



Wisconsin TAX BULLETIN

www.dor.state.wi.us

Number 124

April 2001

FOCUS 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. [↗](#)

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. [↗](#)



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:

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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 and 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



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Madison WI 53707-7840

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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.

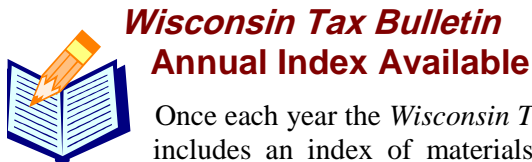
Therefore, use tax applies on purchases made via the Internet. The use tax may be reported as follows:

- **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 online 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

- | | |
|---|--|
| <p>102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/00)</p> <p>103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (11/00)</p> <p>104 Wisconsin Taxation of Military Personnel (9/00)</p> <p>106 Wisconsin Tax Information for Retirees (1/01)</p> <p>109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2000 (11/00)</p> <p>112 Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (1/99)</p> <p>113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (2/00)</p> <p>116 Income Tax Payments Are Due Throughout the Year (12/95)</p> | <p>119 Limited Liability Companies (LLCs) (11/00)</p> <p>120 Net Operating Losses for Individuals, Estates, and Trusts (11/00)</p> <p>121* Reciprocity (2/01)</p> <p>122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2000 (11/00)</p> <p>123 Business Tax Credits for 2000 (11/00)</p> <p>125 Credit for Tax Paid to Another State (11/00)</p> <p>126 How Your Retirement Benefits Are Taxed (10/00)</p> <p>600 Wisconsin Taxation of Lottery Winnings (1/01)</p> <p>601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/01)</p> |
|---|--|

Sales and Use Taxes

- | |
|---|
| <p>200 Electrical Contractors - How Do Wisconsin Sales and Use Taxes Affect Your Business? (3/98)</p> <p>201* Wisconsin Sales and Use Tax Information (1/01)</p> <p>202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)</p> <p>203 Sales and Use Tax Information for Manufacturers (7/00)</p> <p>205 Use Tax Information for Individuals (1/99)</p> <p>206 Sales Tax Exemption for Nonprofit Organizations (6/00)</p> <p>207 Sales and Use Tax Information for Contractors (10/00)</p> <p>210* Sales and Use Tax Treatment of Landscaping (4/01)</p> <p>211 Cemetery Monument Dealers - How Do Wisconsin Sales and Use Taxes Affect You? (6/00)</p> <p>212 Businesses: Do You Owe Use Tax on Imported Goods? (1/99)</p> <p>213 Travelers: Don't Forget About Use Tax (4/99)</p> <p>214 Businesses: Do You Owe Use Tax? (4/99)</p> <p>216 Filing Claims for Refund of Sales or Use Tax (11/00)</p> <p>217 Auctioneers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)</p> |
|---|

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. [☞](#)

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. [↗](#)

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. [☞](#)