



Wisconsin TAX BULLETIN

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Number 125

July 2001



OCUS ON . . .

Sales Internet Process

(see article on page 5, publication on page 35)

New Tax Laws Pending

The Governor's 2001-2003 Budget Bill and other bills affecting Wisconsin taxes were still pending at the time this Bulletin went to press. If any of these bills become law, a special issue of the *Wisconsin Tax Bulletin* will be published to provide information about the tax law changes. [🔗](#)

Marinette County Adopts County Tax

Effective October 1, 2001, the county sales and use tax will be in effect in Marinette County. This brings to 55 the number of counties that have adopted the 1/2% county tax.

Retailers were notified about Marinette County's adoption of the county tax in the June 2001 *Sales and Use Tax Report* (number 1-01). The Report was sent in late June and early July to all persons registered for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 33 and 34 of this Bulletin.

For additional information about the county tax, see Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII, on pages 36 to 42. Publication 201 is available from any Department of Revenue office. See the article titled "Tax Publications Available" on page 8 of this Bulletin for information about how to obtain copies of Publication 201 by mail, e-mail, fax, or the Internet. [🔗](#)

Federal Refunds Used to Offset State Tax Delinquencies

The Department of Revenue (DOR) has collected over \$1.6 million in delinquent income taxes through the Treasury Offset Program (TOP), a federal offset program implemented in Wisconsin in early February.

DOR certified approximately 25,000 delinquent income tax liabilities totaling over \$128 million to Financial Management Service, the branch of the U.S. Treasury that disperses federal payments, including federal income tax refunds. As of early June, over 2,300 delinquent taxpayers have had their federal refunds intercepted, either in whole or in part, as a result of this program.

TOP was first opened to state revenue departments in January 2000. To date, sixteen states have collected over \$72 million in delinquent income taxes through TOP. [🔗](#)

Streamlined Sales Tax Rolling

The national Streamlined Sales Tax Project (SSTP) is rolling down the tracks with a full head of steam. The SSTP is co-chaired by Diane Hardt, Administrator of the Income, Sales, and Excise Tax Division in the Department of Revenue. Consider:

- ★ The Wisconsin Legislature's Joint Information Policy & Technology Committee recommended passage of the Uniform Sales and Use Tax Administration Act (Senate Bill 152 and Assembly Bill 317) after hearing testimony from Ms. Hardt and representatives of AT&T, General Electric, the Wisconsin Grocers Association, and the Wisconsin Merchants Federation on May 9.
- ★ A total of 29 states have introduced the Model Act; 14 have already enacted the Model Act, including Arkansas, Florida, Indiana, Kentucky, Louisiana, Maryland, Nebraska, Nevada, North Dakota, Oklahoma, Tennessee, Texas, Utah, and Wyoming.

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Legislatures in Illinois and Rhode Island passed the Act and forwarded it on to their Governor for signature. Several other states, including Wisconsin, are expected to enact the SSTP model legislation later this year.

- ★ Forty states and many businesses, including multi-state giants such as Wal-Mart, Microsoft, General Electric, Penneys, and Federated Department Stores, were represented at the SSTP meetings on May 7-8 in Milwaukee and June 25-26 in Raleigh, North Carolina.
- ★ At the annual Federation of Tax Administrators meeting in Seattle, held on May 29-31, State of Washington Governor Locke expressed support for the SSTP, stating “it demonstrates that states can work together to streamline, simplify, and harmonize the sales tax, and reduce the burden of compliance on both remote sellers and brick and mortar businesses that operate in multiple states.”

The Streamlined Sales Tax Project is a 33-state effort (with more “observing” states) to simplify state sales tax laws so that they are more understandable to consumers and easier to administer by retailers, including mail order, Internet retailers, and bricks-and-mortar stores.

The Project is:

- ★ Devising standardized definitions. (States would retain the right to determine whether to tax any item and to set the rate of tax but the definition of each item would be consistent among the states.)
- ★ Developing software to automatically identify taxable products, apply the tax rate, and remit the proper amount to the taxing jurisdiction.
- ★ Proposing uniform sourcing, uniform audit procedures, one-stop registration, and simplification in rates. [↗](#)

Wisconsin Tax Bulletin

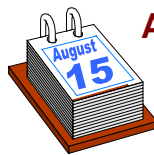
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Madison WI 53708-8933

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Madison WI 53707-7840

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**Automatic 4-Month Extension
Expires August 15**

If your 2000 Wisconsin and federal individual income tax returns were due April 16 2001, but you filed an application for an automatic 4-month extension for filing your federal return with the Internal Revenue Service (IRS), both your federal and Wisconsin returns are due August 15, 2001. When you file your Wisconsin return, be sure to attach a copy of the federal extension application, Form 4868.

Any filing extension available under federal law may be used for Wisconsin purposes, even if you are not using

that extension to file your federal return. If you did not file a federal extension application but needed a 4-month extension for Wisconsin only, your 2000 Wisconsin return, ordinarily due April 16, 2001, must be filed by August 15, 2001.

If you are extending the time to file your Wisconsin return only, attach one of the following items to the 2000 Wisconsin return you file:

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

Note: You were not required to pay your 2000 taxes by April 16, 2001, as a condition for receiving an extension of time to file your Wisconsin tax return. [☞](#)



Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars in October. The seminars will include information on differences between the two states' laws. All of the October seminars are for general businesses. Seminars for contractors will likely be held in the spring.

You are invited to attend any of the following seminars, free of charge. All seminars are from 9:00 a.m. to 12:30 p.m., at the locations indicated. To register or for more information, call the Minnesota Department of Revenue at 1-800-888-6231.

October 2, 2001 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

October 16, 2001– Hudson, Wisconsin
Hudson House
1616 Crestview Drive

October 23, 2001 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Road

[☞](#)

Electronic Funds Transfer Program Still Growing

More than 70,000 tax and unemployment insurance accounts are now registered in an electronic funds transfer (EFT) program that includes both the Department of Revenue and the Department of Workforce Development. This program allows taxpayers to make EFT payments for both taxes and unemployment insurance.

The Department of Revenue has offered the EFT payment method since 1993. In October 1999, an administrative rule, section Tax 1.12, became effective. The administrative rule authorizes the Department of Revenue to mandate the use of EFT payments for taxpayers whose tax payments exceed certain amounts. The rule provides that taxpayers not required to pay by EFT may elect to do so.

Mandatory EFT is being gradually phased in by tax type. EFT notices have been sent to taxpayers mandated for the following tax types: withholding, sales, cigarette, tobacco, alternative fuels, liquor and wine, and fermented malt beverages.

Taxpayers that meet the criteria to be mandated for EFT payments for corporation income and franchise estimated tax will receive an invitation to register for EFT in August 2001. Taxpayers that meet the criteria to be mandated for EFT payments for individual income estimated tax will receive an invitation to register in September 2001. The department is sending invitation letters to taxpayers so they can register and get acquainted with EFT program requirements prior to the mandate. Mandate notices will be mailed about sixty days after the invitation letters. Upon receipt of the mandate notice, taxpayers have ninety days to register for EFT and must begin using EFT on the first tax due date following the ninety day registration period.

The intent of the administrative rule is to improve the department's operational efficiency, and to maximize collections by having funds available on tax due dates. EFT collections continue to grow as the mandatory requirements of the administrative rule are implemented. In fiscal year 2000, \$3.1 billion was collected by EFT, which is 27% of total collections. In fiscal year 1997, \$1.8 billion was collected, representing 19% of total collections.

If you have questions regarding the department's EFT program or if you wish to register for EFT, you may call the EFT information line at (608) 264-9918 or write to Wisconsin Department of Revenue, EFT Unit, Mail Stop 3-14, PO Box 8912, Madison WI 53708-8912. You

may also visit the department's Internet web site at www.dor.state.wi.us for general EFT information and EFT information for financial institutions. Click on the "E-services" tab to access EFT information. [↗](#)

Many "Summer Services" Are Subject to Sales Tax

Many seasonal services are subject to Wisconsin sales tax. Taxable seasonal services include:

- Landscaping and lawn maintenance services, such as landscape planning and counseling;
- Lawn and garden services, such as planting, mowing, spraying, and fertilizing;

- Shrub and tree services, such as tree trimming and removal;
- Swimming pool cleaning and maintenance; and
- Repair services to boats, motorcycles, and bicycles.

Persons in the business (or part-time business) of providing these services must hold a Wisconsin seller's permit. If you know of someone who provides these services but does not hold a seller's permit, contact any Department of Revenue office so registration information can be sent to that person. [↗](#)

Contractors - Don't Forget Use Tax

Under the Wisconsin sales and use tax law, contractors making real property improvements are subject to Wisconsin sales or use tax on their purchases of materials used in making those improvements. If the seller of the materials does not charge Wisconsin sales tax on the sale of the materials, the contractor is subject to use tax.

The use tax is the same rate as the sales tax (5% state, 0.5% county, and 0.1% or 0.5% stadium). Exemptions that apply to the sales tax also apply to the use tax.

What are some examples of real property improvements?

The following items, when installed by a contractor in new home construction or home remodeling projects, are real property improvements:

Bathroom fixtures
Burglar alarm systems
Cabinets
Ceiling fans
Central air conditioning
Communications wiring
Dishwashers (built-in)
Doors
Electrical wiring
Fencing
Fire alarm fixtures
Fireplaces (built-in)

Flooring
Furnaces and duct work
Garage doors
Insulation
Light fixtures
Roofs
Sinks
Walls
Water heaters
Water lines
Water softeners
Windows

A contractor's purchases of the above items it installs in making a real property improvement are subject to Wisconsin use tax if the seller did not charge sales tax. More information about real property improvements can be found in Wisconsin Publication 207, *Sales and Use Tax Information for Contractors*.

Why wouldn't a seller charge tax?

There are primarily two reasons why a seller would not charge tax on sales to contractors:

1. The seller is located outside the state and is not required to collect Wisconsin tax.

Example: Contractor A purchases light fixtures from Company B, an out-of-state mail order company. Company B did not charge Wisconsin sales tax. Contractor A installs the light fixtures in a new

home being constructed. Contractor A owes Wisconsin use tax on his purchase of the light fixtures.

2. The seller has on file an exemption certificate from the contractor.

Example: Contractor A purchases materials from Company B on a regular basis. Most of these materials are resold by Contractor A without installation. Contractor A gave Company B an exemption certificate claiming resale, so that Company B would not charge sales tax on the sale of materials to Contractor A. Contractor A checked the box on the exemption certificate indicating the certificate was continuous (i.e., applies to all purchases by Contractor A until revoked). Rather than reselling all of the materials, Contractor A uses some of them in making real property improvements. Contractor A owes Wisconsin use tax on its purchase of the materials it used in real property construction and did not resell as tangible personal property.

How does a contractor report use tax to the Department of Revenue?

There are several ways to report use tax:

1. If the contractor holds a seller's permit or use tax number issued by the Department of Revenue, use tax is reported on the sales and use tax return the contractor files (Form ST-12, lines 11a – 11d).
2. If the contractor does not regularly make purchases subject to use tax that would require the contractor to have a seller's permit or use tax number, use tax can be reported on the:
 - a) Form UT-5, Consumer Use Tax Return; or
 - b) Individual income tax return, if the contractor is a sole proprietor.

Important: Failure to report use tax is the most common error made by taxpayers and one of the main reasons why a penalty may be imposed if a taxpayer is audited. Don't forget the use tax!

If you have any questions, you may contact your local Department of Revenue office or call (608) 266-2776 for assistance. [☞](#)



Focus on Publications: E-file Sales Tax Returns

What is "SIP" (Sales Internet Process), and how is it used to file sales and use tax returns electronically? How do I get started with e-filing, and what's in it for me? These and other questions are answered in the department's newest publication, Wisconsin Publication 227, *E-file Sales Tax returns with S.I.P.*

Publication 227 provides information about how to use SIP to file sales and use tax returns electronically and to

make tax payments by EFT (Electronic Funds Transfer). It provides guidelines for minimum hardware and software requirements, discusses the benefits of SIP, and lists lots of ways to obtain additional information.

A copy of Publication 227 appears on pages 35 to 37 of this Bulletin. Additional copies, 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 8 of this Bulletin for details. [☞](#)

Any Suggestions for 2001 Tax Forms?

Do you have suggestions for improving Wisconsin's tax forms or instructions? Can you think of ways the forms or instructions could be made easier to understand? If so, the department would like to hear from you. In past years, many suggestions from taxpayers and tax professionals have been used in developing tax forms and instructions.

Please take a few moments to put your ideas in writing, and mail them to Wisconsin Department of Revenue, Administration Technical Services, Mail Stop 6-40, PO Box 8933, Madison WI 53708-8933. If you prefer, you may fax your suggestions to (608) 261-6240, or e-mail them to treid@dor.state.wi.us. Your suggestions could help make "tax time" easier for taxpayers and practitioners. [☞](#)

Delinquent Occupational License Holders in Jeopardy

Occupational license or credential holders that have Wisconsin tax delinquencies may have their licenses or credentials suspended or revoked. Initial or renewal applications may be denied if the applicant has a Wisconsin tax delinquency.

The Wisconsin Department of Revenue (DOR) is authorized to certify tax delinquencies to 13 Wisconsin agencies. Once certified, these agencies must deny initial or renewal applications, or suspend or revoke current licenses or credentials.

The current list of agencies participating in the “Occupational License Program” is as follows:

Administration - Division of Gaming
Board of Commissioners of Public Lands
Commerce
Commissioner of Insurance
Ethics Board
Financial Institutions
Health and Family Services
Natural Resources
Public Instruction
Regulation and Licensing
Revenue - SLF Division
Transportation
Workforce Development

The above-listed agencies, examining boards, and affiliated credentialing boards issue certain professional and occupational licenses or credentials. Most licenses or credentials renew on a periodic basis, either yearly or every two years. License/credential holders go through a screening process, at initial issuance, upon renewal, or by a periodic match program, to identify individuals and businesses with Wisconsin tax delinquencies. Individuals or businesses with delinquent tax liabilities are notified and allowed ten days to pay their delinquent accounts.

An individual or business whose initial or renewal application has been denied, or whose license or credential has been either suspended or revoked, is entitled to a hearing before DOR, provided the hearing request is

made in a timely manner as specified by Wisconsin Statutes. This hearing is limited to questions of: a) mistaken identity of the license/credential holder; and b) whether the license/credential holder has paid the delinquent taxes for which the person or the business is liable.

If, after the hearing, DOR affirms its certification that the license/credential holder is liable for delinquent taxes, the agency issuing the license or credential must affirm its denial, suspension, or revocation of the holder’s license or credential. The license/credential holder or applicant may then seek judicial review in the Dane County Circuit Court.

If a license/credential holder’s license or credential is denied, revoked, or suspended because of delinquent taxes and the license/credential holder reapplies for the license or credential, the issuing agency must deny the reapplication until DOR sends the agency a clearance certificate, indicating the delinquent tax issue is resolved. If a license/credential holder or applicant owes delinquent tax and cannot pay the balance in full, DOR may accept installment payments on the balance. Before the license or credential will be released, the license/credential holder must provide financial information, have ALL outstanding tax returns filed up-to-date, and make a down payment.

Individuals or businesses that have delinquent tax accounts and have questions relating to applying for or renewing an occupational license or credential, or to resolving the delinquent accounts, should contact DOR as follows:

1. Those that wish to resolve their delinquent accounts before applying for or renewing a license or credential, and that have not yet received a notice of denial, suspension, or revocation of the license or credential, may either contact their nearest DOR office or call the Madison Central Collection office at (608) 266-7879.
2. Those that have received a notice that their license or credential will be denied, suspended, or revoked should contact the Madison Central Collection office at the telephone number listed above. [☞](#)

Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division. A comprehensive listing of telephone numbers and addresses appears in *Wisconsin Tax Bulletin* 124 (April 2001), pages 39 to 42.

Madison — Main Office Area Code (608)

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

District Offices

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



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 index will help you locate reference materials including articles, court case summaries, tax releases, and private letter rulings, to research questions about Wisconsin taxes.

The latest *Wisconsin Tax Bulletin* 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, Mail Stop 6-40, 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 65 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, Mail Stop 5-77, PO Box 8951, Madison WI 53708-8951; call (608) 266-1961; or fax a request to (608) 261-6913.

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> |
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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> |
|--|

- 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)
- 227* E-file Sales Tax returns with S.I.P. (3/01)

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 (5/01)
- 503 Wisconsin Farmland Preservation Credit (1/01)
- 508* Wisconsin Tax Requirements Relating to Nonresident Entertainers (5/01)
- 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) [!\[\]\(49aa2e1da5fe39294864e9598c593810_img.jpg\)](#)

Question and Answer**(Sales and Use Tax)**

Q One of my customers gave me a “tax number” and told me I should not charge her Wisconsin sales tax on items she will be reselling. Do I need to obtain an exemption certificate from her, or is her “tax number” sufficient documentation for the exemption?

A You must obtain a properly completed exemption certificate (Form S-211) from your customer. Obtaining only the customer’s tax number is not sufficient.

Q One of my customers gave me an “exempt number” and told me I should not charge her Wisconsin sales tax because the customer is a nonprofit organization. Do I need to obtain an exemption certificate from the nonprofit organization, or is the “exempt number” sufficient documentation for the exemption?

A You may obtain any one of the following from the nonprofit organization:

- A properly completed exemption certificate (Form 211).
- The nonprofit organization’s Certificate of Exempt Status (CES) number, which you record on your copy of the invoice or other billing document you keep.
- A purchase order (from federal and Wisconsin governmental units only).

Caution: A Certificate of Exempt Status (CES) number is issued by the Wisconsin Department of Revenue and is a one- to six-digit number (e.g., ES – #####). A CES number does not include a federal employer identification number (e.g., 39 - #####) or a social security number (e.g., ### – ## – #####).

(Homestead Credit)

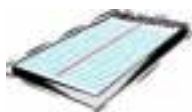
Q One of my landlords for last year will not sign a rent certificate. I paid rent to him for five months. May I claim that rent on my homestead credit claim?

A You may claim the rent that you can verify, provided you attach the following two items to your Schedule H:

1. An unsigned rent certificate. Complete lines 1 to 13b yourself. Include your estimate of the value of the items listed on line 12 that your landlord provided (or fill in –0– if none of the items were provided), and write “Landlord Refuses to Sign” at the top of the certificate; and
2. Copies of whatever cancelled checks or money order receipts you have to verify the rent paid. Only verified rent will be allowed.

Q As a volunteer in the Senior Companion Program, I receive amounts for supportive services, plus mileage reimbursement. These amounts are nontaxable for income tax purposes. Are the payments considered income for homestead credit?

A No. Under “Title II of the Domestic Volunteer Service Act of 1973,” nontaxable amounts received from the Senior Companion Program may not be included in household income for homestead credit purposes. (Note: This Act also provides that nontaxable payments received from the Foster Grandparents Program and the Retired Senior Volunteer Program [“RSVP”] may not be included in household income for homestead credit purposes.) [§ 90.01\(2\)\(b\)](#)



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 39 of this Bulletin. The Index is also on the department’s Internet web site at www.dor.state.wi.us. Just click on “Publications.” 

Don’t Ignore Department of Revenue Inquiries

If a client receives a letter or notice from the Department of Revenue (DOR) asking that they file a tax return, or estimating the client’s tax liability, don’t ignore that letter or notice. It is important to respond timely in order to avoid an estimated assessment and the possibility of a collection fee (minimum of \$35) and other collection actions.

When the DOR believes that a required tax return has not been filed, the department may either send a letter to the taxpayer requesting the missing return, or issue an estimated tax assessment. If no return is required, the taxpayer should send a response to the department, explaining why no return is required. In the case of a business, the business should notify the department when a Wisconsin seller’s permit or Wisconsin employer identification number is no longer needed. As long as a seller’s permit or employer identification number is considered active, sales tax returns or withholding tax deposit reports are required to be filed, even if there are no sales to report or withholding deposits to be made.


An estimated assessment is issued if a timely response to a request for a return is not received. Estimated assessments are generally much higher than the taxpayer’s actual liability, because the estimates are based on incomplete information, and credits are not allowed. For example, in cases involving individual income tax, the estimate may not take into account Wisconsin tax withheld from wages.

If there is no response to an estimated assessment, a delinquent account is established and the amount of the assessment is subject to delinquent interest of 1.5% per month, as well as a minimum \$35 collection fee. The \$35 fee will be cancelled if a tax return or information is subsequently furnished **and** the tax return or information indicates that there is no filing requirement.

After a delinquent account has been established, collection action will be initiated, including, but not limited to, filing a tax lien, requiring an employer to withhold additional money from an employee’s pay, and seizing assets such as bank accounts. The tax lien is public information, which creates a potential for credit agencies to obtain access to the information. This could adversely affect a taxpayer’s credit rating.

These types of actions are the reason it is vital to respond to letters and notices from the DOR. There may not be a need for a tax return, and even if a return is due, the taxpayer may not owe Wisconsin tax. But the department will never know unless a response is received.

Each letter or notice requesting that a return be filed includes a telephone number to call with questions. Also, employees located in any of the department’s offices throughout the state are available to provide assistance.

For a list of department office locations and hours, or for further information regarding delinquent tax collection, you may access the department’s Internet web site at www.dor.state.wi.us and click on “FAQs” (frequently asked questions). 

Bankruptcy Attorney Charged With Tax Crimes

John V. Asher, 48, a former Brookfield bankruptcy attorney, was charged in May 2001, with failure to file a 1998 State income tax return and with theft of withholding tax money. The complaint alleges that between July 1997 and January 1999 Asher deducted and withheld State income taxes from his employees' wages but failed to remit this tax money to the Wisconsin Department of Revenue. Asher faces up to 13½ years in prison and \$40,000 in fines if convicted on all counts.

Asher had previously been charged with theft of bankruptcy filing fees in March of 2001. In that complaint it was alleged that he had hundreds of thousands of dollars flowing through at least 14 bank accounts, and that he was making monthly payments for a Mercedes Benz, along with leasing an airplane. However, by late 1998 and early 1999, Asher's bank accounts were closed out with nothing left in them. Asher was also forced out of his Dousman, Wisconsin home last year when he defaulted on a \$434,000 mortgage.

Asher had operated the now-defunct Christian Law Center, which was located in Brookfield, Wisconsin, and which handled filings of personal bankruptcies. This operation ceased after Asher and the business filed for bankruptcy in 1999.

In addition to the criminal charges, Asher lost his law license after he was charged with more than 200 counts of professional misconduct for alleged unethical and illegal treatment of his clients.

Wisconsin law provides for substantial civil penalties on the tax liability in addition to the criminal penalties. Assessment and collection of the taxes, penalties, and interest follows the conviction for criminal violations.

In June 2001, Sharon M. Richards, 50, of Spooner, was charged in Chippewa County Circuit Court with two counts of making false statements in motor vehicle title applications, and two counts of falsely reporting the sales tax on those applications. According to the criminal complaint:

- Richards is a licensed motor vehicle dealer and the owner of Turtle Lake Auto Sales and Turtle Lake Auto Salvage.
- She falsely reported the purchase price of two wreckers she purchased in August 1999, as \$125 and \$200.

- Documents obtained from the parties who sold the vehicles to Richards showed actual purchase prices of \$7,500 and \$11,000.

Richards evaded \$999.63 in state and county sales taxes as a result of the false statements. She faces a total of 10 years and two months imprisonment and \$11,000 in fines if convicted on all counts.

The charges against Richards are the result of a joint investigation by the Wisconsin Department of Transportation and the Fraud Unit of the Wisconsin Department of Revenue.


Amy C. Banks, 31, Evansville, was ordered in June 2001, to serve one year in the county jail for embezzling money from her employer and filing two fraudulent Wisconsin income tax returns. Banks is the former bookkeeper of Regent Mental Health Group in Madison.

Between January 1998 and July 1999, Banks took over \$60,000 from Regent Mental Health Group and did not report any of the stolen money on her Wisconsin income tax returns. As part of a plea agreement in March 2001, she was found guilty of two felony counts of theft in a business setting and one felony count of income tax evasion.

Dane County Circuit Court Judge Steven Ebert withheld sentence and placed Banks on probation for five years, with several conditions. Among the conditions are that Banks must spend one year in either the Dane or Rock County Jail. In addition, she must pay restitution to the Wisconsin Department of Revenue and perform 200 hours of community service. Banks has made restitution to Regent Mental Health Group.

Thomas Swanson, Sr., 57, was sentenced in June 2001, for one count of filing a false homestead credit claim. Kenosha County Circuit Court Judge David M. Bastianelli sentenced Swanson to three years in prison and ordered him to make restitution of \$2,998 to the State.

According to the criminal complaint, Swanson filed a 1997 Wisconsin income tax return that included the false homestead credit claim. He also claimed a false dependent, false IRA deduction, and fraudulent earned income credit, and underreported income by \$10,000.

Filing a fraudulent homestead credit claim is a crime punishable by up to five years imprisonment and up to \$10,000 in fines. 



Report on Litigation

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

The following decisions are included:

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INDIVIDUAL INCOME TAXES

Assessments - correctness; Appeals - frivolous. *John Gutsch vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 23, 2001). The issues in this case are:

- A. Whether the department properly assessed the taxpayer for 1997 and 1998 income taxes under sec. 71.74(3), Wis. Stats.
- B. Whether the taxpayer's position in this matter is frivolous and groundless, thereby subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

In March and April 2000, the department wrote to the taxpayer, requesting him to file Wisconsin income tax returns for tax years 1997 and 1998. The taxpayer did not file the requested returns, and in May 2000, the department sent him an estimated assessment for 1997 and 1998, pursuant to sec. 71.74(3), Wis. Stats.

The taxpayer filed a petition for redetermination with the department in June 2000. In it the taxpayer asserted that the assessment was unlawful, that he was a Minnesota resident, that he was a nonresident alien, that he was a "Citizen of Wisconsin and domiciled in Dunn County, Wisconsin," and that he was a "Sovereign Citizen of the Wisconsin Republic." The department denied the petition for redetermination, and the taxpayer timely filed an appeal with the Commission. The department has filed a motion for summary judgment.

The taxpayer claims protection from paying income taxes by citing various provisions of the U. S. Constitution, and by citing quotations from cases from the federal courts and the courts of various states.

The Commission concluded as follows:

- A. The department properly assessed the taxpayer for 1997 and 1998 income taxes under the provisions of sec. 71.74(3), Wis. Stats.
- B. The taxpayer's position in this matter, consisting exclusively of semantic gymnastics which attempt to rationalize why the state income tax laws do not apply to him, is frivolous and groundless, thereby

subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats. The taxpayer's arguments and ones like them have been given no credence when argued by others in prior cases before the Commission and the courts, and his arguments do not prevail now.

The Commission granted the department's motion for summary judgment and dismissed the petition for review. In addition, in accordance with conclusion B, the Commission imposed an additional assessment of \$500 against the taxpayer.

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



Native Americans - reservation of another tribe.

Joan La Rock vs. Wisconsin Department of Revenue (Wisconsin Supreme Court, February 13, 2001). This is a review of a December 28, 1999, decision of the Court of Appeals. See *Wisconsin Tax Bulletin* 119 (April 2000), page 15, for a summary of the Court of Appeals' decision. The issue in this case is whether the taxpayer, an enrolled member in the Menominee Tribe, is exempt from Wisconsin's income tax while living and working on the Oneida Reservation.

The taxpayer is an enrolled member of the Menominee Tribe. She married an enrolled member of the Oneida Tribe and they had four children, all enrolled members of the Oneida Tribe. She divorced in 1993 but resided and worked on the Oneida Reservation in 1994 and 1995. The taxpayer deducted her federal adjusted gross income from the state income tax in 1994 and 1995, based on her American Indian status.

The department disallowed her deduction because she was not living and working on Menominee tribal lands. The taxpayer appealed the department's finding to the Wisconsin Tax Appeals Commission on the ground she is an "Indian" living in "Indian country." The Commission

affirmed the department, as did the Circuit Court and the Court of Appeals.

The Commission found "no Act of Congress, no treaty, no state statute or state agreement with any tribe that impairs Wisconsin's right to impose an income tax on enrolled members of a federally-recognized Indian tribe who live and work on the reservation of another tribe in Wisconsin." The Circuit Court held that "since [La Rock] is not a member of the Oneida Nations, she enjoys no protected status that would allow her to claim immunity from the duty she owes as a citizen of the State of Wisconsin to pay income taxes." The Court of Appeals reviewed the treaties and federal statutes and asserted that those laws did not preempt state income tax jurisdiction in this instance.

The Wisconsin Supreme Court concluded that principles of tribal sovereignty do not bar the State from taxing the taxpayer's income earned on the Oneida Reservation, because she is an enrolled member of the Menominee Tribe rather than the Oneida Tribe.

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



Settlement agreement - taxable portion.

Randall Schwartz and Gayle J. Nelson vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 7, 2001). The issues in this case are:

- A. Whether any portion of payments from a settlement agreement entered into in 1991 is exempt from income tax, pursuant to sec. 104(a)(2) of the Internal Revenue Code ("IRC").
- B. What portion of the payments from the settlement agreement is attributable to a covenant not to compete and, therefore, is subject to the income tax.

From 1985 until 1990, Randall Schwartz ("the taxpayer") was one of three shareholders of Global Fastener & Supply, Inc. ("Global"). In 1990 he came to believe that the other two shareholders were causing Global to act improperly, and so he decided it was necessary to sever his ties with Global.

As a result of the conduct of the other two shareholders, the taxpayer suffered anxiety and panic attacks, and he continued to exhibit a panic disorder condition for several years thereafter. His condition prevented him from working for Global during the period from August 1990 to January 1991.

In January 1991, the taxpayer, the other two shareholders, and Global entered into a settlement and purchase

agreement (“Settlement”). Under terms of the Settlement, Global paid \$100,000 in cash to the taxpayer at closing and executed a promissory note for \$250,000. The Settlement provided that the parties would allocate, for tax purposes, \$175,000 of the \$350,000 (“the \$175,000 payment”) in consideration of the release by the taxpayer of any possible claim for personal injury, and for a covenant not to compete.

The \$175,000 payment included the \$100,000 paid at closing, plus monthly payments of \$8,000, consisting of \$6,139 in principal and \$1,861 in interest. The covenant not to compete limited the taxpayer’s activity with regard to Global’s past and current customers and within Global’s sales territory until March 1, 1991.

The parties to the Settlement also executed a mutual release agreement (“Release”). The Release provided in part that the \$175,000 payment was to be paid in exchange for the taxpayer’s non-competition agreement and in lieu of all possible claims for personal injury. The other two shareholders also executed a directors’ resolution that authorized and directed the proper officers to enter a mutual release agreement with the taxpayer, pursuant to which he would be paid \$175,000 for releasing Global “from any liability pursuant to any allegations or threatened allegations by Mr. Schwartz and in exchange for a covenant not to compete.”

Both the Settlement and the Release specified that the portion allocable to the release of any possible claim for personal injury shall be excludable from the taxpayer’s income for tax purposes, all in accordance with IRC section 104(a)(2) and other relevant Code sections and Treasury regulations. None of the documents specified how the \$175,000 payment was to be allocated between the covenant not to compete and the release of any personal injury claim, and no such allocation was made on Global’s books.

On their 1991 income tax return, the taxpayers (who are husband and wife) attributed \$10,000 of the \$175,000

payment to the covenant not to compete and included it as taxable income. They did not report the remainder of the \$175,000 based on their assertion that it was not taxable because it was received in exchange for the release of personal injury claims. In April 1994, the department issued an income tax assessment to the taxpayers, on which it attributed the entire \$175,000 to the covenant not to compete. The taxpayers filed a petition for redetermination with the department, the department denied it, and the taxpayers filed a timely petition for review with the Commission.

The department argued that the personal injury claims subject to the Release are not those contemplated by IRC sec. 104(a)(2). It also argued that the taxpayer failed to show that any portion of the \$175,000 can be attributed to the personal injury claim release.

The Commission concluded as follows:

- A. Payments to the taxpayer in exchange for the personal injury claim release are exempt pursuant to IRC sec. 104(a)(2). The language of the Settlement and related documents contemplated damages for personal injuries or sickness within the meaning of that section.
- B. Only the portion of the \$175,000 payment received by the taxpayer prior to the March 1, 1991, expiration of the covenant not to compete is attributable to the covenant not to compete and, therefore, subject to the income tax. The taxable amount is \$112,278, consisting of the \$100,000 payment at closing plus two monthly principal payments of \$6,139 each. It is reasonable to assume that amounts paid after March 1, 1991, were not attributable to the covenant not to compete.

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



Tax Appeals Commission - proper procedures.

Billy E. Stephenson and Terry A. Stephenson vs. Wisconsin Department of Revenue (Circuit Court for Milwaukee County, January 2, 2001). This is a review of an April 20, 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 taxpayers received a fair and impartial hearing by the Commission, and more specifically

whether the Commission’s decision correctly applied applicable law and was supported by substantial evidence in the record.

The department made numerous adjustments to the taxpayers’ joint Wisconsin income tax returns for the years 1991 through 1994. Adjustments included the disallowance of a business loss for 1991, an ordinary loss on Form 4797 for 1992, employee business expenses and a rental loss for 1993, and employee business expenses,


capital losses on Schedule D, and ordinary losses relating to the sale of a camper for 1994. The reasons for the adjustments included improper or unsubstantiated deductions, failure to prove that a business ever existed, and discrepancies relating to ownership of the camper.

On appeal, the taxpayers asserted that the hearing before the Commission violated due process. The taxpayers further contended that the department failed to notify them as to what documents were being requested.

The Circuit Court concluded that the hearing before the Commission did not violate due process because its de-

cision was the result of adherence to prescribed procedure and the correct interpretation of applicable law. The burden to show that the assessments were in error is on the taxpayers, and the Commission's finding that they failed to do so is supported by substantial evidence in the record. The taxpayers were adequately informed of which deductions were being challenged and what type of documentation was necessary to successfully challenge the assessments, either in the assessment notices or in a letter from the department's Office of Appeals.

The taxpayers have not appealed this decision [!\[\]\(cbe2492b119e39e02a1dab2af4a4b296_img.jpg\)](#)

 **Termination payments treated as capital gains.** *Sigurd and Betty J. Gudal vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 3, 2001). The issue in this case is whether termination payments Sigurd Gudal ("the taxpayer") received from State Farm Insurance Company ("State Farm") during 1994 to 1998 qualify for capital gain treatment.

The taxpayers filed Wisconsin income tax returns for the years 1994 through 1997, listing income received from State Farm as termination payments. They did not claim capital gain treatment for the payments.

In November 1998, the taxpayers filed amended returns for 1994 through 1997, claiming refunds based on their belief that compensation received from State Farm during those years qualified for capital gain treatment. The taxpayers filed their 1998 Wisconsin income tax return reporting the compensation from State Farm as a long-term capital gain.

In July 1999, the department denied the taxpayers' refund claims for 1994 through 1997. Also in July 1999, the department issued an assessment against the taxpayers for 1998, on which it denied capital gain treatment on the compensation received from State Farm. The taxpayers filed petitions for redetermination with the department regarding both actions. The department de-


nied both petitions, and the taxpayers then filed timely petitions for review with the Commission.

During 1994 through 1998 the taxpayer was not actively employed by State Farm. At some point prior to 1994, the taxpayer entered into an agency agreement with State Farm, which provided that upon termination he could receive termination payments for 60 months, based on commissions, compensation, and other entitlements as of the date of termination. The agreement also provided for extended termination payments for certain agents who met age and length of service requirements. The agreement did not provide that eligibility for or the amount of termination or extended termination payments were based upon, or in exchange for, the sale of goodwill or any other asset.

The Commission concluded that the payments the taxpayer received from State Farm from 1994 to 1998 were not entitled to capital gain treatment. There is no evidence that there was a sale of assets, as is required for capital gain treatment. Nothing in the agency agreement indicates that State Farm is compensating the taxpayer for his contributions to the company's assets and goodwill, as asserted by the taxpayers.

The taxpayers have appealed this decision to the Circuit Court. [!\[\]\(7d1d6890825e83a6a4a51febe2dcc7f3_img.jpg\)](#)


CORPORATION FRANCHISE AND INCOME TAXES

 **Business loss carryforward - reorganization.** *Wisconsin Department of Revenue vs. Caterpillar, Inc.* (Court of Appeals, District IV, January 11, 2001). This decision was summarized in

Wisconsin Tax Bulletin 124 (April 2001), page 21. That summary indicated that the department had appealed the decision to the Wisconsin Supreme Court.

On April 5, 2001, the Wisconsin Supreme Court denied the department's petition for review. The case is closed. [!\[\]\(28f72b996fc97883dfd9d4e8b1b16b4e_img.jpg\)](#)

SALES AND USE TAXES

 **Exemptions - manufacturing machinery and equipment; Penalties - negligence, incorrect return.** *J. W. Winco, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 23, 2001). The issues in this case are:

- A. Whether the taxpayer's purchases of Industriever 12000T Vertical Lift Systems (Industriever) used to stock raw material parts after delivery from suppliers are exempt from Wisconsin sales or use tax as equipment used exclusively in manufacturing under sec. 77.54(6)(a), Wis. Stats.
- B. Whether the taxpayer was negligent under sec. 77.60(3), Wis. Stats., in failing to report use tax on purchases of books, stools and chairs, badges, certificates, anniversary seals, a carton opener, a knife, freight charges, and additional Industriever.

During the year 1997, the taxpayer was a Wisconsin corporation with its principal place of business in New Berlin, Wisconsin.

The taxpayer was in the business of manufacturing business tools and tooling components for sale to other manufacturers and distributors, and the importing, exporting, and wholesale distributing of metric and inch standard clamping and operating elements.

On May 30, 1997, the taxpayer purchased 10 Industriever on which the taxpayer stocks raw material parts after delivery from suppliers. Some work in progress is also put on the Industriever after the taxpayer performs some manufacturing work on them. No finished goods are placed on the Industriever.

Each Industriever contains 42 pans. When stocking parts on an Industriever, the taxpayer's employee enters into the Industriever's computer keyboard the location on the Industriever where the part is to be placed. The computer tells the extractor (vertical lift/conveyor) to retrieve the pan in that location and deliver it to the employee, who then places the part in the pan and pushes the "return pan" button on the keyboard to return the pan to its location on the Industriever. The Industriever's same moving parts were used to stock raw materials on the Industriever as were used to retrieve raw materials from the Industriever.

The taxpayer keeps on a computer separate from the Industriever information regarding the part identifica-

tion number, quantity, location, and description of the various items of raw material and work in progress that have been placed on the Industriever. To manufacture a finished product, the taxpayer's computer generates a kit order, which is an instruction sheet that sets forth the various components of raw material and/or work in progress items and the procedures required to assemble those components into a finished product. The kit order also includes the Industriever's location code for each of the required components. After obtaining the kit order, the employee inputs the location code from the kit order for each of the required components on the Industriever's control panel. The Industriever then deliver the pans which contain each of the components to the employee, who then takes the various components from the Industriever and either carries them to a work station or places them on a wheeled cart and pushes it to a work station.

The taxpayer does not have statistical information or data indicating the percentage of use for holding raw materials versus stocking or retrieval from the Industriever for manufacturing. The Industriever helped the taxpayer reduce its storage space by 93%. The Industriever did not produce any physical change in the raw materials placed on them, and they were not part of a synchronized system of manufacturing tangible personal property.

During the years 1994 through 1997, the taxpayer had no system for reporting use tax and reported no use tax on its annual sales and use tax returns. The taxpayer indicated on its franchise and income tax returns that it did not purchase any tangible personal property or taxable services for storage, use, or consumption in Wisconsin without paying sales or use tax.

The Department of Revenue mailed sales and use tax returns, instructions, and various publications with sales and use tax information to the taxpayer at its mailing addresses at several different locations.

The Commission concluded:

- A. The Industriever were not used exclusively in manufacturing as required by sec. 77.54(6)(a), Wis. Stats., and are not exempt from Wisconsin sales and use tax. The Commission recognized in its opinion that manufacturing does not include storage under the provisions of sec. Tax 11.39, Wis. Adm. Code, and that "exclusively" as defined in sec. Tax 11.40, Wis. Adm. Code, means "to the exclusion of all other uses...except...an infrequent and sporadic use other than in manufacturing tangible personal prop-

erty.” The Industriervers were used more than incidentally for storage. Even when raw materials were being retrieved from one pan of an Industriever to be used in manufacturing, the Industriervers’ other pans were still being used to store raw materials. At any one time only one of 42 pans, or 2.4% of the Industriervers’ capacity, would possibly be considered used in manufacturing, leaving 97.6% used for storage. This does not constitute exclusive use in manufacturing as required under sec. 77.54(6)(a), Wis. Stats.

B. The taxpayer was negligent under sec. 77.60(3), Wis. Stats., in failing to report use tax on purchases of books, stools and chairs, badges, certificates, anniversary seals, a carton opener, a knife, freight charges, and additional Industriervers. It was neglect for the taxpayer’s owners and officers to fail to inform themselves concerning the sales and use tax law applicable to such transactions, and it was neglect for them to fail to report and pay use tax on those transactions subject to tax.

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



Officer liability. *Wisconsin Department of Revenue vs. John D. and Charlene Ceille, and John D. Ceille vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, April 24, 2001). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated February 28, 2000. See Wisconsin Tax Bulletin 119 (April 2000), page 21, for a summary of the Commission’s decision. The issue in this case is whether John Ceille (the taxpayer) and Charlene Ceille (the taxpayer’s wife) are responsible persons under sec. 77.60(9), Wis. Stats., for delinquent sales and use taxes of Ceille Industries, Inc. (“the company”), during May and August 1988 and January through June 1989 (“the period under review”).

Beginning in August of 1986, the taxpayer became sole shareholder, president and treasurer of the company. The taxpayer’s authority included signing all checks drawn on the company’s checking account. Also in August of 1986, the taxpayer initiated a loan agreement with the company’s bank. The taxpayer alone negotiated and executed the loan documents on behalf of the company. The taxpayer, on behalf of the company, negotiated an additional loan with the bank in the spring of 1988.

Prior to August of 1988, the taxpayer’s wife had no active involvement in the company. During a portion of the period under review the taxpayer’s wife was a member of the company’s board of directors and the company’s vice-president and secretary.

In July of 1988, the taxpayer became incapacitated. In August of 1988, the taxpayer was no longer involved in the business affairs of the company, and, in accordance with the terms of a loan agreement between the taxpayer and the company’s bank, the taxpayer’s wife agreed to allow the company’s bank to approve all checks written on the company’s account. The taxpayer’s wife was given authority to write checks, but the bank had final approval of all payments. The bank authorized some tax payments by the company, but sales tax returns for August of 1988 and the first six months of 1989 were filed without payment of the tax due. The taxpayer’s wife attempted to pay a number of tax liabilities with checks that were not approved and were not honored by the bank.

The Circuit Court concluded as follows:

- A. The taxpayer is a responsible person who is liable for the company’s unpaid sales and use taxes for the month of May 1988.
- B. The taxpayer is not a responsible person liable for the company’s unpaid sales and use taxes for August 1988 and January through June of 1989.
- C. The taxpayer’s wife is not a responsible person liable for the company’s unpaid sales and use taxes.

Neither the department nor the taxpayer has appealed this decision. [🔗](#)



Officer liability. *Kurt T. Swartz vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, February 23, 2001). This is a judicial review of a Wisconsin Tax Appeals Commission (“Commission”) decision dated August 31, 2000. See *Wisconsin Tax*

Bulletin 123 (January 2001), page 26, for a summary of the Commission’s decision. The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of the La Crosse HI Corporation (“the corporation”), under sec. 77.60(9),

Wis. Stats., for the periods April through August 1994, May through August and October and November 1995, and February 1996 (“the period under review”). The taxpayer also disputes whether the Commission had personal jurisdiction over him because he is a resident of Minnesota, and whether an affidavit submitted by a Department of Revenue (“department”) attorney was admissible by the Commission.

The taxpayer, a Minnesota resident, was employed as the controller of the corporation from August 1990 to May 1997. As controller, the taxpayer supervised the clerks and auditors who maintained the corporation’s books and records. The taxpayer signed monthly sales tax returns filed with the department and prepared local financial records for the corporation on a day-to-day basis. The taxpayer signed all of the corporation’s sales tax returns filed during the period under review, and he became aware of a sales tax delinquency in mid-1994. The taxpayer did not file the return for the month of April 1994 until September 30, 1994. Further, the taxpayer signed the June, July, August, and October 1994 sales tax returns showing substantial amounts of tax due but filed them with no remittance.

In addition to signing the sales tax returns, the taxpayer held himself out as having authority over the corporation’s Wisconsin state tax matters when he:

1. Signed the corporation’s application for an employer identification number on February 21, 1991;
2. Executed a sales tax assessment settlement agreement with the department on June 30, 1991;
3. Signed a letter as controller of the corporation in response to a notice of delinquent tax warrant filed against the corporation by the department in March 1991; and
4. Prepared and signed the proper forms on behalf of the corporation, when the department informed the corporation in January and February 1996 that the sales tax returns filed for November and December 1995 were incomplete.

The taxpayer had authority to cosign checks on the corporate checking account from February 1991 until at least May 1996. The bank statements for the corporate checking account for the months of January, August,

and November 1995 and February 1996 show substantial deposits. The taxpayer cosigned checks from the corporate checking account to pay other creditors, while substantial amounts were owed to the department.

The Circuit Court found that by filing his petition with the Commission, the taxpayer requested the assistance of the Commission and thus submitted himself to the jurisdiction of the Commission.


The taxpayer disputes the admission of the affidavit signed by the department’s attorney because he alleges the attorney did not have the necessary personal knowledge of the documents attached to the affidavit. However, the Circuit Court found there was a reasonable basis for the Commission’s decision to admit the affidavit because the routine identification of documents can be submitted via an attorney’s affidavit if the documents qualify as records prepared during the regularly conducted activity of a qualified witness, and the witness is personally acquainted with the business records relative to the assessment at issue. The taxpayer failed to demonstrate the attorney was not personally acquainted with the documents attached to the affidavit.

Giving great deference to the Commission’s decision, the Circuit Court affirmed the Commission and concluded the taxpayer is personally liable under sec. 77.60(9), Wis. Stats., for the unpaid sales tax of the corporation for the periods April through August 1994, May through August and October and November 1995, and February 1996.

The taxpayer held himself out as having **authority** over the corporation’s Wisconsin state tax matters by signing the corporation’s sales tax returns, signing the application for an employer identification number, signing a settlement closing agreement to resolve a prior sales tax matter on the corporation’s behalf, and signing a form to complete the corporation’s incomplete sales tax returns. The taxpayer had a **duty** to pay the taxes due because based on the affidavit submitted by the department’s attorney, he knew the taxes were unpaid and had the authority to see that corporate funds were used to pay them. The affidavit and its attached exhibits show the taxpayer **intentionally breached his duty** when he used corporate funds to pay other creditors with knowledge of taxes being due.

The taxpayer has not appealed this decision. 

WITHHOLDING OF TAXES

 **Appeals - jurisdiction.** *Fidelis Omegbu vs. Wisconsin Department of Revenue* (Court of Appeals, District I, February 27, 2001). On November 8, 1999, the taxpayer filed a petition in the Circuit Court for Milwaukee County, seeking a judicial review of a Wisconsin Tax Appeals Commission decision dated October 14, 1999. The Commission had held that the taxpayer is personally liable for the unpaid withholding taxes of Kasa Corp. under sec. 71.83(1)(b)2, Wis. Stats. for the years 1989 through 1995. See *Wisconsin Tax Bulletin* 118 (January 2000), page 32, for a summary of the Commission's decision.

On December 1, 1999, the department moved the Circuit Court to dismiss the taxpayer's petition because the taxpayer failed to properly serve the petition on the department or the Commission. The Circuit Court agreed


with the department and dismissed the taxpayer's petition. The taxpayer appealed to the Court of Appeals. (The Circuit Court's decision was not summarized in the *Wisconsin Tax Bulletin*.)

The taxpayer served copies by regular mail on the department and the Commission, of the November 8, 1999, petition with the Circuit Court. The Circuit Court held that it was without subject matter jurisdiction because the taxpayer failed to serve the petition on the department and the Commission in person or by certified mail as required by sec. 227.53(1)(a)1, Wis. Stats.

The Court of Appeals concluded that the Circuit Court correctly held that it lacked subject matter jurisdiction over the taxpayer's petition for review. The Court of Appeals thus granted summary judgment to the department.

The taxpayer has not appealed this decision. [!\[\]\(3211b5d1d968fc1665909b34f9f16010_img.jpg\)](#)

SALES AND USE TAXES, AND WITHHOLDING OF TAXES

 **Officer liability.** *Brenda Pharo and Michael A. Pharo vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 23, 2001). The issue in this case is whether the taxpayers are responsible persons who are liable for the unpaid withholding taxes and sales and use taxes of American Alarm & Telephone Corporation ("AATC") under secs. 71.83(1)(b)2 and 77.60(9), Wis. Stats., for various periods from 1992 through 1997.

During the years 1992 through February 1997, AATC was in the business of selling and servicing telephone systems, and installing and monitoring alarm systems.

From incorporation in January 1992 until early 1995, Brenda Pharo was president and treasurer of AATC. Mrs. Pharo handled some of the accounting and payroll duties for AATC, signing the application for AATC's seller's permit, and signing and filing some of AATC's monthly sales and use tax returns and the AATC 1992 year-end withholding tax return.

Mrs. Pharo was the only signatory on AATC's bank account from November 26, 1991, until December 9, 1994. During this period, Mrs. Pharo signed all checks drawn on this account, usually after determining that funds were available in this account. During the period Mrs. Pharo was president of AATC, AATC was delin-

quent in its Wisconsin withholding and sales and use taxes. Although AATC owed withholding and sales and use taxes, Mrs. Pharo authorized the use of corporate funds to pay AATC's other creditors.

Michael Pharo, while being president and treasurer of AATC from early 1995 through the end of February 1997, was in fact in charge of virtually all activities of AATC from 1992 through February 1997, including all day-to-day activities of AATC. Mr. Pharo routinely:

- Received and handled inquiries received by the receptionist;
- Assigned duties and responsibilities to AATC employees;
- Assigned service calls for AATC technicians;
- Held himself out as owner of AATC and its "controller," even before becoming AATC's president;
- Signed and filed withholding and sales and use tax returns on behalf of AATC;
- Represented AATC in all dealings with the Department of Revenue; and
- Was compensated for his efforts on behalf of AATC.

Mr. Pharo was a signatory on AATC's checking account beginning December 8, 1994. Prior to and during the period Mr. Pharo was its president, AATC was delinquent in its Wisconsin withholding and sales and use taxes. Mr. Pharo had actual knowledge that AATC was delinquent in its withholding and sales and use taxes as early as 1993. Although AATC owed withholding and sales and use taxes, Mr. Pharo authorized the use of corporate funds to pay AATC's other creditors.

The Commission concluded the taxpayers were persons responsible for the withholding tax and sales and use tax liabilities of the corporation under secs. 71.83(1)(b)2 and 77.60(9), Wis. Stats.

The taxpayers were the corporation's president and treasurer, or played a significant role in the corporation's

business affairs. They either possessed the **authority** to write checks on the corporation's checking account or were in a position to direct payment of AATC's tax liabilities. As the corporation's president and treasurer, or responsible person, the taxpayers had a **duty** to pay the taxes of the corporation and knew they were not being paid. The taxpayers **intentionally breached their duty** to pay the taxes when they directed payments to other creditors while the taxes went unpaid.

The taxpayers have appealed this decision to the Circuit Court.

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. [!\[\]\(e474458956c9a37fbf9586ddb60a7fa1_img.jpg\)](#)



Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those given herein, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.

The following tax release is included:

Sales and Use Taxes –

1. Motor Vehicle Attachments22

SALES AND USE TAXES

Note: The following tax release interprets 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 Motor Vehicle Attachments

Statutes: Sections 77.51(9)(a), 77.54(3)(a), (5)(a), and (7)(a) and (b), and 77.61(1)(c), Wis. Stats. (1999-00)

Administrative Code: Section Tax 11.83(1)(b) and (4)(a), (August 1999 Register), Wis. Adm. Code

Background: Section 77.54(7)(a), Wis. Stats. (1999-00), provides a sales and use tax exemption for the occasional sale of tangible personal property. Section 77.54(7)(b), Wis. Stats. (1999-00), provides that the occasional sale exemption does not apply to the transfer of a motor vehicle, with certain exceptions.

Section 77.51(9)(a), Wis. Stats. (1999-00), states that “occasional sales” include:

“Isolated and sporadic sales of tangible personal property or taxable services where the infrequency, in relation to the other circumstances, ... support the

inference that the seller is not pursuing a vocation, occupation or business or a partial vocation or occupation or part-time business as a vendor of personal property or taxable services. No sale of any tangible personal property or taxable service may be deemed an occasional sale if at the time of such sale the seller holds or is required to hold a seller’s permit...”

Section Tax 11.83(1)(b), Wis. Adm. Code (August 1999 Register), defines “motor vehicle” to mean:

“...a self-propelled vehicle, such as an automobile, truck, truck-tractor or motorcycle, designed for and capable of transporting persons or property on a highway. In this section, ‘motor vehicle’ does not include a self-propelled vehicle which is not designed or used primarily for transportation of persons or property, and is only incidentally operated on a public highway, such as a farm tractor, snowmobile, fork lift truck or road machinery as defined in s. 340.01(52), Stats. ‘Motor vehicle’ does not include a vehicle which is not self-propelled, such as a trailer or semitrailer.”

Section 77.61(1)(c), Wis. Stats. (1999-00), provides that the purchaser of a motor vehicle registered or titled in Wisconsin, or required to be registered or titled in Wisconsin, that is purchased from a person who is not a Wisconsin motor vehicle dealer, shall file a sales tax return and pay the tax prior to registering or titling the motor vehicle.

Section 77.54(5)(a), Wis. Stats. (1999-00), provides an exemption from Wisconsin sales or use tax for:

“...aircraft, motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such aircraft, motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such aircraft, motor vehicles or trucks from this state.”

Section Tax 11.83(4)(a), Wis. Adm. Code (August 1999 Register), further provides that truck bodies include semitrailers. However, the separate sale of a “slide-in” camper to a nonresident is taxable if delivery is in Wisconsin.

Section 77.54(3)(a), Wis. Stats. (1999-00), provides an exemption from Wisconsin sales or use tax for:

“...tractors and machines, including accessories, attachments and parts therefor, used exclusively and directly in the business of farming, including dairy farming, agriculture, horticulture, floriculture and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use...”

Question: Does “motor vehicle,” as the term is used in Chapter 77 of the Wisconsin Statutes, include attachments mounted on a motor vehicle?

Answer: Attachments to motor vehicles, such as snowplow blades, cranes, truck toppers (with the exception of a truck topper for a specific make or model of a truck that is unlikely to be used on any other truck), and specialized trailer hitches (e.g., fifth-wheel hitches) are not within the definition of “motor vehicle.” Sales of such attachments are sales separate from the sale of the motor vehicle.

Example 1:

- Individual A, a Wisconsin resident, purchases a used truck, Truck B, from a private party (Individual C) for \$12,000.
- Individual C does not hold and is not required to hold a Wisconsin seller’s permit.
- A snowplow blade is attached to Truck B; however, the snowplow blade can be removed by Individual A (e.g., Individual A may choose to remove the snowplow blade during the summer months).
- The value of Truck B is \$10,000.
- The value of the snowplow blade is \$2,000.

Individual A is subject to Wisconsin use tax on \$10,000 (the purchase price of the truck only) when he registers Truck B with the Wisconsin Department of Transportation (“DOT”).

The snowplow blade is an attachment to the motor vehicle (i.e., Truck B) separate from the motor vehicle. The sale of the snowplow blade by Individual C to Individual A qualifies as an exempt occasional sale. Therefore, no sales or use tax is due on the \$2,000 portion of the \$12,000 selling price.

Example 2:

- Individual D, a Wisconsin resident, purchases a used truck, Truck E, from a private party (Individual F) for \$10,000.
- Individual F does not hold and is not required to hold a Wisconsin seller’s permit.
- Truck E has a custom topper that was installed on the truck by the manufacturer. The topper is made of fiberglass and is color-coordinated to exactly match the color of paint on Truck E. The custom topper is attached to Truck E with clips. It is unlikely that the topper will ever be used on any truck other than Truck E.
- The value of Truck E, excluding the topper, is \$9,000.
- The value of the topper is \$1,000.

Individual D is subject to Wisconsin use tax on the \$10,000 (the purchase price of the truck and topper) when she registers Truck E with DOT.

The custom truck topper is considered a part of the motor vehicle (i.e., Truck E). The occasional sale exemption does not apply.

Example 3:

- Individual G, a Wisconsin resident, purchases a used truck, Truck H, from a private party (Individual I) for \$10,000.
- Individual I does not hold and is not required to hold a Wisconsin seller’s permit.
- Truck H has a standard topper. The topper can be used on any truck that is similar in size to Truck H. The topper is attached to Truck H with clips.
- The value of Truck H, excluding the topper, is \$9,000.
- The value of the topper is \$1,000.

Individual G is subject to Wisconsin use tax on \$9,000 (the purchase price of the truck only) when he registers Truck H with DOT.

The standard truck topper is an attachment to the motor vehicle (i.e., Truck H) separate from the motor vehicle. The sale of the topper by Individual I to Individual G qualifies as an exempt occasional sale. Therefore, no sales or use tax is due on the \$1,000 portion of the \$10,000 selling price.

Example 4:

Individual J, a resident of Illinois, purchases a used truck, Truck K, from a Wisconsin motor vehicle dealer (Dealer L) for \$10,000.

- Individual J takes possession of Truck K in Wisconsin.
- Individual J will not use Truck K in Wisconsin other than in its removal from Wisconsin.
- Truck K has a standard topper. The topper can be used on any truck that is similar in size to Truck K. The topper is attached to Truck K with clips.
- The value of Truck K, excluding the topper, is \$9,000.
- The value of the topper is \$1,000.

Dealer L's sale of Truck K to Individual J (\$9,000) is an exempt sale under sec. 77.54(5)(a), Wis. Stats. (1999-00). Dealer L's sale of the topper (\$1,000) is taxable. The standard truck topper is an attachment to the motor vehicle (i.e., Truck K). Since the exemption for motor vehicles sold to nonresidents under sec. 77.54(5)(a), Wis. Stats. (1999-00), does not include attachments, Dealer L's sale of the topper is taxable.

Example 5:

- Individual M, a Wisconsin resident, purchases a used truck, Truck N, from Business O for \$10,000.
- Business O holds a Wisconsin seller's permit but is not a licensed motor vehicle dealer.
- Truck N has a standard topper. The topper can be used on any truck that is similar in size to Truck N. The topper is attached to Truck N with clips.
- The value of Truck N, excluding the topper, is \$9,000.

- The value of the topper is \$1,000.

Business O's sale of the truck to Individual M (\$9,000) is not subject to Wisconsin sales tax, because Business O is not a licensed dealer of motor vehicles as provided in sec. 77.61(1)(c), Wis. Stats. (1999-00). However, Individual M is subject to Wisconsin use tax on her purchase price of the truck when she registers Truck N with DOT.

Business O's sale of the topper to Individual M (\$1,000) is subject to Wisconsin sales tax.

Example 6:

- Farmer P, a Wisconsin resident who operates a farm in Wisconsin, purchases Truck Q from a Wisconsin motor vehicle dealer (Dealer R) for \$15,000.
- Truck Q is for highway use.
- Truck Q has an attached hydraulic conveyor. The attached hydraulic conveyor is a machine that will be used exclusively in Farmer P's farming business operations to harvest cob corn.
- The value of Truck Q, excluding the hydraulic conveyor, is \$11,000.
- The value of the conveyor is \$4,000.

Dealer R's sale of the hydraulic conveyor to Farmer P (\$4,000) is exempt from Wisconsin sales tax as a farm machine under sec. 77.54(3)(a), Wis. Stats. (1999-00), providing Farmer P gives Dealer R a properly completed exemption certificate claiming the farm machinery exemption. Dealer R's sale of the truck only (\$11,000) is subject to Wisconsin sales tax. The exemption under sec. 77.54(3)(a), Wis. Stats. (1999-00), does not apply to motor vehicles for highway use. [!\[\]\(95b425611cbd2b8716a140cf67c81822_img.jpg\)](#)



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

Admissions - hang gliders

W 0124006 (p. 25)

Construction contractors (activities) - countertops
Nexus

W 0118004 (p. 26)

Exemptions - fuel converted to electric energy

W 0116003 (p. 29)

Telecommunications messaging services - electronic
monitoring

Services subject to the tax - electronic monitoring

W 0120005 (p. 31)

✱ **W 0124006** ✱

March 22, 2001

Type Tax: Sales and Use Taxes

Issue: Admissions - hang gliders

Statutes: Section 77.52(2)(a)2, Wis. Stats. (1999-00)

This letter addresses your request for a private letter ruling. Thank you for providing the additional information requested.

Facts:

- Club QRS (“the club”) purchases and maintains several ultra-light airplanes.
- The club provides a piloted ultra-light airplane to tow hang glider equipment and pilots from ground level to a height between 1,500 and 3,000 feet above ground level.
- The club charges the hang glider pilot a fee for this towing. The fees are used to pay for the maintenance of the ultra-light airplanes, gas, and oil. Although the club is charged a rental fee by the airfield, the club does not charge the hang glider pilot a fee for admission to the airfield.
- The hang glider equipment may be the property of the pilot or may be rented from TUV Corporation (“TUV”).
- Person P is the 100% shareholder of both the club and TUV.
- The hang glider equipment is attached to the tow-rope (“Rope A”) in the following manner:
 - A rope (“Rope B”) is attached to the top of the base tube of the hang glider equipment.
 - Rope A is attached to the ultra-light airplane on one end and has a large ring at the other end.
 - Rope B goes through the ring and is attached to a device on the harness that is worn by the hang glider pilot.
 - To release from Rope A, the hang glider pilot “slaps” at the attachment device on his harness, which detaches Rope B from the hang glider pilot’s harness. The result of “slapping the attachment” is that the hang glider equipment and the hang glider pilot are both detached from Rope A. Rope A remains attached to the ultra-light airplane. In case of emergency, the pilot of the ultra-light airplane can release the longer towrope (i.e., Rope A) to the hang glider pilot to catch.

- The hang glider equipment and hang glider pilot are not towed back to the ground by the ultra-light airplane.

Request:

You ask two questions, as follows:

1. Are the club's towing charges to the hang glider pilots subject to Wisconsin sales tax?
2. Is the tax treatment of the service performed different when the hang glider is owned by the hang glider pilot or rented by the hang glider pilot?

Ruling:

1. Yes. The club's charges to the hang glider pilots are subject to Wisconsin sales tax as a taxable admission, unless an exemption applies (e.g., resale).
2. No. The service is subject to Wisconsin sales tax as an admission, regardless of whether the customer (i.e., hang glider pilot) owns the tangible personal property (i.e., hang glider equipment) or rents it.

Analysis:

Section 77.52(2)(a)2, Wis. Stats. (1999-00), imposes a tax on "(t)he sale of admissions to amusement, athletic, entertainment or recreational events or places ... and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities... ."

The club attaches a towrope to the hang glider while it is on the ground. The club's ultra-light airplane provides the means for the hang glider and pilot to reach the height from which to hang glide. The club furnishes its service for a fee. This service is for amusement, athletic, entertainment, or recreational purposes. Therefore, the charge by the club is considered a taxable admission under sec. 77.52(2)(a)2, Wis. Stats. (1999-00). [✎](#)

Statutes: Sections 71.23(1) and (2), 77.51(2) and (15), and 77.53(1) and (14), Wis. Stats. (1997-98)

Administrative Code: Sections Tax 2.82 (November 1993 Register), Tax 11.68(6)(b) (June 1999 Register), and Tax 11.97(3)(d) and (g) (October 1997 Register), Wis. Adm. Code

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

Facts:

The companies involved:

Company A, a corporation incorporated in and located in another state.

Company C, a Wisconsin corporation located in Wisconsin.

Company B, a Wisconsin company located at various sites in Wisconsin.

Their relationship to Company A:

Company A makes and installs countertops in residential kitchens. Company A uses an independent company in Wisconsin (Company C) to install these kitchen countertops into residences in Wisconsin. Company C has agreed to install these tops per a price established by Company A. Company A furnishes no labor in Wisconsin.

Company C has property located within Wisconsin and sells inventory at retail. Company B has a contract and an established price list (copies appended to the request) with Company A to "provide certain services to" the Company B customers. The price list as used by Company B is simplified for ease of use by Company B personnel. This price list is a combination of material cost, labor cost of fabrication, and labor cost of installation to produce countertops for the particular job site of the Company B customer. Company A does separate out each of these items internally for each Company B purchase order for tracking and costing purposes. They are available for any invoicing purposes should Company B require invoices at some later date.

Company B collects money from its customers for orders placed with Company B for countertops which will be provided by Company A and installed by Company C. Company B issues a purchase order for work to Company A to furnish and install countertops for Com-

✱ **W 0118004** ✱

February 14, 2001

Type Tax: Sales and Use Taxes

Issue: Construction contractors (activities) - countertops; Nexus

pany B customers. (This purchase order to Company A contains the “list prices” and quantities generated by the simplified Company B price list. These “list prices” are prices paid by the customer to Company B. The amount to be paid Company A is included as only a total in a “coded” area of the purchase order). The purchase order to Company A does not separate material and labor ordered in any other way than as a “coded total” in the purchase order. Company A is not permitted by Company B to send to Company B any invoice for the work done.

Once the purchase order has been received by Company A, Company A then contacts Company C to measure the countertops in Wisconsin. Company C goes to the Wisconsin address on the Company B generated purchase order to measure the site to determine how the material for the countertops is to be shaped to fit the job site. Company C measures for the tops and sends this information to Company A.

(Note: If an increase in labor or material manifests itself at the job site measure when compared to the quantities in the Company B purchase order, Company C will contact Company A, who will in turn contact Company B to ask for an additional purchase order to cover the additional work and/or material that is required to produce the countertops as the Company B customer requests. Company B may issue an additional purchase order as described above for additional or revised countertop, or may cancel the order. Company A does not know whether or not the additional charges are paid by the Company B customer; Company B has in fact stated that the additional charges may or may not be collected by Company B from its customer.)

Company C sends the measurement information to Company A so it can shape (fabricate) the material to fit the job site as measured by Company C. When the countertops are ready at Company A’s place of business in another state, Company C picks up the countertops and returns to Wisconsin (countertops are FOB Company A and responsibility for any damage to the countertops becomes the responsibility of Company C).

Company C installs the countertops at the job site in Wisconsin. When the installation is complete, Company C asks for a signature of approval for the installation from the owner of the job site (the same person listed as the customer in the Company B purchase order). This signed form is sent to Company A and is in turn forwarded to Company B. Company B requires this signature before it will pay for the work ordered under its purchase order. When Company B receives this

signed approval, it in turn pays Company A for the work done in the purchase order(s). The amount paid is the sum of the “coded total(s)” listed on the Company B purchase order(s).

Company C, at the conclusion of its installation, invoices Company B for the installation work it did and at the same time it forwards the customer signed installation approval form to Company A. Company A confirms that Company C’s invoice matches the work done as ordered by the Company B purchase order and enters the invoice as a payable. Company B will not pay for any work not listed on its purchase order. Company A will not pay to Company C any invoiced work not also listed on a Company B purchase order for a project.

Company B requires that the installers of countertops must be approved by them. When approved, Company B issues the installers badges with Company B logos on them.

Customer complaints are directed to Company B who contacts Company A for resolution. If the customer is still not satisfied, but work seems to be done per industry standards, Company B will pay Company A for work done, but may discount or rebate money to its customer.

Request:

1. Regarding Sales/Use Tax: Who is responsible to collect tax and who is responsible to pay the tax? Why? What kind of tax is it?
2. Regarding income in the State of Wisconsin: Does Company A have a presence or “nexus” in Wisconsin and must pay income tax or does one of the other companies shoulder this burden? How is nexus defined and applied in this situation?
3. Should sales or use tax be based on the raw material cost to Company A, and should fabrication labor be subject to this tax as well (all labor is for the purpose of shaping the raw material to fit a particular Company B order)?

Ruling:

1. Company A owes Wisconsin use tax on its purchases of raw materials becoming a component of the countertops and any other materials used in the installation of the countertops. Company C owes Wisconsin sales or use tax on its purchases of any tools and materials it uses in the installation of the countertops.

2. Company A has nexus in Wisconsin and is subject to Wisconsin franchise or income tax based on its net income apportioned to Wisconsin. Company B and Company C are also subject to Wisconsin franchise or income tax. "Nexus" refers to the degree of activity necessary before the state has jurisdiction to impose an income tax or franchise tax measured by net income on the corporation. Company A has nexus in Wisconsin as a result of its ownership of the countertops and any other materials used in their installation in Wisconsin.
3. The use tax owed by Company A is based on its cost of the raw materials it purchases that become a component part of the countertops or that are used in the installation of the countertops. Company A is not subject to use tax on its cost of fabrication necessary to make the countertops. It is assumed that all fabrication is performed by (i.e., the fabrication is not performed by another person for Company A).

Note 1. "Wisconsin use tax" and "Wisconsin sales or use tax" includes 5% Wisconsin state tax and, depending on where the installation occurs, possibly 0.5% county tax, 0.1% baseball stadium tax, and 0.5% football stadium tax.

Note 2. A credit is allowed against the Wisconsin use tax for sales or use tax properly paid to another state.

Analysis - Parts 1 and 3:

The installation of the countertops into residences in Wisconsin constitutes a real property improvement, as provided in sec. Tax 11.68(6)(b), Wis. Adm. Code (June 1999 Register). Section Tax 11.68(6)(b), Wis. Adm. Code (June 1999 Register), provides that personal property which becomes a part of real property includes built-in household items such as kitchen cabinets, dishwashers, fans, garbage disposals, central vacuum systems, and incinerators. The countertops described in the facts are built-in household items and are comparable to kitchen cabinets.

Company A is liable for Wisconsin use tax on its purchases of the raw materials for the countertops purchases because (1) it is the consumer of the raw materials it purchases that are used in real property improvements in Wisconsin, and (2) Company A is "engaged in business" in Wisconsin.

Consumer of materials:

Section 77.51(2), Wis. Stats. (1997-98), provides, in part:

" 'Contractors' and 'subcontractors' are the consumers of tangible personal property used by them in real property construction activities and the sales and use tax applies to the sale of tangible personal property to them..."

Section 77.53(1), Wis. Stats. (1997-98), provides, in part:

"...an excise tax is levied and imposed on...the storage, use or other consumption of tangible personal property manufactured, processed or otherwise altered, in or outside this state, by the person who stores, uses or consumes it, from material purchased from any retailer, at the rate of 5% of the sales price of that material."

Section 77.53(14), Wis. Stats. (1997-98), provides:

"It is presumed that tangible personal property or taxable services shipped or brought to this state by the purchaser were purchased from or serviced by a retailer."

As described in the facts, Company A sells a real property improvement to its customer, Company B. Company A does not sell the materials as tangible personal property. As the consumer of the raw materials it uses in fabricating the countertops, Company A is liable for the tax imposed under sec. 77.53(1), Wis. Stats. (1997-98).

The tax imposed under sec. 77.53(1), Wis. Stats. (1997-98), is measured by the "sales price" of the materials Company A uses in fabricating the countertops. Section 77.51(15), Wis. Stats. (1997-98), provides, in part, that "sales price" means the total amount for which tangible personal property is sold, leased, or rented.

The facts state that Company A performs the fabrication, and the answer assumes that none of the fabrication is performed by another person for Company A. Therefore, Company A's fabrication labor (i.e., the labor of its employees) in fabricating the countertops is not part of the "sales price" of the raw materials purchased by Company A.

Engaged in business in Wisconsin:

Section Tax 11.97(3)(d), Wis. Adm. Code (October 1997 Register), provides that unless otherwise limited by federal statute, a retailer engaged in business (having nexus) in Wisconsin includes:

“Any retailer having any representative, including a manufacturer’s representative, agent, salesperson, canvasser, or solicitor operating in Wisconsin under the authority of the retailer or its subsidiary for the purpose of selling, delivering or taking orders for any tangible personal property or taxable services.”

Company A is engaged in business (has nexus) in Wisconsin because it has Company C operating in Wisconsin under its authority for the purpose of delivering and installing tangible personal property in Wisconsin. The countertops, until they are installed in residences, are tangible personal property.

Section Tax 11.97(3)(g), Wis. Adm. Code (October 1997 Register), provides that unless otherwise limited by federal statute, a retailer engaged in business in Wisconsin includes any person performing construction activities in this state.

Company C is performing construction activities as a subcontractor under Company A’s authority.

In addition, Company A’s ownership of the countertops in Wisconsin prior to their installation and sale to Company B establishes a physical presence in Wisconsin for Company A.

Analysis - Part 2:

Section 71.23(1) and (2), Wis. Stats. (1997-98), provides, in part:

71.23 Imposition of tax. (1) INCOME TAX. For the purpose of raising revenue for the state and the counties, cities, villages and towns, there shall be assessed, levied, collected and paid a tax as provided under this chapter on all Wisconsin net incomes of corporations which are not subject to the franchise tax under sub. (2) and which own property within this state or whose business within this state during the taxable year, except as provided under sub. (3), consists exclusively of foreign commerce, interstate commerce, or both...

(2) FRANCHISE TAX. For the privilege of exercising its franchise or doing business in this state in

a corporate capacity, except as provided under sub. (3), every domestic or foreign corporation ... shall annually pay a franchise tax according to or measured by its entire Wisconsin net income of the preceding taxable year...

Section Tax 2.82, Wis. Adm. Code (November 1993 Register), provides guidelines for determining what constitutes nexus; that is, what business activities are needed for a foreign corporation (one not incorporated in Wisconsin) to be subject to Wisconsin franchise or income tax. Among the activities that constitute nexus is ownership of a stock of goods in Wisconsin. Company A’s ownership of the countertops in Wisconsin prior to their installation and sale to Company B establishes nexus in Wisconsin for Company A for franchise or income tax purposes. [§](#)

✱ **W 0116003** ✱

January 26, 2001

Type Tax: Sales and Use Taxes

Issue: Exemptions - fuel converted to electric energy

Statutes: Section 77.54(6)(c), Wis. Stats. (1997-98)

Administrative Code: Section Tax 11.57(4)(a) (April 1993 Register), Wis. Adm. Code

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

Facts:

BCD Corporation (“BCD”) is an electric and gas utility. BCD is a wholly-owned subsidiary of EFG Corporation. HIJ Company, a limited liability company, has announced its desire to construct an electric generation plant (“the Facility”) in Wisconsin. HIJ is in the process of obtaining required state and local permits and determining the financial feasibility of the Facility. The Facility will be a “wholesale merchant plant” within the meaning of sec. 196.491(1)(w), Wis. Stats. (1997-98).

BCD sells natural gas to LMN Company (“LMN”) and anticipates selling natural gas to other Wisconsin power producers. LMN uses the gas to produce electricity at its facility located near City XYZ. BCD has entered into a long-term power purchase agreement to purchase substantially all of the electric output of LMN for resale to BCD’s retail and wholesale customers. LMN also pro-

duces steam as part of the production of electricity. LMN sells the steam to an unrelated paper company.

The last few years have seen a proliferation of independent power producers (“IPPs”) constructing electric power plants in Wisconsin in order to meet the state’s reliability concerns. IPPs are only in the business of selling power. They sell power at wholesale in competition with traditional public utilities. In some jurisdictions, e.g., California, and likely soon in Wisconsin, IPPs and power marketers may sell at retail in competition with traditional utilities. IPPs generally fall into two categories:

1. “Qualifying facilities” (QF) under the federal Public Utility Regulatory Policies Act of 1978 (PURPA). These are basically small facilities that are exempt from federal and state regulation and from which a utility is legally obligated to purchase power for resale at the utility’s “avoided cost” of energy production. Qualifying facilities now have been largely supplanted in the power industry by the second category.
2. “Exempt wholesale generators” (EWGs), authorized by the federal Energy Policy Act of 1992. An EWG is a producer determined by the Federal Energy Regulatory Commission (FERC) to be eligible to sell electricity only at wholesale to utilities or power marketers for resale to the public. An EWG is analogous to a “qualified wholesale electric company” (QWEC) under sec. 76.28(l)(gm), Wis. Stats., i.e., a power producer that sells at least 95% of its electricity to a public utility or to any other entity that sells electricity to the public. LMN and the HIJ Facility fall within the definition of EWG and QWEC.

The Public Service Commission of Wisconsin (PSCW) and the Wisconsin Legislature have encouraged IPP plants. The PSCW’s “advance plan” process opened up the construction and operation of new electric plants to IPPs to satisfy the state’s energy needs. For example, the LMN plant was the result of this process. 1998 Wisconsin Act 204 substantially liberalized the PSCW’s permitting and approval process for IPPs. It also adopted the state equivalent of an EWG, the “wholesale merchant plant.” The HIJ Facility, if constructed, will be considered a wholesale merchant plant by the PSCW. A wholesale merchant plant is one that can sell power in Wisconsin only to energy marketers or to electric distribution companies, i.e., public utilities.

Request:

You ask whether LMN and HIJ are “utilities” for purposes of the exemption under sec. 77.54(6)(c), Wis. Stats. (1997-98).

Ruling:

LMN and HIJ are “utilities” for purposes of the exemption under sec. 77.54(6)(c), Wis. Stats. (1997-98).

Analysis:

Section 77.54(6)(c) provides an exemption from Wisconsin sales and use tax for fuel converted to electric energy by “utilities.”

Section Tax 11.57, Wis. Adm. Code (April 1993 Register), entitled “Public Utilities,” provides in sub. (4)(a), that sales to public utilities of fuel converted to electric energy by “utilities” are not taxable under sec. 77.54(6)(c), Wis. Stats. Section Tax 11.57, Wis. Adm. Code, does not state that the exemption is limited only to public utilities.

Wisconsin Publication 203 (12/94) states in Section VI A.3: “A ‘utility’ is a company authorized by law to perform a service for the public in a particular area and is subject to Public Service Commission regulation.” However, it goes on to state that a “corporation which produces electricity or steam primarily for its own consumption is not a utility.” Publication 203’s reference to the traditional public utility definition predates the developments in the electric power industry described above.

In the case of *Fort Howard Paper Company v. Wisconsin Department of Revenue*, (CCH 201-483, April 20, 1978) the Wisconsin Tax Appeals Commission held that Fort Howard was not a “utility” within the intent and meaning of sec. 77.54(6)(c), Wis. Stats. Fort Howard purchased coal that it used to produce steam and electricity that it consumed in its manufacturing operation. No power was sold to anyone, and this activity was not regulated by the PSCW.

The Dane County Circuit Court affirmed the WTAC decision (unpublished decision, not to be cited as precedent). The Court of Appeals also affirmed the WTAC decision (unpublished decision, not to be cited as precedent).

For the years at issue, essentially only traditional public utilities could sell power. Under current law the Fort

Howard facility would not qualify as a QF, EWG, or QWEC.

The *Fort Howard* decisions support the proposition that sec. 77.54(6)(c), Wis. Stats., does not apply to a purchase of fuel to produce power if the power is consumed entirely in the producer's own manufacturing activity. In addition, the decisions do not support a proposition that "utilities" in sec. 77.54(6)(c), Wis. Stats. (1997-98) only means "public utilities," (i.e., entities providing power to the general public upon demand at regulated tariffed rates).

A strict yet reasonable construction of "utilities" in sec. 77.54(6)(c), Wis. Stats., and one that is consistent with *Fort Howard*, is one that is tied to purchases of fuel to produce electricity that is ultimately sold to the public (though not necessarily by the producer). Also consistent with *Fort Howard* is that power producers are otherwise defined in the Wisconsin utility laws. An IPP is subject to the gross receipts tax under sec. 76.28, Wis. Stats., as a "qualified wholesale electric company." (Local property tax would apply only if the producer controls less than 50 MWs of capacity.) [☞](#)

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February 27, 2001

Type Tax: Sales and Use Taxes

Issue: Telecommunications messaging services - electronic monitoring; Services subject to the tax - electronic monitoring

Statutes: Sections 77.51(21m) and 77.52(2)(a)5m, Wis. Stats. (1999-00)

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

Facts, as stated in your request:

Wisconsin Municipality A ("WMA") holds a seller's permit and receives gross receipts from its jail inmates for participation in the municipality's home detention and bracelet monitoring program (BMP). The home detention and bracelet monitoring program is a Global Positioning System (GPS) monitoring program designed for offenders who pose a minimal risk to the community, yet whose behavior and offense may indicate a need for close supervision. The program can also be used for offenders who have special needs or problems

that may be better handled in their home environment. The BMP is used to manage the detention facility population, to monitor and maintain better supervision of work release inmates, and to handle special circumstances where actual jail confinement is less desirable.

WMA has a contract with XYZ Company ("XYZ") whereby for \$11.50 per unit per day plus \$.75 per violation communication, XYZ provides the equipment and services necessary for the electronic monitoring of inmates. XYZ also provides initial training for the installation and use of the equipment. Entry of offender data into XYZ's data storage and monitoring system is based on data provided by WMA.

Upon being made aware of the BMP by WMA, an inmate may apply for and be interviewed for participation in the program by WMA's law enforcement office. Once approved, the inmate signs an agreement to comply with the rules and regulations of the BMP, to wear a monitoring bracelet, and to allow monitoring equipment to be connected to their telephone, which must remain operational at all times. The inmate is responsible for any damage to the monitoring equipment, is instructed in the use of the equipment and informed not to disconnect the equipment unless instructed to do so by WMA personnel.

The inmate completes a work schedule that is set up on XYZ's data storage and monitoring system along with curfew times, routes of travel and other configuration data. The GPS system samples and stores movements of the inmate every 1 minute during normal monitoring and every 15 seconds during any violation period. XYZ continuously monitors the GPS system, and if a violation occurs, XYZ notifies WMA by facsimile (FAX). WMA then responds to violation notices received from XYZ by making contact with the inmate.

The inmate pays WMA \$15.00 per day to offset the costs of the BMP which enables the inmate to serve his or her sentence at home rather than in jail. If the inmate fails to make weekly payment of the \$15.00 per day fee, he or she may be returned to the jail and removed from the program.

Request:

WMA requests a determination of whether the \$15.00 charge to the inmate is subject to the Wisconsin sales tax.

Ruling:

The \$15.00 per day charge to the inmate by WMA is subject to the Wisconsin sales tax as a telecommunications messaging service.

Analysis:

The inmate is paying \$15.00 per day for a monitoring service, which WMA purchases from XYZ and resells to the inmate. The inmate is not renting the equipment from WMA.

As determined in the case of *Wisconsin Department of Revenue v. Dow Jones & Company, Inc.*, Court of Appeals, District IV, January 26, 1989 (CCH 203-024), and as provided in sec. Tax 11.67(1), Wis. Adm. Code (April 2000 Register):

“When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred.”

Although the monitoring service requires the use of tangible personal property in performing the service, the true objective of the inmate is to receive the monitoring service, which allows the inmate to serve his or her sentence at home rather than in jail.

Section 77.52(2)(a)5m, Wis. Stats. (1999-00), imposes Wisconsin sales and use tax on:

“The sale of services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser’s direction, but not including those services if they are merely an incidental, as defined in s. 77.51(5), element of another service that is sold to that purchaser and is not taxable under this subchapter.”

Section 77.51(21m), Wis. Stats. (1999-00), provides:

“ ‘Telecommunications services’ means sending messages and information transmitted through the use of local, toll and wide-area telephone service; channel services; telegraph services; teletypewriter; computer exchange services; cellular mobile telecommunications service; specialized mobile radio; stationary two-way radio; paging service; or any other form of mobile and portable one-way or two-way communications; or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities. ‘Telecommunications services’ does not include sending collect telecommunications that are received outside of the state.”

The monitoring services provided by WMA are taxable under sec. 77.52(2)(a)5m, Wis. Stats. (1999-00), because the information sent over telephone lines from the inmate’s location to XYZ is a telecommunications message. The message is sent from the inmate’s home on telephone lines to XYZ, who records the message and transmits violations recorded to WMA by FAX according to the agreements between XYZ, WMA, and the inmate. [!\[\]\(626ce8ac21792b9405bfddfea8e0c96a_img.jpg\)](#)