



# Wisconsin TAX BULLETIN

[www.dor.state.wi.us](http://www.dor.state.wi.us)

Number 127

October 2001



OCUS ON . . .

## Electronic filing

(see articles on this page and on pages 3 and 4)

## FREE Electronic Filing Workshops Scheduled

At various locations around the state, the Internal Revenue Service (IRS) and the Wisconsin Department of Revenue will present workshops that cover “how-to” electronically file (“e-file”), program updates, and changes. Participants can also apply to become a registered Electronic Return Originator (ERO) at these workshops. Tax preparers and practitioners interested in becoming an ERO and in learning more about e-file are encouraged to attend. The workshops are FREE, but participants are requested to pre-register. To register, contact the IRS by e-mail at [michael.c.young@irs.gov](mailto:michael.c.young@irs.gov), phone at (414) 297-3574, or fax at (414) 297-1600. Seating is limited.

The schedule is as follows:

Brookfield	October 30, 2001	12:30 p.m.-4:30 p.m.
Eau Claire	October 31, 2001	9:30 a.m.-1:30 p.m.
La Crosse	November 1, 2001	9:30 a.m.-1:30 p.m.
Madison	November 2, 2001	9:30 a.m.-1:30 p.m.
Brookfield	November 5, 2001	12:30 p.m.-4:30 p.m.
Madison	November 6, 2001	12:30 p.m.-4:30 p.m.
Green Bay	November 7, 2001	12:30 p.m.-4:30 p.m.

Agenda:

First Hour	For the new ERO: Introduction to e-file and the application process.
Second Hour	For ALL participants: updates, payment options, shared secrets/PIN, statistics, e-file technical issues.
Third Hour	ERO panel discussion: current practices and past experiences.
Fourth Hour	Wrap-up. <a href="#">☞</a>

## Electronic Filing for Homestead Credit

Electronic filing for Wisconsin homestead credit claims is about to become a reality. For tax year 2001, claimants will be able to electronically file (“e-file”) homestead credit claims, either via the Internet or through a tax professional. To e-file for homestead credit, however, a federal and Wisconsin income tax return must also be filed electronically.

Individuals will be able to purchase software or go to the department’s Internet web site, [www.dor.state.wi.us](http://www.dor.state.wi.us), to directly link to a vendor’s software that will allow e-filing. Otherwise, an individual can have a registered tax preparer or tax practitioner file the homestead credit claim and tax returns electronically.

Tax practitioners must be approved by the Internal Revenue Service (IRS) to file tax returns electronically. See the article titled “Electronic Filing Popularity Bolstered by Preparers” on page 3 of this Bulletin for additional information. [☞](#)

## Tax Return Volunteers Needed

Would you like to become a Volunteer Income Tax Assistant (VITA), Tax Counseling for the Elderly (TCE) or American Association of Retired Persons (AARP) volunteer? VITA, TCE, and AARP volunteers help persons

(Continued on page 3)

**2001  
Tax  
Filing**

Season at a Glance

**Number of returns**  
2,913,814 - up 0.3%

**Number of refunds**  
2.3 million - up 21.4%

**Electronic filing**

Preparer	543,816 - up 26.0%
TeleFile	117,863 - down 7.1%
Internet	91,549 - up 59.6%
Total*	753,228 - up 22.3%

\* 26% of all returns filed [☞](#)

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## Form Changes for 2001

Listed below are brief descriptions of the major changes to the Wisconsin individual income tax and homestead credit forms for 2001. There are no major changes to Schedule FC, the farmland preservation credit claim form.

Preliminary copies of the 2001 Forms 1, 1A, WI-Z, and 1NPR, Schedules H and FC, and the Rent Certificate (for homestead credit) are reproduced on pages 33 to 50 of this Bulletin. The copies are subject to further revision. Draft copies of these and other Wisconsin income tax forms are also available on the department's Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us).

### Wisconsin Tax Bulletin


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- A line is added to Forms 1, 1A, WI-Z, and 1NPR, for designating a donation to the Packers football stadium.
- The Quick Refund box is removed from Forms 1, 1A, and WI-Z. This program has been discontinued for 2001. See related article on page 4 of this Bulletin.
- The rate used to compute the married couple credit on all of the income tax forms has changed. A maximum credit of \$480 is available for 2001.
- The percentage rate for computing the farmland tax relief credit on Forms 1 and 1NPR is changed from 11% to 13%. The maximum allowable credit is \$1,300.
- The tax computation schedule on Form 1NPR is revised to reflect lower tax rates and the indexing of tax brackets.
- The schedule for reporting cash public assistance and county relief payments is removed from the back of Schedule H.
- The Rent Certificate (for renters claiming homestead credit) is increased in size from a half page to a full page. Additional instructions are provided for claimants. Several sets of checkboxes are added, for landlords to provide additional information. A new schedule is added at the bottom, for claimants to compute allowable rent when joint occupants do not pay equal shares of the rent. 

## Tax Return Volunteers Needed

(Continued from page 1)

with low to moderate income prepare federal and state income tax returns and Wisconsin homestead credit claims. Volunteers can choose to work during the day, at night, or on weekends.

Last year VITA, TCE, and AARP volunteers, operating 416 Wisconsin sites, helped prepare over 45,000 federal and Wisconsin returns for low and moderate-income persons.

Both the Internal Revenue Service (IRS) and Wisconsin Department of Revenue (DOR) provide training to VITA volunteers and TCE instructors. As a volunteer, you will be trained to prepare federal Forms 1040-EZ, 1040A, and 1040 (1040 training limited to Schedules A, *Itemized Deductions*; B, *Interest and Dividend Income*; and D, *Capital Gains and Losses*) and Wisconsin

Forms WI-Z, 1A, 1, and Schedule H, *Homestead Credit*. TCE volunteers will also be trained to help persons prepare federal and Wisconsin estimated tax vouchers.

**Enrolled agents** participating in these programs may earn up to half of their required **CPE credits**. Other income tax practitioners may also earn CPE credits. These practitioners should check with their professional associations. **Note:** If you are a CPA, you may be eligible for CPE credits if you conduct classes for volunteers.

With the tax season fast approaching, VITA, TCE, and AARP programs are in need of volunteers. If you would you like to volunteer, please call or e-mail either:

Roy Block 1-414-297-3027 [Roy.L.Block@IRS.gov](mailto:Roy.L.Block@IRS.gov)

or

Rick Dilley 1-608-266-2606 [Rdilley@dor.state.wi.us](mailto:Rdilley@dor.state.wi.us)




## Motor Vehicle Dealers' Measure of Use Tax Increased to \$114

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

**Effective January 1, 2002, the amount subject to use tax is increased from \$110 to \$114 per plate per month.** (Note: The use tax per plate per month is not \$114. Rather, \$114 is multiplied by the use tax rate (5%,


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

The reason for the increase to \$114 per plate is that sec. 77.53(1m)(a), Wis. Stats. (1999-00), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30. The percentage change for the period July 2000 to June 2001 was 3.25% ( $\$110 \times 1.0325 = \$114$  rounded to the nearest whole dollar). 

## Sales and Use Tax Return Revised

The Department of Revenue has revised the Wisconsin Sales and Use Tax Return, Form ST-12, to make it easier to complete and to enable the department to process it more efficiently. The new 8 1/2" x 11" return, which replaces the 8 1/2" x 14" return, features a separate schedule (Schedule CT) for persons reporting county tax

in four or more counties. The instructions for the return have also been revised, to be more easily understood.

The new return will first be used for reporting periods beginning on or after October 1, 2001. Copies of the new Form ST-12 and Schedule CT appear on pages 51 to 54 of this Bulletin. 

## Electronic Filing Popularity Bolstered by Preparers

In the 2001 tax season, more than 750,000 income tax returns were electronically filed with the Wisconsin Department of Revenue (DOR), through one of the three accepted e-file methods. This represents a 22.3%

increase from the 617,000 e-filed returns in the previous season. The success of the Wisconsin e-file program is due in large part to the participation and cooperation of tax practitioners who are approved Electronic Return Originators (EROs).

**The BENEFITS of e-file for an ERO's clients are:**

- Return less likely to be adjusted, because the data on e-filed returns are more accurate; the software performs mathematical calculations.
- Direct deposit is available only for e-filed Wisconsin returns.
- Refunds will be issued within one week or less.
- Taxpayers receive acknowledgements from DOR and IRS, of their returns being filed.
- Balance due returns can be filed early in the season, but can be paid on April 15th.
- Electronic filing reduces processing costs for DOR, which benefits all taxpayers.
- Wisconsin allows electronic filing through October 15th for returns with extensions.

**How do tax practitioners become EROs with DOR?**


- 1) Complete an Electronic Return Originator application (Federal Form 8633), and submit it to the IRS.
- 2) Send DOR a copy of the federal application, (Form 8633), and a copy of the IRS acceptance letter with your EFIN (Electronic Filing Identifica-

tion Number) on it. Participants who are not sole proprietors must also provide a list of the full names, addresses, and social security numbers of all partners or officers.

- 3) IRS-approved EROs will automatically be accepted into the Wisconsin e-file program, but applicants will be reviewed for delinquent tax liabilities and non-filing status.

These documents can be faxed to (608) 264-6884 or mailed to

Wisconsin Department of Revenue  
Electronic Filing Office  
Mail Stop 3-258  
PO Box 8977  
Madison WI 53708-8977

For more information on electronic filing, visit the department's Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us), send an e-mail message to the Electronic Filing Office at [efiling@dor.state.wi.us](mailto:efiling@dor.state.wi.us), or call (608) 264-6886. 

## Electronic Filing Is Our Future – Quick Refund Program Discontinued

Our individual income taxpaying customers who want the fastest service possible in getting their refunds have increasingly chosen electronic filing. When taxpayers filed their Wisconsin individual income taxes in 2001, over 750,000 chose to file electronically – either through a professional tax preparer, via TeleFile, or on-line from their own personal computer. That's one of every four taxpayers. Electronic filing leaped 23 percent in just the last year. In contrast, Quick Refund usage has dropped by almost one-third since its high-water mark five years ago.


Because of the customer demand for more electronic filing options and also because we need to control operating expenses, the department is discontinuing the labor-intensive and paperbound "Quick Refund" program. The program will not be available for 2001 taxes in the 2002 tax processing season.

- That is why postcards with the taxpayer's mailing label attached will **not** be sent to taxpayers who filed through practitioners. (The Quick Refund pro-

gram required that the mailing label on the tax booklet be affixed to the return.)

- Also, to save tax dollars, tax booklets will **not** be mailed to those who filed their 2000 individual income taxes electronically. Electronic filers are accustomed to using the Internet and can access on-line (at the department's Internet web site, [www.dor.state.wi.us](http://www.dor.state.wi.us)), the tax information found in the printed tax booklets.

The department intends to offer additional electronic filing options in 2002 and beyond. For example, we will offer electronic filing of 2001 homestead credit claims to be filed in 2002. Also, we will offer a web filing option to those who are eligible for TeleFile for 2001 taxes in the 2002 tax processing season.

For taxpayers who choose to file on paper forms, the department strongly encourages that returns be filed by the end of February for faster refunds. After February, the volume of returns and limited resources simply do not permit the department to issue refunds as quickly as when the returns are filed electronically. 

## Reminder: County Tax Effective in Marinette County

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

A reminder to retailers was included in the September 2001 Sales and Use Tax Report (number 2-01). Also

included in that Sales and Use Tax Report was a summary of sales and use tax law changes recently enacted by the Legislature.

The Report was sent in late September and early October to all persons registered for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 55 and 56 of this Bulletin. [☞](#)



## Guidelines for Reproduced and Substitute Tax Forms

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

A copy of the "Guidelines for Reproduced and Substitute Tax Forms" appears on pages 57 and 58 of this Bulletin. The guidelines are also on the department's Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Click on "Forms" and then see "Tax Return Guidelines." [☞](#)

## 2001 Package WI-X Available in January

Wisconsin's Package WI-X will be available by January 31, 2002. Package WI-X will contain actual size copies of most 2001 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, estate tax, motor vehicle fuel tax, sales and use tax, and withholding tax forms.

The cost of the 2001 Package WI-X is \$7.00, plus sales tax. It may be ordered on the tax form order blank

(Form P-744). This order blank was mailed in September. See the article titled "Tax Form Order Blanks Mailed" on page 6 of this Bulletin, for more information.

If you want to purchase copies of the 2001 Package WI-X and did not receive an order blank, you may mail a request, indicating the number of copies you require, along with your remittance for the amount due. Send it to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 5-77, PO Box 8951, Madison WI 53708-8951. [☞](#)

## Magnetic Media Filing Required for Some Forms

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

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

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

Wisconsin Publication 509, *Filing Wage Statements and Information Returns on Magnetic Media*, provides more information about magnetic media filing. For information about how to obtain this publication, see the article titled "Tax Publications Available" on page 10 of this Bulletin. [☞](#)



## Tax Form Order Blanks Mailed

During September, the department mailed order blanks (Form P-744) to 9,000 tax preparers. Use these original order blanks (not copies) to request bulk orders of 2001 Wisconsin tax forms that require payment. Forms that do not require payment are not listed on the order blank.

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

The department is also mailing order blanks (Forms P-744b and P-744L) to banks, post offices, and libraries for their use in requesting bulk orders of 2001

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

If you have not received an order blank, you may request one by: contacting any department office; writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 5-77, PO Box 8951, Madison WI 53708-8951; or calling (608) 267-2025.

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

As an alternative to ordering forms, most forms in Package WI-X may be reproduced. Package WI-X will be mailed separately in January. [!\[\]\(faf942dc3e59ce8eb64b4ac481eca7e0\_img.jpg\)](#)

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## Wisconsin legislation approved in Budget Bill **Streamlined Sales Tax Model** **Legislation Adopted by 20 States**

The first steps to achieve a radically simplified sales tax system have been taken by 20 states, and another three states will consider the legislation by the end of the calendar year. The Streamlined Sales Tax Project Model Act was approved by Governor Scott McCallum and the Wisconsin Legislature through Senate Bill 55, the Wisconsin Budget Bill (2001 Wisconsin Act 16), effective September 1, 2001.

Other states that have enacted the Model Act include: Arkansas, Florida, Illinois, Indiana, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Nebraska, Nevada, North Carolina, North Dakota, Oklahoma, Rhode Island, Tennessee, Texas, Utah, and Wyoming.

Ohio, Pennsylvania, and Massachusetts are expected to consider the Model Act before the end of 2001.

The National Conference of State Legislatures Executive Committee Task Force on Electronic Commerce held a hearing on the Streamlined Sales Tax Project's (SSTP) work products and progress at its annual meeting in San Antonio, on August 10, 2001. Project Co-Chairs Diane Hardt from Wisconsin and Charles Collins from North Carolina testified about the work of the Project since early 2001. Representatives from business, including JC Penney, Wal-Mart Stores, the Equipment Leasing Association, and the telecommunications industry, spoke favorably about the work and progress,

and they urged legislators to work together to pass the simplifications in all states.

The SSTP has developed issue papers and recommendations for simplifications. These papers have been placed on the SSTP's Internet web site at [www.streamlinedsalestax.org](http://www.streamlinedsalestax.org). These papers and recommendations will be considered by the states that have enacted the Model Act, later this year. It is anticipated that additional model legislation will be ready for state legislatures to consider, beginning in January 2002.

The key features of the Streamlined Sales Tax System include:

- uniform definitions within tax bases,
- simplified exemption administration for use- and entity-based exemptions,
- state administration of all state and local taxes,
- uniform sourcing rules for property and services, and
- simplified audit procedures for retailers who use a technology model specified by the states.

In a related initiative, government and business organizations are combining forces to study retailer costs to administer the sales taxes, both before and after the SSTP simplifications. The study is intended to truly measure the results of the Project. [!\[\]\(19d44b37fb4fa155bf9d60c77a3d3cb2\_img.jpg\)](#)

### To improve sales tax collection **Counties and DOR Team Up**

The Wisconsin Department of Revenue (DOR) hosted the June 2001 meeting of the Wisconsin Counties Association's Taxation and Finance Steering Committee at the DOR headquarters in Madison. The 30 county representatives were anxious to receive the latest information on the Integrated Tax System (ITS), county sales tax processing, Streamlined Sales Tax, and other important tax issues.

By statute, DOR charges counties that have a sales tax an administrative fee of 1.75% to collect, process, and distribute county sales tax funds. The department provides counties with a 45-day turnaround for their taxes, even though state law now allows 75 days. Last year, total collections for the 54 counties with a county sales

tax equaled \$215 million. A portion of the administrative fee is used to partially fund the department's ITS project, which will increase revenue collection, expand Internet tax filing capabilities, and provide faster refunds.

The Taxation and Finance Steering Committee members also learned how DOR is a national leader in the Streamlined Sales Tax Project (see a related article titled "Streamlined Sales Tax Model Legislation Adopted by 20 States" on page 6 of this Bulletin). The mission of the project is to develop sales and use tax requirements that radically simplify compliance for businesses across the nation. Counties lost an estimated \$7.3 - \$8 million in sales tax collections last year, due to Internet and mail order purchases. DOR is working to protect sales tax collections on these types of purchases via the Streamlined Sales Tax Project. [✍](#)

### **Integrated Tax System Already Paying Off in Early Stages**

The new "data warehouse" developed by the Department of Revenue (DOR) for the Integrated Tax System (ITS) project is already paying big dividends. It is a collection of databases that can be compared to one another to help pinpoint audit candidates. DOR promised the Legislature that the creation of the data warehouse along with ITS would increase collections of unpaid taxes by \$4.8 million. By the end of the 2001 fiscal year, unpaid tax collections increased by \$4,939,826 - surpassing expectations.

During the 2001-2003 biennium, the bar is being raised. The system is expected to increase collections by \$32 million. ITS will increase collections by \$37 million annually by 2005, by identifying audit candidates in individual income, sales, use, and corporate taxes.

### **Success of the Sales Internet Process (SIP) Spurs Expansion**

DOR is expanding the highly successful Sales Internet Process (SIP), which was originally created as part of the ITS project. SIP gives sales tax filers the ability to submit the Wisconsin sales and use tax return (Form ST-12) via the Internet. The benefits of using the Internet are:

- A faster, more efficient way to file and pay sales and use tax.

- A choice of payment options (paper check or Electronic Funds Transfer - EFT).
- Reduced paper handling and postage.
- No computation errors, because the system performs calculations.
- No more checks or returns lost in the mail.

About 700 retailers have been using SIP since May 2000. The Department of Revenue has extended an invitation to 20,000 retailers to participate.

For more information, go to the department's Internet web site at [www.dor.state.wi.us/eserv/sip.html](http://www.dor.state.wi.us/eserv/sip.html), e-mail a question to [sales10@dor.state.wi.us](mailto:sales10@dor.state.wi.us), or call (608) 261-6261.

### **ITS Spurs Roll-Out of New Sales and Use Tax Form (ST-12)**

As part of the ITS project a new Sales and Use Tax form was designed (see a related article titled "Sales and Use Tax Return Revised" on page 3 of this Bulletin). Sales tax filers will be receiving the newly designed ST-12 in the mail in October. For those who don't file electronically, the new ST-12 is more user friendly than the previous form and is designed to reduce errors and incomplete returns. It incorporates county tax reporting for up to three counties, allowing 94% of taxpayers to avoid filing a supplemental county reporting form. The new ST-12 will also be processed more quickly, as its standard 8 1/2" X 11" size is scanned with fewer problems than the old 8 1/2" X 14" legal size form.

### ITS Gearing Up for Release 1

ITS “Release 1” is due to go online in October 2002. This means that business tax registration and taxpayer accounting, forms processing, revenue accounting, refunds, system administration, exception case management, customer service, and correspondence for

sales and use tax will be integrated and administered with new Internet-based programming. Future phases of the seven year, \$78 million project include individual income, estate, withholding, and corporate taxes, other business taxes, and excise, property, utility, and miscellaneous taxes. [☞](#)

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### Reminder: IRS Mileage Rates for 2001 Apply for Wisconsin

The Internal Revenue Service (IRS) optional standard mileage rates for 2001, for computing automobile expenses for business, charitable, medical, and moving expense purposes, also apply for Wisconsin.

For 2001 the business standard mileage rate is 34.5¢ per mile for all business miles driven, without regard to

whether the automobile was previously considered fully depreciated. If the standard mileage rate of 34.5¢ per mile is used, depreciation is considered to be allowed at 15¢ per mile. However, no portion of the 34.5¢ per mile is considered to be depreciation after the adjusted basis of the automobile reaches zero.

For 2001 the mileage rate allowed for calculating automobile expenses for charitable deduction purposes is 14¢ per mile. The rate for medical expense and moving expense deductions is 12¢ per mile. [☞](#)

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### Delinquent Tax Compromises

When a taxpayer does not have the ability to pay a delinquent tax liability in full, either immediately or over a period of time, a compromise of delinquent tax may be considered. A taxpayer must complete a Form A-212, *Petition for Compromise of Delinquent Taxes*, to request a compromise.

When reviewing a taxpayer’s petition for compromise, the department considers many factors. Among them are:

- age of the petitioners;
- current and future earning potential;
- equity in real estate or other assets; and
- any other factor that would affect a taxpayer’s ability to fully satisfy the obligation.

Legislation permitting compromises to be satisfied via installment payments took effect in June 2000. Previously, any compromise of delinquent tax had to be paid within ten days of the department’s acceptance of the

compromise. Accepting installment payments to satisfy a compromise of delinquent tax is at the department’s discretion; no installment arrangements will be accepted if the department believes the acceptance would jeopardize the state’s revenues.

Installment payments are a way for some taxpayers to take advantage of a delinquent tax compromise who would otherwise be unable to do so. However, acceptance of a compromise based on installment payments also carries a condition that no new tax obligations may be incurred during the life of the agreement. Not making all of the agreed upon payments by their due dates, or incurring a new tax obligation while making payments, will automatically void the agreement. Should this occur, the full tax obligation that was the subject of the compromise will become due and owing immediately.

Publication 124, *Petition for Compromise of Delinquent Taxes*, offers more information on this topic. Both the Form A-212 and the publication are available on the department’s Internet web site, [www.dor.state.wi.us](http://www.dor.state.wi.us). See the article titled “Tax Publications Available” on page 10 of this Bulletin, for other methods of obtaining Publication 124. [☞](#)



## 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

## Delinquent Tax Payment Options Available

Wisconsin law and Department of Revenue policy allow several options for payment of delinquent taxes. Among them are paying by credit card and paying through periodic (installment) payments.

### Credit card payments


The department, in cooperation with Official Payments Corporation (OPC), allows the option of making a full or partial payment of a delinquent tax liability by credit card. To pay by credit card, you need the following items:

- An American Express Card, Discover Card, or MasterCard (Visa is not accepted).
- A “Payment Key.” This is a 28-digit number, which is listed on most of the department’s automated notices. If you do not know or have your payment key, you can call the department’s Madison office at (608) 266-7868, between 7:45 a.m. and 4:30 p.m. on weekdays, to obtain the number.

To pay delinquent taxes by credit card, you may call OPC at 1-800-2PAY-TAX (1-800-272-9829), or you may visit their Internet web site at [www.officialpayments.com](http://www.officialpayments.com). When contacting OPC, be sure you request that the payment be applied to “Wisconsin – Delinquent Tax.”

### Installment payments

To request an installment agreement to pay delinquent taxes, you may contact your nearest department office, call the Madison office at (608) 266-7868, e-mail a request to [delnqtax@dor.state.wi.us](mailto:delnqtax@dor.state.wi.us), or mail an installment agreement request form to the department. The form, Form A-771, is available on the department’s Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Mail the completed form to Wisconsin Department of Revenue, Delinquent Tax Assistance, Mail Stop 4-206, PO Box 8901, Madison WI 53708-8901.

A revenue agent will negotiate the payment terms with you. To be given an installment agreement, you will be required to indicate the names of your employer and financial institution. If you enter into an agreement with the department to pay your delinquent taxes in installments, a \$20 installment agreement fee will be charged. 

## 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](mailto: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](http://www.dor.state.wi.us), and click on "Publications" and then "Tax Publications."

**Note:** The numbers of some publications are followed by an asterisk. These are publications that are new or have been revised since the last issue of the *Wisconsin Tax Bulletin*.

### Income and Franchise Taxes

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

### Sales and Use Taxes

- 200 Electrical Contractors - How Do Wisconsin Sales and Use Taxes Affect Your Business? (3/98)
- 201 Wisconsin Sales and Use Tax Information (1/01)
- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)
- 203 Sales and Use Tax Information for Manufacturers (7/00)
- 205\* Use Tax Information for Individuals (8/01)
- 206 Sales Tax Exemption for Nonprofit Organizations (6/00)
- 207 Sales and Use Tax Information for Contractors (10/00)
- 210 Sales and Use Tax Treatment of Landscaping (4/01)
- 211 Cemetery Monument Dealers - How Do Wisconsin Sales and Use Taxes Affect You? (6/00)
- 212\* Businesses: Do You Owe Use Tax on Imported Goods? (8/01)
- 213\* Travelers: Don't Forget About Use Tax (8/01)
- 214\* Businesses: Do You Owe Use Tax? (8/01)
- 216 Filing Claims for Refund of Sales or Use Tax (11/00)

217 Auctioneers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)

219 Hotels, Motels, and Other Lodging Providers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (2/01)

220\* Grocers - How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/01)

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 (10/01)

115\* Handbook for Federal/State Electronic Filing (10/01)

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)



## IRS Sends Letter to Packer Ticket Holders

The Internal Revenue Service (IRS) sent the following letter to Green Bay Packer season ticket holders in August 2001. The letter provides information pertaining to federal tax consequences regarding the User Fee paid by season ticket holders for seats in Lambeau Field. The information in the letter also applies for Wisconsin franchise and income tax purposes.

The text of the letter has not been edited.

Dear Green Bay Packer Season Ticket Holder:

This letter is intended to provide answers to some of the questions that the Internal Revenue Service, the City of Green Bay, and the Green Bay Packers football organization have received concerning the federal income tax consequences of paying the Lambeau Field Redevelopment User Fee.

The User Fee is a payment you make to retain your opportunity to purchase future season tickets for seats in the city-owned stadium. The User Fee will

ultimately be refunded to you when you choose not to renew your season tickets, or it will be refunded to an authorized transferee of your tickets when the transferee chooses not to renew them. The User Fee will not be refunded only in the unlikely event that no one else is willing to purchase your tickets and pay the fee.

In general, a payment must be an expense to be tax deductible. Because of the virtual certainty that the User Fee will be refunded, it should be treated for tax purposes as either a deposit or a loan, rather than as an expense. Accordingly, you should not deduct the User Fee as a tax, charitable contribution, business expense, or other deductible expense. Similarly, the User Fee does not represent the cost of an asset that you may take into account for tax purposes through amortization.

If you have any specific questions relating to the User Fee, please visit your local IRS office or call (866) 583-3251. Please direct any questions regarding your Green Bay Packer season tickets to the Green Bay Packers Ticket Office at (866) 752-1265. [☞](#)

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## Dry Cleaners Must Be Licensed, Pay Fees and File Returns Timely

### License requirements

Dry cleaners operating in Wisconsin must be licensed by the Wisconsin Department of Revenue, to operate a dry cleaning facility. Dry cleaners that are not licensed could be subject to penalties for each day they operate without holding a valid dry cleaning license.

In order to obtain a dry cleaning license for the current year, a facility must have paid in full the dry cleaning facility fee from the previous calendar year, as explained below. When the January 25 quarterly installment is paid, the department mails a dry cleaning license to the dry cleaner, that is valid for the year in which the January 25 installment is due.

Under Wisconsin law, any person who operates a dry cleaning facility without holding a valid dry cleaning license issued by the department is subject to a penalty, unless the person is specifically exempted. The penalty is \$5 per day for each day the person operates without a license.

### Fees and dry cleaning returns

The dry cleaning facility fee and dry cleaning return are due to the department in four quarterly installments, on April 25, July 25, October 25, and January 25. The amount of the fee for each installment is 1.8% of the gross receipts received in the quarter ending the last day of the month preceding the payment due date.

Failure to pay the fee by the installment due date results in a penalty of \$5 per day for each day the installment is late. In addition, dry cleaners that file their dry cleaning return after the due date are subject to a late filing fee, as well as delinquent interest on fees due with the return. A dry cleaner that files late may also be assessed negligence penalties.

For corporations, the late filing fee is \$30. For businesses other than corporations, the late filing fee is as follows:

- \$2 when the total fee for the quarter is less than \$10.
- \$3 when the total fee for the quarter is \$10 or more, but less than \$20.
- \$5 when the total fee for the quarter is \$20 or more.

- Exception - \$30 when the return is 60 or more days late.

The total fee due with a late-filed return is subject to interest at 1.5% per month until paid. If the dry cleaning return is filed late due to negligence, the fees due on the return are also subject to a negligence penalty of 5% for each month or fraction of a month the return is late, up to 25%.

If you have questions regarding dry cleaning facility fees or returns, or how to obtain a dry cleaning license, you may contact the department's Inquiry and Technical Assistance unit at (608) 266-2776. Additional information is also available on the department's Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us), under "FAQs" (frequently asked questions). [☞](#)

### Quick Phone Access to the Department's Bankruptcy Unit

In an effort to provide better assistance to all delinquent taxpayers, the Department of Revenue's Central Collection Section implemented an automated phone system in 2000, with a new phone number, (608) 266-7879. The department's Bankruptcy Unit is part of this phone system. While it provides better service, it can also take a little longer to go through the prompts to reach one of the three bankruptcy agents.

To bypass the prompts and be connected directly to the person you are calling, dial (608) 266-7879. As soon as you hear the voice answer, push #, #, 1, and then enter the extension number of the agent you are calling, from the following list:

<u>Name</u>	<u>Extension</u>
Jim Polkowski	63770
Hiram Cutting	17689
Linda Millard	78998

After you enter the extension you will be connected to the agent if he or she is available. If the agent is on another call or is not able to answer the phone, you will either be transferred to one of the other bankruptcy agents to help you, or you will be given the opportunity to leave a voice mail message.

The department's goal is to give all customers the best possible service. [☞](#)

### Underpayment Interest Will Not Be Applied for Certain Corporations

A new law defining when a corporation is considered "doing business" in Wisconsin was recently enacted as part of the Governor's budget bill, 2001 Wisconsin Act 16. For taxable years beginning on or after January 1, 2001, the definition of "doing business" includes owning, directly or indirectly, a general or limited partnership interest in a partnership, or an interest in a limited liability company treated as a partnership, that does business in Wisconsin, regardless of the percentage of ownership. Corporations "doing business" in Wisconsin are required to file franchise or income tax returns.

A corporation's estimated tax on income arising from this newly enacted law would normally be payable in installments throughout the taxable year, beginning in 2001. However, since the law was not enacted until September 1, 2001, the department will not apply underpayment interest on any tax due as a result of income related to this new law for any installment payments that would otherwise be due prior to October 15, 2001.

**Example 1:** A corporation that is not organized under Wisconsin law and has not been doing business in Wisconsin owns a 50% interest in an LLC that is treated as a partnership. The LLC, which is not necessarily an extension of the corporation's business, is engaged in business in and outside Wisconsin. The corporation's taxable year is a calendar year. The corporation must determine its Wisconsin net income under the apportionment method. Fifty percent of the LLC's business income is included in the corporation's apportionable income. Fifty percent of the LLC's Wisconsin property, payroll, and sales is included in the numerator of the corporation's property, payroll, and sales factors, respectively, and 50% of the LLC's total property, payroll, and sales is included in the denominator of the corporation's property, payroll, and sales factors, respectively. In addition, any Wisconsin destination sales made by the corporation are included in the numerator of its sales factor.

Since the corporation's taxable year begins January 1, 2001, its required Wisconsin estimated tax installment payment is due December 17, 2001. The corporation

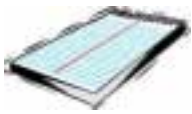


must pay all of the estimated tax and surcharge due for the 2001 calendar year.

**Example 2:** Assume the same facts as above, except that the corporation's taxable year is a fiscal year beginning on February 1, 2001. The corporation's required installments would be due October 15, 2001 and Janu-

ary 16, 2002. The corporation must pay 3/4 of the estimated tax and surcharge due on October 15, 2001 and the remaining 1/4 on January 16, 2002.

Affected corporations should add in red ink at the top of Form 4U they file: "New Law - Doing Business as Owner in Partnership or LLC." [☞](#)



### 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 59 of this Bulletin. The Index is also on the department's Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Just click on "Publications." [☞](#)



### 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). [☞](#)



### Nearly 2.3 Million Refunds Issued

More than 2,277,000 income tax refunds were issued to taxpayers during the fiscal year ending June 30, 2001 (primarily 2000 returns), for an average refund of \$503. The average refund for 1999 returns was \$337. Nearly 222,000 refunds were directly deposited in taxpayers' accounts.

Here are some more comparisons:

	<b>2000 Returns</b>	<b>1999 Returns</b>
Number of individual income tax returns	2,913,814	2,906,336
Itemized deduction credit		
% of taxpayers claiming	26%	33%
Average credit	\$576	\$557

Homestead credit		
# of claimants	202,354	170,935
Average credit	\$508	\$483
Age 65 or older	45%	47%
Renters*	57%	59%
Homeowners*	49%	48%
*some claimants were both		
Farmland preservation credit		
# of claimants	20,143	20,316
Average credit	\$810	\$840
Earned income credit		
# of claimants	195,133	188,868
Average credit	\$319	\$318
Sales/use tax payments		
Amount collected	\$1,601,856	\$1,565,194
# of payers	26,202	25,341

[☞](#)

## State Election Campaign Fund Checkoffs Increase Slightly for 2001

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

During July 2000 through June 2001 (primarily 2000 tax returns), taxpayers designated \$339,060 to the election campaign fund on their Wisconsin tax returns. This compares to \$339,033 for the prior year. [↗](#)



## Endangered Resources Contributions Rise 18% in 2001

The 2000 Wisconsin income tax returns included a line for taxpayers to designate a contribution to the Wisconsin Endangered Resources Fund. These contributions help protect and care for Wisconsin's endangered species, nongame wildlife, and rare plant and animal habitats.

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

During July 2000 through June 2001 (primarily 2000 returns), 47,688 taxpayers contributed \$712,505 to the Endangered Resources Fund. This compares with 1999 income tax returns, where 43,334 taxpayers contributed \$603,395. The higher contributions represent an increase of more than 18% from the previous year. [↗](#)

## Auditors Discover Over \$28 Million in Unpaid Use Tax

As part of its efforts to obtain compliance with Wisconsin use tax laws, Department of Revenue auditors assessed over \$28 million of use tax in the fiscal year ending June 30, 2001.

Field auditors found that many businesses, while properly accounting for tax on sales, do not have a system to keep track of purchases subject to use tax. For example, purchases were made from unregistered out-of-state sellers (e.g., mail order or Internet companies) without a sales or use tax being paid . . . until the businesses were audited.

Office auditors found that many purchasers of motor vehicles, all-terrain vehicles, aircraft, boats, and snowmobiles failed to properly report use tax because they underreported the purchase price of the motor vehicles, all-terrain vehicles, aircraft, boats, and snowmobiles paid to nondealers, or they claimed an invalid exemption. In addition, discovery projects targeting particular industries and individuals resulted in use tax collections for purchases made from unregistered out-of-state sellers (e.g., mail order or Internet companies) without a sales or use tax being paid.

The \$28 million of use tax assessed does not include interest and penalties that were also imposed.

Purchasers should carefully review their accounting methods to ensure that use tax is properly reported. [↗](#)



## Wanted: Your Comments About the *Wisconsin* Tax Bulletin

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

How could the department improve on the information it publishes? What topics do you want covered or ex-

panded? Do you have particular likes or dislikes about the WTB? Do you have ideas, comments, or suggestions you'd like to share?

Please take a few moments to give us your comments or ideas, and be a part of improving *your* WTB. Send your comments or ideas to Mark Wipperfurth, Wisconsin Department of Revenue, Mail Stop 6-40, PO Box 8933, Madison WI 53708-8933. If you prefer, you may fax your comments to him at (608) 261-6240, or you may e-mail or call him at [mwipperf@dor.state.wi.us](mailto:mwipperf@dor.state.wi.us) or (608) 266-8253. We'd like to hear from you! [↗](#)

## Taxpayers Receive Property Tax Relief

Three state programs - property tax/rent credit, homestead credit, and lottery credit - delivered more than a half-billion dollars in direct property tax relief to Wisconsin taxpayers this year, in the form of tax credits or direct payments. This represents an increase of 81% from last year.

More than 1.7 million homeowners and renters received \$335.2 million in **property tax/rent credits** on their year 2000 income tax returns - an average of \$194 per claim. The program was reinstated after the 1999 tax year. Up to \$300 is available per claim.

Another program targets property tax relief to the most needy - even those who pay no income tax. Almost 200,000 low-income households received \$94.4 million in **homestead credits** this year. That's a 28 percent increase from the \$73.8 million disbursed during the same period last year. Each claimant averaged a record-high \$475, compared to \$447 last year. With the increase in the household income limit to \$24,500, more people are able to claim the credit - 198,842 compared to 165,371 last year.

A third program, the **lottery credit**, cut \$89.7 million off property tax bills, averaging \$67 per homeowner. It is applied toward property tax bills issued in December 2000 and payable by June. [✎](#)

## Question and Answer



### (Sales and Use Tax)

**Q** I paid \$75 of sales tax to a seller on a purchase of fuel oil used for my farm machinery. I have found I should have claimed exemption for farm use by providing the seller with an exemption certificate. How do I claim exemption and obtain a refund, now that the transaction has been completed?

**A** You have two options:

1. Since the amount of tax you paid was \$50 or more, you may file a claim for refund with the Department of Revenue, using a *Buyer's Claim for Refund of Wisconsin State, County and Stadium Sales Taxes*, Form S-220.
2. Request a refund of the tax from the seller. You should provide the seller with a completed *Certificate of Previous Purchases*, Form S-244, listing the specific purchase and providing all the additional information requested on the form.

**Note:** Generally a refund claim must be requested within four years of the due date of your Wisconsin income or franchise tax return. For more information, see Wisconsin Publication 216, *Filing Claims for Refund of Sales or Use Tax*.

**Q** My company installs shelves, counters, and display cases to hold merchandise in Wisconsin retail stores. The general contractor or customer purchases the fixtures and supplies. My company is subcontracted to do the installation only. Do I charge Wisconsin sales tax for the installation service?

**A** Yes. The labor for installing store fixtures used to carry on a trade or business in Wisconsin is subject to Wisconsin sales tax. However, if you are installing the fixtures for a general contractor, the general contractor may provide you with an exemption certificate claiming resale, because it will charge its customer sales tax on the sale and installation of the store fixtures. [✎](#)

## Budget Cuts Force Branch Office Closings

As a result of budget constraints placed on all state agencies, the Department of Revenue will close several branch offices of its Income, Sales, and Excise Tax Division. Customer services for persons in those locations will be provided from other area offices.


The Waupaca office was closed in August 2001, and the Shawano office was closed in September. The West Bend office and the Manitowoc office were scheduled to be closed by October 31, 2001.

In addition to the office closings this year, the Watertown, Marshfield, and Monroe offices are scheduled to be closed by June 30, 2002. Also by June 30, 2002, the Madison District office at 5005 University Avenue will

be relocated to the department's headquarters building at 2135 Rimrock Road, Madison.

Customers in locations where offices have closed may contact the Madison headquarters office (telephone 608 -266-2772), or nearby department branch or district offices for assistance. This includes Green Bay (920-448-5179), Appleton (920-832-2727), Oshkosh (920-424-2003), Grafton (262-375-7948), Sheboygan (920-459-3101), or Milwaukee (414-227-4000). Assis-

tance and information are also available on the department's Internet web site, [www.dor.state.wi.us](http://www.dor.state.wi.us).

The Department of Revenue remains committed to providing the best possible service to its customers in these areas, as well as statewide. One of the factors considered in the decision of which offices must be closed was a close location of another branch office, to minimize inconvenience to taxpayers throughout the state. 

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## Former UW Professor Sent to Prison

Former UW-Madison professor Edward Oplinger, 58, was sentenced to four years in prison in August 2001, for evading income taxes while he embezzled \$450,000 in research money from the school. Dane County Circuit Judge William Foust also ordered the former agronomy professor and soybean expert to serve 12 years' probation for the embezzlement.

Oplinger pleaded no contest in April 2001, to one count of felony theft and two counts of felony tax evasion. He took money paid to the school for seed research from 1992 through 1999 and placed it in his private account and an account for the Wisconsin Soybean Association, an organization he helped form. His 1995 and 1996 Wisconsin income tax returns did not reflect the additional income.

In addition to the prison sentence and probation, Oplinger may face restitution payments. The amount of restitution will be decided at a future hearing.

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Dairy farmer Galen W. DeBruin, 46, of Luxemburg, Wisconsin, was charged in July 2001, with failure to file Wisconsin income tax returns for the years 1998 and 1999. The charges were filed by the Brown County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Fraud Unit.

According to the criminal complaint, DeBruin operated a dairy farm under the name of White Gold Trust. He has not filed Wisconsin individual income tax returns since 1987, and no tax returns have ever been filed for the trust. The complaint alleges that DeBruin's gross income was \$66,824 in 1998 and \$70,903 in 1999.

If convicted on both counts, DeBruin faces a maximum sentence of 18 months imprisonment and a fine of \$20,000. 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.

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Sandra Maddern, 58, Racine, pleaded guilty in September 2001, to three counts of filing false state sales tax returns for a bingo operation run by New Day Drum and Bugle Corps, Inc. Racine County Circuit Court Judge Charles E. Constantine sentenced her to two years of probation and ordered her to make restitution of \$13,880.54 to the State for sales taxes she evaded. In addition, Maddern was ordered not to do any work for not-for-profit organizations while she is on probation.

According to the criminal complaint filed in February 2001, Maddern evaded the taxes by underreporting the actual bingo receipts in the sales and use tax returns she filed each month between September 1995 and December 1998. While the amount totaled over \$40,000, she could only be charged for the period January 1998 to December 1998, due to a three year statute of limitations on that crime.

The sales tax investigation was started after it was discovered that Maddern reported substantially greater bingo receipts in semi-annual reports to the Wisconsin Gaming Division than in sales tax returns to the Department of Revenue.

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Sharon M. Richards, 50, Spooner, pleaded guilty in September 2001, in Chippewa County Circuit Court, to two counts of filing false or fraudulent sales tax returns related to the registration of two separate motor vehicles. As part of a plea agreement, two counts of making false statements on the two applications for motor vehicle titles were dismissed.

Judge Thomas Sazama withheld sentence and ordered Richards to serve one year of probation. The judge ordered her to pay \$999.63 in restitution for the sales tax

she evaded, along with service fees and court costs. He also ordered that her dealer and salvage licenses be revoked for one year.

According to the criminal complaint, Richards was a licensed motor vehicle dealer, the owner of Turtle Lake Auto Sales and Turtle Lake Auto Salvage. The complaint alleged that on two separate applications for motor vehicle titles, Richards falsely reported the purchase price of two wreckers she purchased in August of 1999, as \$125 and \$200. Based on information and documents obtained from the parties who sold the vehicles to Richards, the actual purchase prices were \$7,500 and \$11,000. Richards evaded \$999.63 in state and county sales taxes as a result of the false statements.

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Michael A. McElwrath, 31, Oak Creek, was charged in October 2001, with five counts of forgery, one count of theft, and one count of filing a fraudulent Wisconsin income tax return. The felony charges were filed by the Dane County District Attorney's Office following a joint investigation by the Madison Police Department and the Wisconsin Department of Revenue.

According to information filed with the court, McElwrath altered five checks payable to his employer, United Rentals, and made the checks payable to himself. The total amount of these five checks exceeded \$17,000. McElwrath also took over \$2,500 from United Rentals. He failed to report any of the embezzled funds on his 2000 Wisconsin income tax return.

If convicted on all counts, McElwrath faces a maximum sentence of over 97 years in prison and fines of up to \$70,000. [!\[\]\(0aff635c4179ba9e710b00f4b01d3b20\_img.jpg\)](#)





## Report on Litigation

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

The following decisions are included:

### Individual Income Taxes

#### Appeals - jurisdiction

*Judy Hagner* .....19

#### Appeals - jurisdiction

*Robert J. Quinnell* .....19

#### Appeals - jurisdiction

*Billy E. Stephenson and Terry A. Stephenson* .....20

#### Assessments - correctness

#### Appeals - frivolous

*Jerome Redcay* .....20

#### Distributable net income

*Edmund R. Gilson* .....21

#### Retirement funds exempt

*Alan and Carol Hansis* .....22

#### Retirement funds exempt - federal retirement benefits

*Raymond L. and Helen L. Bartkowiak* .....22

### Corporation Franchise and Income Taxes

#### Appeals - jurisdiction

*Kurtis and Donna Borre, and Interstate Management Services, Inc.* .....23

### Sales and Use Taxes

#### Exemptions - waste reduction or recycling machinery and equipment

*Browning-Ferris Industries of Wisconsin, Inc.* .....24

#### Leases and rentals - real vs. personal property

*All City Communication Company, Inc. and Waukehsa Tower Associates* .....24

#### Officer liability

*Eugene C. Rondon* .....25

### Drug Taxes

#### Drug tax, claim for refund - timeliness

*David L. Gilbert* .....26

## INDIVIDUAL INCOME TAXES



**Appeals - jurisdiction.** *Judy Hagner vs. State of Wisconsin Appeals Commissioners – Musolf, and Department of Revenue* (Court of Appeals, District I, April 19, 2001). This is an appeal from an order of the Circuit Court for Milwaukee County dated July 26, 2000. See *Wisconsin Tax Bulletin* 123 (January 2001), page 23, for a summary of the Circuit Court decision. The issue in this case is whether the Circuit Court has subject matter jurisdiction over the case.

The taxpayer requested the Circuit Court to vacate three decisions of the Wisconsin Tax Appeals Commission and claimed she was owed a tax refund of approximately \$5 million. The Circuit Court dismissed the case because it lacked subject matter jurisdiction, since the taxpayer failed to serve the department with a copy of her petition for review. The taxpayer submitted four affidavits of service to the Circuit Court, but none of them were directed to the department, as required.

The taxpayer contends that even if the Circuit Court lacks subject matter jurisdiction over her appeals to the Commission, the Circuit Court had jurisdiction as an original action because her claim was also based in “civil tort personal injury.”

The Court of Appeals concluded that the Circuit Court properly held that it does not have subject matter jurisdiction over this matter. The Court of Appeals further concluded that a civil tort claim against the Commission is barred by the doctrine of sovereign immunity, because the taxpayer did not comply with the “notice of claim” statute.

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



**Appeals - jurisdiction.** *Robert J. Quinnell vs. Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission.* (Circuit Court for Wood County, June 12, 2001). This is an appeal from a decision of the Wisconsin Tax Appeals Commission dated February 20, 2001. See *Wisconsin Tax Bulletin* 124 (April 2001), page 19, for a summary of the Commission’s decision.


The Commission's ruling and order was issued and mailed to the taxpayer on February 20, 2001. The 30-day period for filing a petition for review of the Commission's decision lapsed on March 22, 2001. The taxpayer's petition for review was filed with the Circuit Court on March 23, 2001, and the Commission filed a Motion to Dismiss the petition, on the grounds that it was not timely filed.

The Circuit Court concluded that even though the petition for review was only one day late, the Circuit Court

has no authority to hear it, regardless of any merit it may have. The deadline may not be extended or ignored by the court.

Without the authority or jurisdiction to act, The Circuit Court dismissed the petition for review.

The taxpayer has appealed this decision to the Court of Appeals. [!\[\]\(a870788d6ed9b8fd294b7654a8c8526b\_img.jpg\)](#)

 **Appeals - jurisdiction.** *Billy E. Stephenson and Terry A. Stephenson vs. Wisconsin Department of Revenue* (Court of Appeals, District I, August 6, 2001). This is an appeal from a February 9, 2001, order of the Circuit Court for Milwaukee County, denying the taxpayers' motion for reconsideration of its decision dated January 2, 2001. See *Wisconsin Tax Bulletin* 125 (July 2001), page 15, for a summary of the Circuit Court's January 2 decision.


The summary of the January 2 Circuit Court decision stated that the taxpayers had not appealed the decision. However, on May 10, 2001, the taxpayers did appeal the Circuit Court's February 9, 2001, denial of their January 21, 2001, motion for reconsideration of the January 2 decision.

The Court of Appeals issued an order on July 10, 2001, in which it concluded that the May 10, 2001, notice was not timely filed as to the Circuit Court's January 2, 2001, decision, and therefore it has no jurisdiction in the

matter. While the appeal was timely as to the February 9, 2001, order denying the motion for reconsideration, the scope of issues reviewable on appeal from that order is limited to new issues that were not previously raised. The July 10 order directed the parties to file memoranda addressing whether any new issues were raised in the January 21 motion for reconsideration. The resulting memoranda did not identify any new issues that might be subject to the Court of Appeals' jurisdiction.

The Court of Appeals concluded that in light of the memoranda submitted by the parties, new issues subject to its jurisdiction were not presented by the taxpayers. Accordingly, the Court of Appeals lacks the jurisdiction to review the Circuit Court's order denying the motion for reconsideration. The Court of Appeals therefore dismissed the appeal.

The taxpayers have not appealed this decision. The case is closed. [!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd\_img.jpg\)](#)

 **Assessments - correctness; Appeals - frivolous.** *Jerome Redcay vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 3, 2001). The issues in this case are:

- A. Whether the department properly assessed the taxpayer for 1998 Wisconsin income taxes to include in income wages he received during the year, and whether the department properly denied the taxpayer's petition for redetermination.
- B. Whether the taxpayer's arguments in this case are frivolous and groundless, thereby subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

In May 1999, the department sent the taxpayer an assessment covering tax year 1998. The assessment was

based on the department's receipt of one or more wage statements showing wages paid to the taxpayer in 1998, which were not reported on his 1998 income tax return. The taxpayer was domiciled in Wisconsin during all of 1998.

The taxpayer filed a petition for redetermination with the department in July 1999. The department denied the petition for redetermination, and the taxpayer timely filed an appeal with the Commission.

The taxpayer's arguments in this case are, generally, that neither federal nor Wisconsin tax laws apply to his earnings. He specifically argued that the department lacks statutory authority to impose income tax on his earnings because they are excluded by Amendment V of the U. S. Constitution, federal and Wisconsin statutes, and the Wisconsin administrative code. He cited por-

tions of federal and Wisconsin cases and also argued that his earnings are excluded because they are convertible to federal reserve notes, which are exempt from tax under 18 U. S. C. sec 8.

The Commission concluded as follows:


- A. The department properly assessed the taxpayer for 1998 Wisconsin income taxes to include in income wages he received during the year. In addition, the department properly denied the taxpayer's petition for redetermination.
- B. The taxpayer's arguments in this case are frivolous and groundless, thereby subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats. The arguments consist of semantic gymnastics, which attempt to rationalize why Wisconsin's

income tax laws do not apply to his income. The taxpayer's arguments and ones like them have been given no credence in prior cases before the Commission and the courts, and his arguments do not prevail now.

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.

**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. [⚖](#)

 **Distributable net income.** *Edmund R. Gilson vs. Wisconsin Department of Revenue* (Court of Appeals, District III, May 15, 2001). This is an appeal from a judgment of the Circuit Court for Outagamie County, dated April 4, 2000. The Circuit Court affirmed decisions of the Wisconsin Tax Appeals Commission dated June 24, 1999, and August 27, 1999. See *Wisconsin Tax Bulletin* 118 (January 2000), page 28, for a summary of the Commission's decisions. (The Circuit Court decision was not summarized in the *Wisconsin Tax Bulletin*.)

The Commission held (and the Circuit Court affirmed) that distributions the taxpayer received from the estate of his late wife, Margaret Gilson ("Margaret"), carried with them "distributable net income" ("DNI"), subject to Wisconsin income tax. The taxpayer contends that under the "separate share rule" set forth in sec. 663(c) of the Internal Revenue Code ("IRC"), he should be required to pay taxes only on 25% of the DNI because that is the percentage of the distributions from Margaret's trust that he would have received if the trust had been funded. The Commission held that the separate share rule did not apply because, under the terms of a settlement agreement, the distributions passed from the estate directly to the taxpayer, without going through the trust.

The taxpayer argues that: (1) the Commission erroneously interpreted Margaret's will when it concluded that the personal representatives were allowed to bypass the trust; (2) the prerequisites for giving that authority to the personal representatives were not met; (3) the separate share rule should apply because the payment from the


estate discharged a legal obligation of the trust; and (4) payment under the will was not proper if it did not discharge the trust's obligation.

Margaret's will named her two daughters and Valley Trust Company as personal representatives of her estate. After disposing of some specific items, the will provided that the residue would go to a trust that was simultaneously created, with the same daughters and trust company named as trustees.

Following Margaret's death, a dispute arose between her daughters and her husband regarding the dollar values to be inserted into the formula created by the trust documents to determine the taxpayer's share. The parties eventually entered into a settlement agreement that, as amended, required the estate to distribute to the taxpayer specific property and cash. It did not contain any provision characterizing the tax attributes of the payments. The estate's tax returns showed that its distribution to the taxpayer carried out the DNI, but the taxpayer's tax returns did not conform with the estate's position.

The Court of Appeals concluded that the Commission reasonably held that Margaret Gilson's will allowed the personal representatives to bypass the trust and distribute the estate directly to the recipients. The will unequivocally allows them to distribute property or bequests set out in the trust "directly to the recipient or beneficiary without transferring such assets to the Revocable Trust...."

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

 **Retirement funds exempt.** *Alan and Carol Hansis vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 14, 2001). The issue in this case is whether retirement benefits paid to the taxpayers during 1995 through 1998 are exempt from the Wisconsin income tax.

Taxpayer Alan Hansis (“Mr. Hansis”) became a member of the Milwaukee Teachers Retirement System (“MTRS”) in 1961. In 1966 he withdrew his entire monetary contributions to the MTRS. The withdrawal application, signed by Mr. Hansis, stated that payments by the MTRS “shall constitute a full and complete discharge and release of all right, interest or claim on my part to state deposit accumulations which accrued while a member of said FUND.”

Mr. Hansis became a member of the State Teachers Retirement System (“STRS”) in 1966, and in 1995 he purchased 6 years of forfeited MTRS service. The Department of Employee Trust Funds (“DETF”) added the 6 years to his total creditable service in 1998, pursuant to the Wisconsin Court of Appeals decision in *Benson v. Gates*, 188 Wis. 2d 389 (Ct. App. 1994).

Taxpayer Carol Hansis (“Mrs. Hansis”) first became a member of MTRS in 1960. In 1965 she withdrew her entire monetary contributions to the MTRS. The withdrawal application, signed by Mrs. Hansis, stated that payments by the MTRS “shall constitute a full and complete discharge and release of all right, interest or claim on my part to state deposit accumulations which accrued while a member of said FUND.”

Mrs. Hansis joined the Wisconsin Retirement System (“WRS”) in 1972. DETF added 2 years of forfeited

MTRS service to her total creditable service in 1998, pursuant to the Benson decision.


On their 1998 Wisconsin income tax return, the taxpayers subtracted from their federal adjusted gross income the retirement benefits they received from the WRS in 1998. The department issued a refund based on their 1998 return.

In July 1999, the taxpayers filed amended Wisconsin income tax returns for 1995, 1996, and 1997, subtracting retirement benefits paid by the WRS to Mr. Hansis. The department issued refunds based on the amended returns for 1995 and 1996, but not 1997.

In January 2000, the department issued an assessment reversing the refunds issued for 1995, 1996, and 1998, and denying a refund for 1997. The taxpayers filed a timely petition for redetermination that the department denied. They each filed a timely petition for review with the Commission.

The Commission concluded that the retirement benefits paid to the taxpayers are not exempt from the Wisconsin income tax, because they were not paid on the accounts of persons who were members of an eligible retirement system as of December 31, 1963. Since each taxpayer withdrew all of the assets that remained in each of their accounts subsequent to December 31, 1963, there was nothing remaining in the accounts as of that date to which they had any right. The taxpayers’ repurchase of forfeited credit does not mean their retirement benefits were paid on the account of a member as of December 31, 1963.

The taxpayers have not appealed this decision. [!\[\]\(fe3aebe81acea8d45108cd2768939da7\_img.jpg\)](#)

 **Retirement funds exempt - federal retirement benefits.** *Raymond L. and Helen L. Bartkowiak vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 19, 2001). The issue in this case is whether the taxpayers are entitled to refunds for taxes they paid on military benefits received by Raymond L. Bartkowiak (“the taxpayer”) in 1983 and 1984.

The taxpayers filed Wisconsin income tax returns for 1983 and 1984, on which they reported as income federal military retirement benefits (“military benefits”) the taxpayer received in those years. In October 1993, the taxpayers claimed refunds for the taxes they paid on the military benefits for those years.

In February 1994, the department and counsel for a number of federal retirees entered into a Settlement Stipulation that provided a method for resolving claims by certain federal retirees for refunds of income taxes previously reported on their federal pensions. Pursuant to the Settlement Stipulation, the taxpayers received a Questionnaire and Release, which they both signed. It provided, in part, that the taxpayers release the State of Wisconsin from any other legal claims relating to the past taxation of federal pension income by the State of Wisconsin. As a result, the taxpayers received installment payments constituting refunds of taxes and interest for 1985 through 1988.



The Settlement Stipulation provided that in order to be considered by the department, refund claims must be filed in a timely fashion as provided by chapter 71 of the Statutes. It specifically provided that refund claims for 1984 must be filed by April 17, 1989, and that each party expressly releases any and all claims related to the taxation of federal pension income for tax years prior to 1984.

In May and August 1994, the department denied the taxpayers' claims for refund for 1984 and 1983, respectively. The taxpayers filed petitions for redetermination with the department, which the department denied. They then filed petitions for review with the Commission.


The Commission concluded that the taxpayers were not entitled to refunds for taxes paid on the taxpayer's military benefits, because their claims for refund were not timely filed pursuant to sec. 71.75(2), Wis. Stats. In addition, in exchange for payment of refunds for 1985 and thereafter, the taxpayers agreed that the statute of limitations set forth in chapter 71 applied to their claims, and they agreed to forgo any refunds for years prior to 1984.

The taxpayers have not appealed this decision.

**CAUTION:** This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. [!\[\]\(e3f8612927870f2e0f9f5989e6dd3064\_img.jpg\)](#)

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## CORPORATION FRANCHISE AND INCOME TAXES

 **Appeals - jurisdiction.** *Kurtis and Donna Borre, and Interstate Management Services, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 3, 2001). The issue in this case is whether the Wisconsin Tax Appeals Commission ("the Commission") has jurisdiction to rule on the taxpayers' petitions for review, neither of which were filed within the time prescribed in sec. 73.01(5)(a), Wis. Stats.

Taxpayers Kurtis and Donna Borre ("the Borres") were assessed income tax by the department in October 1998. They filed a petition for redetermination, which the department granted in part and denied in part, in a Notice of Action dated August 11, 2000, and received by the Borres on August 14, 2000. The Borres filed a petition for review with the Commission, postmarked October 18, 2000. The statutory 60-day period for filing a timely petition for review expired October 13, 2000.

Taxpayer Interstate Management Services, Inc. ("Interstate") was assessed income/franchise tax by the department, also in October 1998. Interstate filed a petition for redetermination, which the department granted

in part and denied in part, in a Notice of Action dated August 11, 2000, and received by Interstate on August 15, 2000. Interstate filed a petition for review with the Commission, postmarked October 18, 2000. The statutory 60-day period for filing a timely petition for review expired October 16, 2000.

The department moved to dismiss both petitions for review, on grounds that they were not filed within the 60-day period prescribed in sec. 73.01(5)(a), Wis. Stats. The Borres claimed that Kurtis Borre comes within the definition of "disability" in the Americans with Disabilities Act ("ADA") and thus invoked the provisions of the ADA to seek redress from the department's notice to them of their appeal rights.

The Commission concluded that because the Borres' and Interstate's petitions for review were not filed within the time prescribed in sec. 73.01(5)(a), Wis. Stats., the Commission lacks subject matter jurisdiction. The Commission therefore granted the department's motion to dismiss. The Commission rejected Kurtis Borre's argument that his claim of disability was relevant to its jurisdiction in these matters.

Neither the Borres nor Interstate have appealed this decision. [!\[\]\(b4eeff342f60cc7bcd67d869b4fedca2\_img.jpg\)](#)



## SALES AND USE TAXES

### **Exemptions - waste reduction or recycling machinery and equipment.**

*Browning-Ferris Industries of Wisconsin, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, June 28, 2001). On September 28, 2000, the Circuit Court for Dane County affirmed the Wisconsin Tax Appeals Commission decision dated January 13, 2000. See *Wisconsin Tax Bulletin* 123 (January 2001), page 25 and *Wisconsin Tax Bulletin* 119 (April 2000), page 20, for summaries of the Circuit Court and Commission decisions. The issue in this case is whether the taxpayer's purchases of compactors, bins, and containers used by its customers to reduce the size of or to collect disposed items, and motor vehicles and related items used to transport recyclables to processing facilities, are subject to Wisconsin use tax.

The taxpayer leased or sold compactors to some of its hauling customers, and also provided bins, dumpsters, and containers to its customers without additional charge. The taxpayer's customers deposited their recyclable items in the bins, dumpsters, and containers, and their nonrecyclable waste items in dumpsters for the taxpayer to pick up.

The compactors were stationary hand-fed, shoot-fed compactors that were placed on the customer's premises. A customer was not required to use or rent the taxpayer's compactors to obtain the taxpayer's hauling services. Most, if not all, of the taxpayer's compactor lease agreements allowed the customer to purchase the compactor at the termination of the lease.

The taxpayer paid no sales or use tax when purchasing the compactors, bins, or containers, or the motor vehicles used to transport recyclables to processing facilities, including equipment, attachments, and repairs for the motor vehicles.

The Commission held that the taxpayer's purchases of compactors, bins, and containers used by its customers to reduce the size of or to collect disposed items, and

motor vehicles and related items used to transport recyclables to processing facilities, are subject to Wisconsin use tax. These items are not exempt as machinery and equipment used "exclusively and directly for waste reduction or recycling activities" under sec. 77.54(26m), Wis. Stats. The items are used prior to the recycling process and do not reduce the amount of waste generated into the waste stream.

The Circuit Court affirmed the Commission's decision, that based on the decisions in *Revenue Dept. v. Parks-Pioneer*, 170 Wis. 2d 44, and *Ruef's Sanitary Service, Inc. v. Wisconsin Department of Revenue*, WTAC, June 13, 1994 (CCH WI Rptr 400-064), the items are not exempt as machinery and equipment used "exclusively and directly for waste reduction or recycling activities" under sec. 77.54(26m), Wis. Stats. The items are not used directly in the recycling process, are not related to an activity that reduces the amount of solid waste generated, and are not related to an activity that composites solid waste or reuses solid waste.

The Court of Appeals concluded that the Commission's interpretation of "directly used for" as meaning "performs an integral function in" waste reduction is a reasonable one, and the disputed items did not perform an integral function in waste reduction activities. The Court of Appeals also concluded that the Commission's interpretation of "reducing the amount of solid waste generated" to exclude reducing the volume of solid waste already generated is reasonable. Giving due weight to the Commission's interpretations, and finding that the taxpayer has not offered a more reasonable interpretation, the Court of Appeals affirmed the Circuit Court's decision that the taxpayer's purchases of compactors, bins, and containers used by its customers to reduce the size of or to collect disposed items, and motor vehicles and related items used to transport recyclables to processing facilities, are subject to Wisconsin use tax.

The taxpayer appealed this decision to the Wisconsin Supreme Court. On September 19, 2001, the Supreme Court denied the petition for review. [☞](#)

### **Leases and rentals - real vs. personal property.**

*All City Communication Company, Inc. and Waukesha Tower Associates vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 6, 2001). The issues in this case are:

- A. Whether the gross receipts Waukesha Tower Associates ("Waukesha Tower") received for the use of a tower and equipment building are subject to sales tax as payments for the lease of tangible personal property.

- B. Whether the rental fees paid by All City Communication Company, Inc. (“All City”) to owners of towers and rooftop equipment on which All City placed its communication equipment are subject to sales tax as payments for the rental of tangible personal property.

During the years 1986 through 1995, Waukesha Tower built and owned a communication tower and an adjacent equipment building on leased land. Waukesha Tower obtained all of the necessary approvals from local, state, and federal government agencies to erect the tower. The lease agreement between the land owner and Waukesha Tower provided that “Improvements and personal property” on the land were the property of Waukesha Tower, which could remove them at the end of the 10-year lease. The lease agreement also contained a provision allowing Waukesha Tower to purchase the leased land if the owner received an offer to purchase from another person, and a provision granting Waukesha Tower an option to purchase the land during the last year of the lease.


Portions of the tower, which was specifically designed for the leased land, were constructed off the premises and brought to the property for assembly there. Concrete anchor points were poured at the leased property to support the tower, approximately 30 guy wires, and the two adjacent equipment buildings. The two buildings adjacent to the tower housed electronic equipment to provide electric power for building lighting, to power the electronic equipment, to maintain climate control in the buildings, and to power transmission equipment on the tower. The buildings also housed telephone lines. The tower could be taken down either by toppling it in place or by dismantling it piece by piece. The tower could either be reassembled at another site, sold as scrap metal, or sold as a used tower.

During the years 1992 through 1995, All City was engaged in the paging business and paid rental fees to owners of towers, including Waukesha Tower, for the placement of its reception and transmission equipment. The rental fees also allowed All City to place other equipment in related, adjacent equipment buildings. All City then used the installed equipment for its own paging business, and also rented the use of its equipment to its customers so they could transmit their signals. All City rented space from Waukesha Tower, for five years, at approximately the 480 foot level of their tower and space in an adjacent equipment building for All City to install, operate, and maintain its 2-way radio equipment.

The Commission concluded as follows:

- A. The gross receipts Waukesha Tower received for the use of the tower and equipment building are subject to sales tax as payments for the lease of tangible personal property. When the tower and related equipment building were installed, Waukesha Tower did not own the land on which they were installed. Therefore, the tower and building remained tangible personal property, not a real estate improvement.
- B. The rental fees paid by All City to Waukesha Tower and to other owners of towers and rooftop equipment on which All City placed its communication equipment are subject to sales tax as payments for the rental of tangible personal property. The rental agreements allow All City to install, operate, and maintain its communications equipment on towers located on leased land for a fixed period for a monthly fee. The agreements are for the lease of locations on towers and related buildings that are tangible personal property, and not merely for access to the equipment.

The taxpayers have appealed this decision to the Circuit Court. [!\[\]\(3211b5d1d968fc1665909b34f9f16010\_img.jpg\)](#)

 **Officer liability.** *Eugene C. Rondon vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 5, 2001). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of National Vehicle Management, Inc. (“the corporation”), under sec. 77.60(9), Wis. Stats., for the periods of February, May through August, November, and December 1995 and January through July 1996, and for a dealer plate project assessment for January 1992 to December 1995.

The taxpayer was president and sole shareholder of the corporation, was in charge of the corporation’s day-to-day operations, and was authorized to sign checks on the corporation’s checking account.

In May and December 1995 and January 1996, the taxpayer signed and issued checks to pay creditors other than the department, even though he knew there were unpaid sales taxes due to the department.

The taxpayer signed all of the corporation's monthly Wisconsin sales and use tax returns for the period under review, reporting taxes due to the department. The taxpayer, on behalf of the corporation, also signed an agreement with the department on October 12, 1995, acknowledging sales and use tax delinquencies through August 1995.

The Commission concluded the taxpayer is personally liable under sec. 77.60(9), Wis. Stats., for unpaid sales tax of the corporation for the periods of February, May through August, November, and December 1995 and January through July 1996, and for a dealer plate project assessment for January 1992 to December 1995. The Commission awarded summary judgement to the department as there was no genuine issue as to any material fact and the department is entitled to summary judgement as a matter of law.

The taxpayer was president and sole shareholder of the corporation, was in charge of the corporation's day-to-day operations, was authorized to sign checks on the

corporation's checking account, and had **authority** to pay the corporation's sales taxes. The taxpayer signed all sales and use tax returns for the corporation and knew what taxes were owed to the department. As a person with authority, and having been advised by the department that the corporation was delinquent in its sales tax payments, the taxpayer had a **duty** to see that corporate funds were used to pay the sales tax liability. The taxpayer **intentionally breached his duty** when he issued checks to the corporation's creditors, knowing that sales tax was due to the department.

The taxpayer's claim that the assessment is an "excessive fine" is not supported because the assessment simply recovers the amount of revenue lost to the state as a result of his conduct. Further, the taxpayer's claim that the department violated his constitutional rights to due process and equal protection is unsupported and makes no legal sense.

The taxpayer has appealed this decision to the Circuit Court. [!\[\]\(e474458956c9a37fbf9586ddb60a7fa1\_img.jpg\)](#)

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## DRUG TAXES



### Drug tax, claim for refund - timeliness.

*David L. Gilbert vs. Wisconsin Department of Revenue* (Court of Appeals, District II, June 6, 2001). This is an appeal from an order of the Circuit Court for Waukesha County, dated June 21, 2000. See *Wisconsin Tax Bulletin* 122 (October 2000), page 29, for a summary of the Circuit Court's decision. The Circuit Court reversed a decision of the Wisconsin Tax Appeals Commission ("Commission") to dismiss the taxpayer's petition for review and the Commission's denial of a rehearing. The department argues that The Commission's dismissal and denial were proper because the taxpayer's petition for review was not filed within two years of a tax assessment, as required under sec. 71.75(5), Wis. Stats. (1995-96).

In June 1993, the department issued a notice of amount due to the taxpayer for taxes, interest, and penalties, under the then-existing Wisconsin tax on controlled substances. The taxpayer paid the tax. In January 1997, the Wisconsin Supreme Court held in *State v. Hall*, 207 Wis. 2d 54, 557 N.W.2d 778 (1997), that the controlled substances tax violated the constitutionally guaranteed privilege against self-incrimination.

In November 1997, the taxpayer requested a refund, citing the unconstitutionality of the controlled sub-

stances law under *Hall*. The department denied the taxpayer's request because it was not filed within two years of the assessment as required under sec. 71.75(5), Wis. Stats. The taxpayer requested a redetermination, the department denied it, and the taxpayer timely filed a petition for review with the Commission.

The department sought an order dismissing the taxpayer's petition and the Commission granted the motion, on the grounds that the taxpayer's request for a refund was untimely under sec. 71.75(5), Wis. Stats., because he did not file it within two years after notice of the assessment under the controlled substances law. The taxpayer filed a petition requesting the Commission to grant a rehearing on its decision, the Commission denied the petition, and the taxpayer filed a petition for judicial review with the Circuit Court.

The Circuit Court reversed the Commission's ruling and order. Relying on municipal property tax cases, the Circuit Court held that the department's assessment was void *ab initio* (void from the beginning), and that the time limits cited were therefore inapplicable to the taxpayer's refund claim. The department appealed from the Circuit Court's order.

The Court of Appeals concluded that the Commission properly dismissed the taxpayer's claim and the Circuit Court improperly reversed the Commission's ruling.

The Legislature provided the taxpayer with an administrative remedy for recovery of allegedly illegal or excessive state taxes, and the taxpayer was required to file a refund request within two years under sec. 71.75(5), Wis. Stats., in order for it to be considered. The Court of Appeals disagreed with the Circuit Court's decision that the assessment was void *ab initio*. Citing *Hogan v. Musolf*, 163 Wis. 2d 1, 471 N.W.2d 216 (1991), the Court of Appeals stated that the department and the Commission "would become ineffectual if they lost their authority to review a case every time a consti-

tutional claim was asserted." Administrative remedies must be timely pursued in connection with all claims, including claims that a state taxing statute is unconstitutional. The Legislature made compliance with this provision mandatory because under sec. 71.75(1), Wis. Stats., it is the only method for the filing and review of claims for refund.

The taxpayer appealed this decision to the Wisconsin Supreme Court. On September 19, 2001, the Supreme Court denied the petition for review. [🔗](#)



# Tax Releases

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

The following tax releases are included:

## Individual Income Taxes

1. Native Americans - Enrolled Members of a Tribe..... 28

## Sales and Use Taxes –

2. Exemption for United States Flags and Wisconsin State Flags..... 28
3. Telecommunications Message Services: Taxability and Situs of Services; Credit Allowed for Tax Paid to Another State ..... 29

## INDIVIDUAL INCOME TAXES

### 1 Native Americans - Enrolled Members of a Tribe

**Statutes:** Section 71.02, Wis. Stats. (1999-00)

**Background:** In the McClanahan case, the United States Supreme Court defined the three factors which, when all were present, exempt a Native American from state taxation. These factors are:

1. The individual must be an enrolled member of a tribe,
2. The individual must be living on the reservation of the tribe of which the individual is a member, and
3. All of the income earned for which the exemption is claimed must be earned on the tribal reservation.

**Facts and Question:** A Native American has lived and worked on the Menominee reservation for several years. The individual was eligible to become an enrolled member of the Menominee Indian Tribe since his birth in January 1960. However, the individual did not actually become an enrolled member of the Menominee Indian Tribe until October 20, 2000. Is the income that was earned prior to

the time the individual actually became an enrolled member of the tribe exempt from Wisconsin income tax?

**Answer:** No. Income is exempt from Wisconsin income tax only if the individual is an enrolled member of a tribe, who lives and works on his or her tribal reservation. Even though the individual had the right since birth to become an enrolled member of the Menominee Indian Tribe, the exemption does not apply until the individual exercised that birthright and actually became an enrolled member on October 20, 2000. All income earned prior to October 20, 2000, by this individual is subject to Wisconsin income tax. [✎](#)

## SALES AND USE TAXES

**Note:** The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The 0.5% county sales and use tax and the 0.5% football stadium and 0.1% baseball stadium sales and use taxes may also apply. For information on sales or purchases that are subject to the county or stadium sales and use tax, refer to Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*.

### 2 Exemption for United States Flags and Wisconsin State Flags

**Statutes:** Section 77.54(46), Wis. Stats., as created by 2001 Wisconsin Act 16

#### Introduction:

This tax release reverses the tax treatment of “flag kits,” as provided in the article titled “Create Exemption for United States and Wisconsin Flags,” that appeared in Wisconsin Tax Bulletin 126 (September 2001) on page 8, and that also appeared in the September 2001 Sales and Use Tax Report on pages 1 and 2. Other than two new examples that appear at the end of this tax release, the only change is the reversal of the tax treatment for “flag kits.”

#### Background:

Section 77.54(46), Wis. Stats., as created by 2001 Wisconsin Act 16, provides a sales and use tax exemption for:

“The gross receipts from the sale of and the storage, use, or other consumption of the U.S. flag or the state



flag. This subsection does not apply to a representation of the U.S. flag or the state flag.”

The effective date of this exemption is October 1, 2001.

### What Is Covered By This Exemption?

The sale of, and the storage, use or other consumption of the following are exempt under sec. 77.54(46), Wis. Stats.:

- The United States flag or the Wisconsin state flag. A flag, for purposes of this exemption, is considered to include the staff to which the flag is permanently mounted when sold by the retailer.

**Example:** Retailer A sells hand-held U.S. flags permanently mounted with staples to a wood or plastic staff. The sale of the flag (i.e., the fabric and staff to which the fabric is mounted) is exempt from Wisconsin sales or use tax.

(The following two paragraphs contain the revised tax treatment for “flag kits”)

- A “flag kit,” sold as a single unit, which includes a United States flag or Wisconsin state flag and related accessories, such as a mounting bracket, a flagpole, a cord, and instructions on the display of the flag. A “flag kit” does not include flag-related accessories that are available for sale individually, even if such items are sold in a single transaction along with a U.S. flag or Wisconsin state flag.

**Example:** Retailer B sells an 8-foot sectional “flag kit” consisting of a two-piece pole with an eagle affixed to the top, a cord, an attaching bracket and screws, and a U.S. flag, all enclosed in a package with a single Universal Product Code (UPC). The sale of the “flag kit” is exempt from Wisconsin sales and use tax.

### What Is Not Covered By This Exemption?

The sale of, and the storage, use, or other consumption of the following are not exempt under sec. 77.54(46), Wis. Stats.:

- Any accessories, when not sold as a part of a “flag kit” containing a United States flag or Wisconsin State flag.

**Example:** Retailer C sells an 8-foot sectional flagpole. The sale of the flagpole is not exempt from Wisconsin sales or use tax under sec. 77.54(46), Wis. Stats.

**Example:** Retailer D sells 40-foot sectional flagpoles, hardware for flags, U.S. flags, and Wisconsin state

flags. All are for sale individually. The sale of the flagpoles and hardware are taxable, even if Retailer D sells these items in a single transaction along with the sale of a U.S. flag or a Wisconsin state flag.

- A representation of the United States flag or Wisconsin state flag.

**Example:** Retailer E sells a photograph of the Wisconsin state flag. The sale of the photograph is not exempt from Wisconsin sales or use tax under sec. 77.54(46), Wis. Stats.

**Example:** Retailer F sells a cape fashioned after the U. S. flag. The sale of the cape is not exempt from Wisconsin sales or use tax under sec. 77.54(46), Wis. Stats.

(The following are new examples that did not appear in Wisconsin Tax Bulletin 126 or the September 2001 Sales and Use Tax Report)

**Example:** Retailer G sells a lapel pin that has an image of the U.S. flag on it. The sale of the lapel pin is not exempt from Wisconsin sales or use tax under sec. 77.54(46), Wis. Stats.

**Example:** Retailer H sells a sticker that has an image of the U.S. flag on it. The sale of the sticker is not exempt from Wisconsin sales or use tax under sec. 77.54(46), Wis. Stats. [✎](#)

## 3 Telecommunications Message Services: Taxability and Situs of Services; Credit Allowed for Tax Paid to Another State

**Statutes:** Sections 77.52(2)(a)5 and 5m, 77.53(1) and (16), and 77.72(3), Wis. Stats. (1999-00)

### Introduction:

This tax release explains the sales and use tax treatment of various telecommunications message services. Effective December 1, 1997, certain telecommunications message services became subject to Wisconsin sales and use tax, under sec. 77.52(2)(a)5m, Wis. Stats., as created by 1997 Act 27. Other telecommunications services are taxable for sales both before and after December 1, 1997, under sec. 77.52(2)(a)5, Wis. Stats.

### Background:

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

“The sale of telecommunications services that either originate or terminate in this state; except services that are obtained by means of a toll-free number, that originate outside this state and that terminate in this state; and are charged to a service address in this state, regardless of the location where that charge is billed or paid, and the sale of the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code.”

Section 77.52(2)(a)5m, Wis. Stats. (1999-00), imposes sales 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.” (Note: Section 77.52(2)(a)5m, Wis. Stats., became effective December 1, 1997.)

### What Are Telecommunications Message Services?

The following non-exhaustive set of examples describes various services and their tax treatment.

- **Voice Mail Service**

**Example 1:** Company A provides voice mail service to its customers. The customers are provided access to Company A’s EVX Office Message System computer through which a customer can deposit or retrieve telephone messages using a touch-tone telephone. The service may be used as a message center, a call forwarding service, or an answering service. Messages are stored in the computer, and the customer may send or retrieve messages, reply to a message directly, reroute messages to others, broadcast messages to a wider group, save selected messages, or cancel messages no longer needed. The service is available 24 hours a day. The customer accesses the computer either through a toll-free telephone number or a local telephone number.

This service is taxable as a telecommunications message service under sec. 77.52(2)(a)5m, Wis. Stats. (1999-00), effective December 1, 1997. However, this service has also been taxable since May 1, 1990 as a telecommunications service under sec. 77.52(2)(a)5, Wis. Stats. (1999-00), provided the service originates (or terminates effective December 1, 1997) in Wisconsin and is charged to a service address in Wisconsin. (May 1, 1990 is the date of a change in the Department of Revenue’s position regarding the sales and use tax treatment of mechanical or electronic voice mail services.)

- **E-Mail Service**

**Example 2:** Company B provides electronic mail (“e-mail”) services. Company B’s customers send e-mail messages from their computers to a central computer at Company B’s location where the messages are appropriately routed.

This service is taxable as a telecommunications message service under sec. 77.52(2)(a)5m, Wis. Stats. (1999-00), effective December 1, 1997. However, this service was also taxable as a telecommunications service under prior law.

- **Telephone Answering Services**

**Example 3:** Company C is a real estate business, whose employees spend considerable periods of time away from its office. Company C contracts with Company D to have Company D’s employees answer incoming telephone calls during periods when Company C’s employees are not available to answer the telephone. Company D takes messages from incoming callers and transmits them to Company C or particular employees of Company C.

This service provided by Company D is a taxable telecommunications message service, effective December 1, 1997. This service was not taxable prior to December 1, 1997.

**Example 4:** A bank provides a toll-free telephone number that its customers may call to register comments, suggestions, compliments, or complaints about the bank’s services or its tellers, loan officers, or other service representatives. The bank contracts with Company E to answer calls to this toll-free number. Company E records the comments, suggestions, compliments, and complaints, and forwards them by electronic or other means to the appropriate officials at the bank.

This service provided by Company E is a taxable telecommunications message service, effective December 1, 1997. This service was not taxable prior to December 1, 1997.

**Example 5:** A sales representative, who spends considerable periods of time traveling away from her home, hires Company F to answer incoming telephone calls to her residence while she is away. Individual employees of Company F keep a log of calls received, recording the name of the person calling, date and time of the call, and a short message, and transmit the log to the sales representative.

This service provided by Company F is a taxable telecommunications message service, effective December 1, 1997. This service was not taxable prior to December 1, 1997.

**Example 6:** Company G contracts with Company H, an office management service, to provide receptionist, typing, filing, scheduling, bookkeeping, and similar services. Employees of Company H also answer and route incoming telephone calls. When calls cannot be routed, Company H takes messages and transmits them to the appropriate person. This answering service is only a small part of the total office management services provided by Company H to Company G.

The telephone answering services provided by Company H are not taxable because such services are an incidental element of the nontaxable office management services provided by Company H to Company G.

**Example 7:** Company I, a mail order company, hires Company J to process telephone orders for merchandise from Company I's customers. Upon receiving a telephone call, Company J employees fill out an order form, verify the order and other information provided by the customer, check on-line inventory records to make sure the desired merchandise is available, and conduct a credit check of the customer. Company J then remits the order form to Company I. The telecommunications message service element of Company J's service (receiving telephone calls and filling out order forms) is only a small part of the total sales processing services provided by Company J to Company I.

The telephone answering services provided by Company J are not taxable because such services are an incidental element of the nontaxable sales processing services provided by Company J to Company I.

**Example 8:** A manufacturer has a toll-free telephone number that potential customers may call for information about its products. The manufacturer contracts with Company K whose employees answer incoming calls to the toll-free number and respond to the inquiries. Generally, Company K does not take and transmit messages to the manufacturer.

Company K is providing a service that is not taxable. If Company K occasionally takes and transmits messages to the manufacturer, this telecommunications message service is an incidental element of its customer service or product information service, which is not subject to tax.

#### • Security Monitoring Service

**Example 9:** Company L provides security monitoring services. When a customer's security system detects unauthorized entry, the system transmits a message over telephone lines to Company L's communications center.

The message contains information concerning the date and time of the unauthorized entry, the specific location of entry, etc. Company L keeps a record of this information, notifies the customer (by transmitting a message electronically to the customer's security system, placing telephone calls to the customer, or mailing written information to the customer) and may, if appropriate, notify local law enforcement authorities.

The service provided by Company L is a taxable telecommunications message service under sec. 77.52(2)(a)5m, Wis. Stats. (1999-00). This service was not taxable until the December 1, 1997 law change reversed the position taken by the Department of Revenue in *Wisconsin Tax Bulletin* 34, October 1983, page 12.

#### • Emergency Response Service

**Example 10:** Company M, located outside Wisconsin, provides emergency response services to subscribers in Wisconsin. When assistance is required, the subscriber presses a button that is worn by the subscriber. Pressing the button sends a radio signal which activates a base unit that is connected to an existing telephone jack in the subscriber's home. The base unit automatically dials the telephone number of Company M. Company M emergency response staff members have access to subscriber's files which include the subscriber's address, health information, and persons to contact. If possible, the staff member communicates directly with the subscriber using a speaker phone built into the base unit in the subscriber's home. Based on the circumstances, the staff member takes appropriate action, which may include calling neighbors or local emergency services.

This service is taxable as a telecommunications message service under sec. 77.52(2)(a)5m, Wis. Stats. (1999-00), effective December 1, 1997. However, this service was also taxable as a telecommunications service under prior law.

**Note:** The revenues collected under sec. 146.70(3), Wis. Stats., of a similar telecommunications emergency response service – the statewide emergency services number system ("911" service) – are exempt from sales and use taxes pursuant to sec. 77.54(37), Wis. Stats., effective August 1, 1987.

#### Where Does the Sale of Telecommunications Message Services Occur?

A telecommunications message service is furnished or consumed at the location where the customer, or someone at the direction of the customer, receives the message. If the customer, or someone at the direction of the customer, receives the message in Wisconsin, the telecommunications

message service is subject to Wisconsin sales or use tax. If the customer, or someone at the direction of the customer, receives the message outside Wisconsin, the telecommunications message service is not subject to Wisconsin sales or use tax.

**Example 1:** Company M, located in Wisconsin, contracts with Company N, a security monitoring service provider located in Texas. Company M's security system transmits messages to Company N's communications center located in Texas. Company N creates a computerized record of the message and transmits certain information by telephone, which is received by Company M at its Wisconsin location.

This telecommunications message service is furnished or consumed in Wisconsin because the messages are received by the customer, Company M, at its Wisconsin location. Therefore, the sale is subject to Wisconsin sales or use tax.

**Example 2:** Company O, located in Minnesota, contracts with Company P, an office message service provider located in Wisconsin. Employees of Company P answer Company O's incoming telephone calls at Company P's Wisconsin location, take messages from callers, and transmit the messages to Company O. Company O receives the messages at its Minnesota location.

This telecommunications message service is furnished or consumed in Minnesota, because the messages are received by the customer, Company O, at its Minnesota location. Therefore, the sale is not subject to Wisconsin sales or use tax.

**Example 3:** Company Q, located in Nontaxable County A, a Wisconsin county which has not adopted the 0.5% county sales and use tax, contracts with Company R, an office message service provider located in Taxable County B, a county which has adopted the 0.5% county sales and use tax. Employees of Company R answer Company Q's incoming telephone calls at its location in Taxable County B, take messages from callers, and transmit the messages to Company Q. Company Q receives the messages at its location in Nontaxable County A.

This telecommunications message service is furnished or consumed in Nontaxable County A, because the messages are received by the customer, Company Q, at its location in Nontaxable County A. Therefore, the sale is not subject to county sales or use tax.

#### Is Use Tax Due If Provider Does Not Charge Tax?

If a telecommunications message service is furnished or consumed in Wisconsin, but the service provider does not

charge the customer Wisconsin sales or use tax, the customer owes Wisconsin use tax, as provided in sec. 77.53(1), Wis. Stats. (1999-00).

**Example:** Company S, located in Wisconsin, contracts with Company T, an office message service provider located in California. Employees of Company T answer Company S's incoming telephone calls at Company T's California location, take messages from callers, and transmit the messages to Company S. Company S receives the messages at its Wisconsin location. Company T does not charge any sales or use tax to Company S.

Company S owes Wisconsin use tax on its purchase of the telecommunications message services.

#### Is Credit Allowed for Taxes Paid to Other States or Local Governments?

A purchaser is allowed a credit against Wisconsin sales or use tax owed on telecommunications message services for state sales or use tax properly paid to another state on such services, limited to the amount of Wisconsin tax due on the transaction.

**Example:** Company U, located in Wisconsin, contracts with Company V, an office message service provider located outside Wisconsin. For \$1,000, employees of Company V answer Company U's incoming telephone calls at Company V's location in the other state, take messages from callers, and transmit the messages to Company U. Company U receives the messages at its Wisconsin location. As required by the other state, Company V charges the other state's 6% state sales tax (\$60) to Company U on the telecommunications message service and properly pays such tax to the other state. Company V does not have nexus in Wisconsin and, therefore, does not charge Wisconsin sales tax to Company U.

Company U is allowed a credit against the 5% Wisconsin state use tax due on its purchase of the telecommunications message services. Although \$60 of sales tax was paid to the other state, the credit is limited to the \$50 of Wisconsin state use tax due. Company U may not claim a credit against Wisconsin state sales or use tax for the additional \$10 of tax paid to the other state.

For additional information concerning credits for taxes paid to other states or local units of government (e.g., whether a credit is allowed against county and stadium taxes, etc.), see *Wisconsin Tax Bulletin* 100, January 1997, page 29. [✎](#)