater owns two used motors valued at \$500. Outboard Motor Dealer allows Boater to trade in the two used motors toward the purchase of the new motor.

Outboard Motor Dealer has gross receipts subject to sales tax of \$500 (\$1,000 selling price of the new motor less the \$500 allowed for the two used motors traded in). [!\[\]\(830769b31eeeaca920791081939ff8ba_img.jpg\)](#)



Private Letter Rulings

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

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

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

The following private letter rulings are included:

Sales and Use Taxes

Exemptions - photocopies of public records

W 0107002 (p. 34)

Telecommunication services - interstate services

W 0105001 (p. 36)

✱ W 0107002 ✱

November 27, 2000

Type Tax: Sales and Use Taxes

Issue: Exemptions - photocopies of public records

Statutes: Section 77.54(32), Wis. Stats. (1997-98)

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

Facts:

The City of XYZ has charged Wisconsin sales tax on the sale of the following types of photocopies in the past:

1. Copies of police accident reports;

2. Copies of the personnel file of an employee, who is filing a grievance, that are provided to the attorney representing such employee; and
3. Copies provided to the attorney of a developer that is filing a lawsuit against the city.

Question:

Are the City of XYZ charges for photocopies as described in 1 – 3 of the *Facts*, above, subject to Wisconsin sales and use taxes?

Answer:

Copies of (1) police accident reports, and (2) the personnel file of an employee, who is filing a grievance, that are provided to the attorney representing such employee, are exempt from Wisconsin sales and use tax under sec. 77.54(32), Wis. Stats. (1997-98).

Copies provided to the attorney of a developer that is filing a lawsuit against the city are also exempt from Wisconsin sales and use tax under sec. 77.54(32), Wis. Stats. (1997-98), provided the items copied are records as defined in *Analysis*, below.

Analysis:

Law

Section 77.54(32), Wis. Stats. (1997-98), provides a sales and use tax exemption for:

“The gross receipts from charges, including charges for a search, imposed by an **authority**, as defined in s. 19.32(1), for copies of a **public record** that a person may examine and use under s. 16.61(12) or for copies of a **record** under s. 19.35(1).” (Emphasis added.)

The charge for copies must meet the following criteria to qualify for exemption under sec. 77.54(32), Wis. Stats. (1997-98):

1. The charge must be made by an **authority** as defined in sec. 19.32(1), Wis. Stats. (1997-98), and
2. The charge must be for copies of either:

- a) **public record** that a person may examine and use under s. 16.61(12); or
- b) **record** under sec. 19.35(1), Wis. Stats. (1997-98).

Section 19.32(1), Wis. Stats. (1997-98), provides, in part, that:

“ ‘Authority’ means any of the following having custody of a record: a state or local office, elected official, agency, board, commission, committee, council, department or public body corporate and politic created by constitution, law, ordinance, rule or order...”

Section 77.54(32), Wis. Stats. (1997-98), relies on the definitions of “public records” and “record” found in:

A. Section 16.61(2)(b), Wis. Stats. (1997-98):

“ ‘Public records’ means all books, papers, maps, photographs, films, recordings, optical disks, electronically formatted documents or other documentary materials, regardless of physical form or characteristics, made, or received by any state agency or its officers or employees in connection with the transaction of public business, and documents of any insurer that is liquidated or in the process of liquidation under ch. 645. ‘Public records’ does not include:

- 1. Records and correspondence of any member of the legislature.
- 1m. Any state document received by a state document depository library.
- 2. Duplicate copies of materials the original copies of which are in the custody of the same state agency and which are maintained only for convenience or reference and for no other substantive purpose.
- 3. Materials in the possession of a library or museum made or acquired solely for reference or exhibition purposes.
- 4. Notices or invitations received by a state agency that were not solicited by the agency and that are not related to any official action taken, proposed or considered by the agency.

- 5. Drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working.

- 6. Routing slips and envelopes.”

B. Section 19.32(2), Wis. Stats. (1997-98):

“ ‘Record’ means any material on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by an authority. ‘Record’ includes, but is not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer printouts and optical disks. ‘Record’ does not include drafts, notes, preliminary computations and like materials prepared for the originator’s personal use or prepared by the originator in the name of a person for whom the originator is working; materials which are purely the personal property of the custodian and have no relation to his or her office; materials to which access is limited by copyright, patent or bequest; and published materials in the possession of an authority other than a public library which are available for sale, or which are available for inspection at a public library.”

Application of Law

The City of XYZ is an “authority” within the meaning of sec. 19.32(1), Wis. Stats. (1997-98).

Copies of police accident reports and the personnel file of an employee meet the definition of “record” in sec. 19.32(2), Wis. Stats. (1997-98), because they are material(s) on which information is recorded or preserved that a requestor has the right to inspect under sec. 19.35(1)(a), Wis. Stats. (1997-98). Additionally, such material “...has been created or is being kept by an authority...” (i.e., the City of XYZ). Therefore, the charges for police accident reports and personnel files of employees are exempt from tax.

Assuming that the content of the copies that are provided to the developer’s attorney meet the definition of “record,” the charges are exempt from tax.

Note: The exemption in sec. 77.54(32), Wis. Stats. (1997-98), applies only to the charge for copies of records that may be reviewed under sec. 16.61(12) or 19.35(1), Wis. Stats. (1997-98). [!\[\]\(eabd9f9ababee93effadc3b380fe65fd_img.jpg\)](#)

* W 0105001 *

November 15, 2000

Type Tax: Sales and Use Taxes

Issue: Telecommunication services - interstate services

Statutes: Section 77.52(2)(a)5, Wis. Stats. (1997-98)

Wis. Adm. Code: Section Tax 11.66 (September 1997 Register)

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

Facts, as stated in your request:

Frame relay service is a packet-based data communication technology that provides high-speed, protocol-transparent switched connectivity between remote computers. Company DEF's ("DEF's") customers use frame relay service to establish cost-effective, high performance links between their geographically dispersed locations.

DEF's frame relay service consists of three components - local exchange carrier (LEC) access, access channels (ports), and permanent virtual circuits (PVCs). Each component is billed separately. The LEC access and access channel together are referred to as the frame relay access facility (FRAF). The FRAF provides the physical connection between the customer's equipment and DEF's frame relay network. The LEC access component of the FRAF is priced identically to the LEC access component of private line. The LEC access component consists of a charge for the dedicated access line between the customer's location and DEF's point of presence (POP), and separately stated connection charges associated with that access line such as a central office connection charge and an access coordination fee.

The access channel component of the FRAF includes a charge for the connection between DEF's POP and DEF's frame relay network. The monthly charges for both the LEC access and the access channel are fixed in amount but vary between customers based on each customer's specific needs (i.e., speed, bandwidth, or term commitment).

The third component of DEF's frame relay service is the PVC. The PVC is a fixed, logical transmission path

between two defined locations through a packet or cell based network. The PVC provides essentially the same service as a dedicated private line. The PVC is established between two specific locations so that all frames transmitted between the two locations always follow the same path. The main difference between a PVC and a private line is that a PVC is a switched, shared network connection between two locations, and a private line is a dedicated, direct connection between two locations. Like the private line charge, the PVC charge is a flat rate per month and is not determined by actual usage. For the flat monthly fee, customers can transmit as much information as they want between two predetermined points.

Request:

DEF requests an opinion from the Department on the following question:

Does the frame relay service sold by DEF qualify as private line service under Wisconsin law, thereby making interstate frame relay service exempt from Wisconsin sales tax under sec. Tax 11.66(4)(d), Wis. Adm. Code (September 1997 Register)?

Ruling:

The answer is no. The frame relay service described in the facts is not private line service, and does not qualify for exemption under sec. Tax 11.66(4)(d), Wis. Adm. Code (September 1997 Register).

Analysis:

Section 77.54(2)(a)5., Wis. Stats. (1997-98), imposes Wisconsin sales and use tax on:

"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 Tax 11.66(4)(d), Wis. Adm. Code (September 1997 Register), provides that gross receipts from the sale or charge for the following services are not taxable:

“Interstate private line service, including tie lines and foreign exchange service, charged on a flat rate basis.”

Section Tax 11.66(1), Wis. Adm. Code (September 1997 Register), provides:

“ ‘Private line’ means a dedicated local or interexchange channel provided for communication between 2 points without use of the local or toll switching network, for the exclusive use of one or several customers.”

Because the frame relay service sold by DEF uses a switched, shared network connection, it does not meet the definition of private line service provided in sec. Tax 11.66(1), Wis. Adm. Code (September 1997 Register). In addition, the request does not indicate that the PVC is reserved for the exclusive use of “one or several customers,” which is another requirement to be a private line. Therefore, the frame relay service sold by DEF does not qualify for the exemption provided in sec. Tax 11.66(4)(d), Wis. Adm. Code (September 1997 Register). [⤴](#)