



Wisconsin TAX BULLETIN

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New Tax Law

The following is a brief description of a new Wisconsin law that makes a change to the Wisconsin individual income tax law.

Interest Abated During Extension Period (2001 Act 23, create sec. 71.03(7)(c), effective December 14, 2001.)

For taxable years 2001 and 2002, no interest charge will apply during the period of an extension of time to file, for persons who:

- serve in the United States in support of Operation Enduring Freedom (or an operation that is its successor), or
- qualify for a federal extension and serve outside of the United States because of their participation in Operation Enduring Freedom (or an operation that is its successor) in the Enduring Freedom theater of operations. [✎](#)

Did You Know the Department of Revenue...✎

- ◆ provides free taxpayer assistance all around Wisconsin (see article on page 9), and via the Internet (www.dor.state.wi.us, then click on "FAQS" – frequently asked questions)
- ◆ has free publications on a wide variety of tax subjects (see article on page 18)
- ◆ has an index to make your research easier (see article on page 17)
- ◆ provides old and new tax forms via the Internet (www.dor.state.wi.us) and via Fax-A-Form (phone 608-261-6229 from a fax telephone)
- ◆ offers recorded refund information 24 hours a day, seven days a week (phone 608-266-8100, Madison, or 414-227-4907, Milwaukee)
- ◆ provides an Internet site for inquiring about your refund (www.dor.state.wi.us) [✎](#)

Revision – Schedule U

The Internal Revenue Service ("IRS") extended the due date of federal estimated tax payments originally due between September 10, 2001, and September 23, 2001, to September 24, 2001.

The Wisconsin Department of Revenue is following the IRS' action. As a result, the September 2001 installment due date listed in Part III of Wisconsin Schedule U, "*Underpayment of Estimated Tax by Individuals and Fiduciaries*," should be changed from September 17, 2001, to September 24, 2001. In addition, the decimal amount on line 15 of Schedule U (for computing underpayment interest using the "short method") should be changed from .07947 to .07890. In the instructions for line 25, the September 17 date should be changed to September 24.

The 2001 Schedule U has been printed and delivered to the department, and it will not be reprinted. The Schedule U and instructions on the department's Internet web site and on its Fax-A-Form system have been revised to reflect these changes. [✎](#)

Federal Laws Enacted After 1999 Do Not Apply for Wisconsin

For taxable year 2000 and thereafter, the Wisconsin individual income tax law currently provides that only those provisions of the Internal Revenue Code (IRC) enacted by December 31, 1999, apply for Wisconsin purposes. Except for changes in depreciation and amortization provisions, provisions of federal income tax law enacted after December 31, 1999, may not be used for Wisconsin purposes. The resulting differences in income and expense items for Wisconsin versus federal purposes must be adjusted for on Wisconsin Schedule I.

For taxable years 2000 and 2001, the differences that result from the fact that Wisconsin continues to follow 1999 federal law are relatively few. However, unless the Wisconsin Legislature adopts the federal tax law changes enacted in 2000 and 2001 for Wisconsin purposes, a significant number of differences will exist for taxable year 2002 and thereafter. This is because most of the provisions of the federal Economic Growth and

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Tax Relief Reconciliation Act of 2001 (EGTRRA) enacted on June 7, 2001, first apply for taxable year 2002.

The fact that current Wisconsin law does not permit the use of EGTRRA changes has raised considerable concern among taxpayers, tax practitioners, and others. Causing the most concern are the numerous pension plan and retirement plan changes made by EGTRRA. For example, EGTRRA increased the contribution limits for traditional IRAs, Roth IRAs, and 401(k), 403(b), 408(k), and 457 plans for 2002. Unless Wisconsin law is changed to adopt these changes, such plans must continue to apply the old (lower) contribution limits for Wisconsin purposes.

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The Wisconsin Legislature is expected to consider adoption of the federal laws passed after 1999 for Wisconsin purposes during its floor period that began on January 22, 2002. Any changes made to Wisconsin law will be explained in a future issue of the *Wisconsin Tax Bulletin*, and on the department's Internet web site, www.dor.state.wi.us. 

Federal “Victims of Terrorism Tax Relief Act” Does Not Apply for Wisconsin

Generally, Wisconsin law provides that the computation of taxable income on the 2001 Wisconsin income tax return is to be based on the provisions of the Internal Revenue Code (IRC) enacted as of December 31, 1999. Changes to the IRC enacted after December 31, 1999, do not apply for Wisconsin income tax purposes. Individuals must complete Wisconsin Schedule I to adjust for any differences that result in the amounts of income and expense items reportable for federal and Wisconsin purposes.

At the time the 2001 Schedule I was sent to the printer (November 20, 2001), new federal legislation affecting the IRC was being considered. The Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134) was enacted on January 23, 2002. The changes made by P.L. 107-134 to the IRC do not apply for Wisconsin purposes for 2001.

Following are brief explanations of differences between federal and Wisconsin law that result from the enactment of P.L. 107-134. The “Federal” explanation

indicates how an item is to be treated for federal income tax purposes for 2001. The “Wisconsin” explanation indicates how the item is to be treated for Wisconsin purposes under the IRC enacted as of December 31, 1999.

If you are affected by any of these differences, you must complete 2001 Schedule I. Schedule I is available from any Department of Revenue office or from the department’s Internet web site (www.dor.state.wi.us).

1. Exclusion of Certain Death Benefits

- (a) Federal – Gross income does not include amounts paid by an employer by reason of the death of an employee who dies as a result of wounds or injury incurred as a result of the terrorist attacks against the United States on April 19, 1995, or September 11, 2001, or who dies as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002.
- (b) Wisconsin – The treatment of amounts paid by an employer is determined under the provisions of the Internal Revenue Code as amended to December 31, 1999.

2. Exclusion of Certain Cancellations of Indebtedness

- (a) Federal – Gross income does not include any amount realized from the discharge (in whole or in part) of indebtedness if the discharge is by reason of the death of an individual incurred as a result of the September 11, 2001, terrorist at-


tacks, or as a result of illness incurred as a result of an attack involving anthrax occurring on or after September 11, 2001, and before January 1, 2002. This applies to discharges made on or after September 11, 2001, and before January 1, 2002.

- (b) Wisconsin – Gross income includes income that is realized by a debtor from the discharge of indebtedness, subject to certain exceptions for debtors in Title 11 bankruptcy cases, insolvent debtors, certain farm indebtedness, and certain real property indebtedness.

3. Disaster Relief Payments

- (a) Federal – Gross income does not include any amount received by an individual as a qualified disaster relief payment.
- (b) Wisconsin – The treatment of a disaster relief payment is determined under the provisions of the Internal Revenue Code as amended to December 31, 1999.

4. Disability Income Related to Terrorist Activity


- (a) Federal – The exclusion from gross income for disability income of U.S. civilian employees attributable to a terrorist attack outside of the United States applies to disability income received by any individual attributable to a terroristic or military action.
- (b) Wisconsin – The treatment of disability income is determined under the provisions of the Internal Revenue Code as amended to December 31, 1999. 

Subtraction for Contributions to a Wisconsin College Savings Account

Beginning with taxable year 2001, Wisconsin law provides a subtraction of up to \$3,000 for an amount paid into a college savings account, as described in section 14.63 or 14.64 of the Wisconsin Statutes. The instructions for the 2001 Form 1 and 1NPR indicate this subtraction applies to amounts paid into a Wisconsin EdVest college savings program.

The department has learned that American Express Company is marketing a Wisconsin state-sponsored college savings program. The name of this program is


“tomorrow’s scholar.” This program qualifies as a section 14.64 college savings account. Thus, contributions to a “tomorrow’s scholar” account qualify for the \$3,000 subtraction (assuming all other requirements are met).

In addition, Wisconsin law also provides a subtraction for any increase in value of a tuition unit under a tuition contract described in section 14.63, or a college savings account as described in section 14.64 (except in the case of a nonqualified withdrawal). The form instructions indicate this subtraction applies to distributions from EdVest college savings accounts. This subtraction also applies to distributions from a “tomorrow’s scholar” account marketed by American Express Company. 

Grant County Adopts County Tax

Effective April 1, 2002, the county sales and use tax will be in effect in Grant County. This brings to 56 the number of counties that have adopted the 1/2% county tax.

Retailers were notified about Grant County's adoption of the county tax in the December 2001 *Sales and Use Tax Report* (number 3/01). The Report was sent in late December and early January to all persons registered for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 37 and 38 of this Bulletin.

For additional information about the county tax, see Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII, on pages 38 to 44. Publication 201 is available from any Department of Revenue office. See the article titled "Tax Publications Available" on page 18 of this Bulletin for information about how to obtain copies of Publication 201 by mail, e-mail, fax, or the Internet. 

Take Taxes, for Instance It's an Electronic World Out There

When taxpayers filed their Wisconsin personal income taxes in 2001, over 750,000 chose to file electronically – either through a professional tax preparer, via TeleFile, or on-line from their personal computer through the www.wisconsin.gov web site. That's one of every four taxpayers! The greatest percentage growth is in direct, on-line filing from home computers.

On-line filing has these advantages:

- Taxpayers can e-file both state and federal income taxes at the same time from one location.
- The computer software does the math and walks taxpayers through the process.
- Taxpayers get immediate confirmation that their return has been received.
- Taxpayers can get their refunds in five business days, no matter when they file (if they choose direct deposit and the return needs no additional review), even if they file right on the April 15, 2002, deadline. (Paper returns filed on the deadline typically require 12 weeks.)
- E-filers can choose to electronically deposit their refunds.
- Electronically filed returns are more accurate (a 1 % error rate compared to 10 % for paper forms).
- Low-income taxpayers (earning \$25,000 or less annually) can e-file for free!

E-filing has increased 22 % in just the last year, while the paperbound "Quick Refund" usage has dropped by

almost one-third since its high-water mark five years ago.

It's no wonder. E-filing is much quicker than the "Quick Refund" method. Taxpayers who choose to have their refunds deposited electronically directly into their bank accounts can get their money within five working days. The best expectation of the Quick Refund was "as little as 14 days" – sometimes longer.

In light of the superior convenience and efficiency of e-filing, it will replace the personal income tax "Quick Refund" program.

Replacing the Quick Refund program with e-filing for the 2002 taxpaying season is an easy call to make. In fact, taxpaying customers have made that decision for the department. By a 2 to 1 margin, taxpayers who want the fastest service possible are choosing the convenience of electronic filing over the slower, paperbound Quick Refund system. This change will also help the department save money.

- Because it is no longer offering the Quick Refund program, the department can discontinue mailing postcards with the taxpayer's mailing label attached (needed to participate in the program) to those taxpayers who used a practitioner last year.
- The department also will save taxpayer dollars by not mailing personal income tax booklets to those who filed electronically in 2001.

Meanwhile, the Department of Revenue is offering these additional electronic filing options:

- Applicants for homestead credit can now file Schedule H electronically when they file their income tax returns.

- Taxpayers eligible for TeleFile can also file over the World Wide Web.
- Low-income taxpayers (under \$25,000 income) can file on-line free-of-charge.

- Taxpayers can pay by credit card.

In these and other ways, the Wisconsin Department of Revenue is committed to its strategic goal of **Making Taxpaying Less Taxing** – in every sense of the word, from lowering the overall tax burden to making the tax filing experience easier and less stressful. [🔗](#)

NetFile – New Electronic Filing Alternative

The Wisconsin Department of Revenue is committed to serving taxpayers in the most efficient manner possible. Through the use of technology, the department has streamlined the methods used to file individual income tax returns. For 2001 tax returns, the Department of Revenue offers a new filing alternative: NetFile.

In order to increase electronic filing, the department is expanding the current TeleFile program to include NetFile for 2001 tax returns. NetFile is an alternative to the current TeleFile program that has been available for three years. Eligible taxpayers may now access the ap-

plication through the Internet or use a touch-tone phone as they have in the past.

Eligibility for participation in TeleFile/NetFile is determined by the Department of Revenue based on previous filing history and is offered by invitation only. Taxpayers who may be eligible to use NetFile will receive a TeleFile/NetFile instruction booklet and a Personal Identification Number (PIN).

The TeleFile/NetFile alternative is easy and it's free! Eligible and qualified Wisconsin taxpayers are encouraged to use this fast and convenient alternative to paper filing. [🔗](#)

Postcards Replace Booklets

In order to inform taxpayers who filed paper income tax returns last year but qualified for free electronic filing ("e-filing"), a select group of taxpayers who formerly received tax booklets received a postcard instead this year, notifying them that they may be eligible for free e-filing.

With this pilot project, the Department of Revenue has taken another innovative step forward, by informing approximately 200,000 taxpayers who made \$25,000 or

less of adjusted gross income last year, that they may qualify to file electronically for **FREE**.

The free program applies to both state and federal individual income tax returns. If this pilot is successful, postcards will be sent next year to all taxpayers who qualify.

More information about free e-filing of income tax returns is available on the State of Wisconsin's Internet web site, www.wisconsin.gov. Click on "State Tax Information," "Electronic Filing and Payments," and then click on the "Quicken Tax Freedom Project" link. [🔗](#)



Tips to Speed Refund Processing

If you have a refund coming on your 2001 Wisconsin income tax return, you want your return processed quickly. You can help by following the tips listed below.



File Early

The time it takes to issue a refund varies greatly, depending on when the return is received. Refunds for returns that are not adjusted are issued in an average of

two weeks for returns received by mid-February, four weeks for returns received from mid-February to mid-March, six weeks for returns received from mid-March to mid-April, and eight weeks for returns received mid-April and after.



File Electronically

There are many good reasons to file your Wisconsin return electronically ("e-file"). It's fast, safe, documented, easy, and accurate. For more information, see the article titled "It's an Electronic World Out There" on

page 4 of this Bulletin. (**Note:** Due to recent budget cuts the department has been directed to make, the processing of returns filed on paper is expected to take longer than it has in previous years. As a result, e-filing is a better choice than ever.)

Use Your Label

Apply the department-printed name and address label to the tax return you file. Here are some more tips about your label:

- Use the label even if you are filing a computerized return or a return completed by a preparer.
- Fill in your social security number (and your spouse's, if applicable) on the tax return, since it is not on the label.
- Draw a line through incorrect information and make corrections on the label.
- Use the Wisconsin label, not the federal IRS label.
- Be sure the label is yours, not another taxpayer's.



File an Accurate and Complete Return

Avoid errors and delays in processing your tax return by following these tips:

- Make entries legible and on the correct lines.
- Attach the correct withholding statements.
- Claim only Wisconsin tax withheld, not federal tax, social security, or tax withheld for another state.
- Attach **all** necessary supporting schedules.
- Attach a **complete** copy of your federal return and schedules if you file on Form 1 or 1NPR.
- Attach a completed rent certificate or a copy of your 2001 property tax bill if you are claiming homestead credit.
- Assemble your return in the proper order (see page 27 of the Form 1 instruction booklet or page 29 of the Form 1NPR booklet).



More Tips

For more tips, see the following article titled "Common Errors on Tax Returns and Credit Claims." [!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd_img.jpg\)](#)



Common Errors on Tax Returns and Credit Claims

Are your tax returns and credit claims filed without errors, and do they include all the schedules and information necessary for the department to accurately process them? Many errors are discovered each year, either in processing or in subsequent audits by the department.

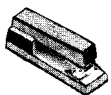
In the 2001 processing season (2000 returns and claims), the department sent back thousands of tax returns and credit claims. Processing was delayed on thousands of other forms, to obtain additional information from taxpayers or claimants. Nearly half a million tax returns and credit claims were adjusted during the processing of those forms.

Preparing error-free tax returns and credit claims will help avoid annoying processing delays and may result in fewer tax dollars being assessed in subsequent office audits or field audits.

Listed below are some common errors made in preparing individual and corporation tax returns, homestead and farmland preservation credit claims, partnership returns, fiduciary income tax returns, and estate tax returns. Some of the common errors listed apply to more than one of these categories.

- Read and follow instructions.
- Fill in social security number or employer identification number.
- Check and recheck math.
- Sign the return or claim.
- Attach required documents:
 - copies of federal return and schedules.
 - (individual returns) wage and tax statements.
 - (1NPR) residence questionnaire, other state's tax return copy.

- (corporation returns) manufacturer's sales tax, research, development zone, farmland tax relief schedules.
- (homestead) copy of separately filed tax return, complete rent certificate, property tax bill, ownership verification if applicable.
- (farmland preservation) property tax bills, farmland preservation agreement or zoning certificate if appropriate, ownership verification if applicable.
- (partnerships) Schedule 3K-1.
- (fiduciaries) as listed on page 2 of Form 2.
- (estate tax returns) copies of federal Form 706 and schedules, list of assets, will, trust instruments, approved federal extension if appropriate.
- Individual returns:
 - Fill in correct amounts and all information for standard deduction, exemption credit, school property tax/rent credit, married couple credit, and itemized deduction credit.
 - Correctly calculate earned income credit, farmland tax relief, underpayment interest, retirement plan deductions, and federal/Wisconsin income differences.
 - Include all taxable income, such as S corporation and partnership income, IRA distributions, interest and dividends, income earned in another state, gambling winnings.
- Homestead:
 - Prorate rent for joint occupancy, if appropriate – see bottom of rent certificate.
 - Correctly prorate property taxes for part business use, more than one acre, co-owned property.
 - Reduce property taxes/rent for months Wisconsin Works (W2) received.
- Follow special instructions if separated from spouse or married, divorced, or widowed during the year.
- Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation (including standard mileage depreciation), IRA/deferred compensation deductions, Wisconsin Works (W2) and county relief payments.
- Farmland preservation:
 - Prorate property taxes for co-owned property.
 - Do not claim special assessments or property taxes for land not in a farmland preservation agreement or zoning certificate.
 - Claim the correct percentage of credit.
 - Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation, capital loss carryover, deferred compensation.
- Fiduciaries:
 - On page one, check one "type of trust" box if applicable, answer questions, fill in fiscal year dates if applicable, request closing certificate if needed.
 - Report all income, expenses, and credits as distributable income on final Form 2.
 - Follow special procedures if ESBT (electing small business trust).
- Estate tax returns:
 - File Wisconsin W706 if filing federal 706.
 - File only if required.
 - File and pay tax timely – use 401T for payment, not 1-ES or 4-ES.
 - Request closing certificate for both fiduciary and estate returns at same time, if possible. [☞](#)



Attaching Copy of Federal Return

Individuals who file their Wisconsin income tax return on Form 1 or 1NPR are required to attach a copy of their federal income tax return to their Wisconsin return. Generally this will be a copy of federal Form 1040, 1040A, or 1040EZ. However, some

Wisconsin filers are not required to file a federal return with the Internal Revenue Service (IRS), or they may use TeleFile to report to the IRS.

Federal TeleFile Filers

Some taxpayers who file their Wisconsin return on Form 1 or 1NPR file their federal return by phone, using

the federal TeleFile system. These taxpayers, who are not required to submit a paper tax return to the IRS, may attach a copy of their federal TeleFile Tax Record to their Wisconsin Form 1 or 1NPR in lieu of federal Form 1040, 1040A, or 1040EZ.

Taxpayers Not Required to File With the IRS

Some taxpayers who are required to file a Wisconsin income tax return are not required to file a federal income tax return with the IRS. For example, a person filing as head of household who is age 65 or over, with gross income of at least \$10,570 but less than \$10,650 for 2001, must file a 2001 Wisconsin return but is not required to file a 2001 federal return.

In this situation, since the person would not have a copy of a federal return to attach to the Wisconsin return, a statement listing the sources and amounts of income must be attached to the Wisconsin Form 1 or 1NPR in lieu of a federal return.

Note: Because the Wisconsin tax forms refer to various lines on the federal return, a person may find it helpful to complete a federal income tax form to use as a reference when completing the Wisconsin return. This federal form, even though it will not be filed for federal tax purposes, may be attached to the Wisconsin return instead of the required statement of income. [✎](#)



Don't Forget Due Dates for Information Returns

Various information returns must be filed with the Wisconsin Department of Revenue by January 31. Others are due February 28 or March 15.

Information returns due January 31, 2002, include Form W-2 to report wages, tips, and other compensation, and Form W-2G to report gambling winnings.

Information returns due February 28, 2002, include Wisconsin Form 9b (or federal Form 1099-R or 1099-MISC) to report retirement plan distributions and other nonwage compensation, and for payers other than corporations to report rents or royalties.

Information returns due March 15, 2002, by **corporations** include Form 9b or federal Form 1099-MISC to report rents or royalties, and Form 8 to report capital stock transfers.

Regardless of the due date for filing the information returns with the department, copies of the information returns (except Form 8) must be given to the recipients of the payments by January 31, 2002. Copies of Form 8 are not required to be given to individuals who transfer capital stock.

Additional information is available in Wisconsin Publication 117, *Guide to Wisconsin Information Returns*. See the article titled "Tax Publications Available" on page 18 of this Bulletin for information about how to obtain a copy of the publication. [✎](#)

Schedule 3K-1s – File on Magnetic/Electronic Media

Partnerships with 50 or more partners are encouraged to file their Wisconsin Schedule 3K-1s, "*Partner's Share of Income, Deductions, etc.*," on magnetic/electronic media. The types of magnetic/electronic media allowed include magnetic tape, cartridge, CD, and diskette.

If your Schedule 3K-1s are prepared by software, ask your software company if they can provide these documents on magnetic/electronic media rather than on paper. Filing on magnetic/electronic media will save both preparers and the department valuable resources, such as paper, shipping costs, and processing time. It's

another way the department is streamlining your process of filing tax returns.

To get information and specifications for filing your Form 3K-1s magnetically/electronically, contact:

Diana Kiesling
Wisconsin Department of Revenue
Mail Stop 3-14
PO Box 8908
Madison WI 53708-8908

Phone: (608) 267-3285

E-mail: diana.kiesling@dor.state.wi.us.





Department Offers Taxpayer Assistance

Department personnel will be available through April 15, 2002, to provide taxpayer telephone and walk-in assistance. Assistance is provided Monday through Friday in many of the larger offices, and Mondays only in other offices (except as noted in the chart below).

In addition, assistance hours will be extended in four offices on Saturday April 13, 2002. Offices in Madison, Milwaukee, Eau Claire, and Appleton will be open from 9:00 a.m. to 3:00 p.m. on that day. The Madison office will be open until 5:00 p.m. on Monday, April 8 through Friday, April 12, and on Monday, April 15.

Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
Appleton	265 W. Northland Ave.	(920) 832-2727	7:45-4:30
Eau Claire	718 W. Clairemont Ave.	(715) 836-2811	7:45-4:30
Madison	2135 Rimrock Rd.	(608) 266-2772	7:45-4:30
Milwaukee	819 N. Sixth St., Rm. 408	(414) 227-4000	7:45-4:30
Waukesha	141 N.W. Barstow St.	(262) 521-5310	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Location	Address	Telephone No.	Hours
Baraboo	1000 Log Lodge Ct.	(608) 356-8973	7:45-1:00
Beaver Dam	220 Seippel Blvd.	(920) 356-6090	7:45-1:00
Elkhorn	715 W. Walworth St.	(262) 723-4098	7:45-1:00
Fond du Lac	845 S. Main, Ste. 150	(920) 929-3985	7:45-4:30
Grafton	1930 Wisconsin Ave.	(262) 375-7948	7:45-1:00
Green Bay	200 N. Jefferson St., Rm. 526	(920) 448-5179	7:45-4:30 *
Hayward	100 Ranch Rd.	(715) 634-8478	7:45-1:00
Hudson	1810 Crestview Dr., Ste. 1B	(715) 381-5060	7:45-4:30
Janesville	101 E. Milwaukee, Rm. 525	(608) 758-6190	7:45-4:30 †
Kenosha	4003 80th St., Ste. 102	(262) 697-5860	7:45-4:30 **
La Crosse	620 Main St., Rm. 213	(608) 785-9720	7:45-4:30
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-1:00
Marinette	Courthouse, 1926 Hall Ave.	(715) 732-7565	9:00-1:00
Marshfield	300 S. Peach Ave., Ste. 4	(715) 387-6346	7:45-1:00
Monroe	1015 18th Ave., Ste. B111	(608) 325-3013	7:45-1:00
Oshkosh	515 S. Washburn, Ste. 105	(920) 424-2100	7:45-4:30
Racine	616 Lake Ave.	(262) 638-7500	7:45-4:30 *
Rhineland	203 Schiek Plaza	(715) 365-2666	7:45-4:30
Rice Lake	11 E. Eau Claire St., Ste. 4	(715) 234-7889	7:45-1:00
Sheboygan	807 Center Ave.	(920) 459-3101	7:45-4:30
Superior	1225 Tower Ave., Ste. 315	(715) 392-7985	7:45-4:30
Tomah	203 E. Clifton St.	(608) 372-3256	7:45-1:00
Watertown	600 E. Main St.	(920) 262-2700	7:45-1:00
Wausau	710 Third St.	(715) 842-8665	7:45-1:00
Wisconsin Rapids	830 Airport Ave.	(715) 421-0500	7:45-4:30

* Open Monday, Tuesday, Wednesday, and Thursday

** Open Monday, Tuesday, and Wednesday

† Open Monday and Tuesday



How to Obtain Wisconsin Tax Forms

Tax preparers and others requiring more than 6 of any one Wisconsin tax form or more than 29 total Wisconsin forms must use a forms order blank, Form P-744. The original of the completed order blank must be sent to the department. You can obtain a Form P-744 by writing, calling, or faxing your request to the department at the address or phone number listed below under “To Receive Forms in the Mail.”

You can obtain up to 6 of any one Wisconsin tax form or a total of 29 Wisconsin forms by visiting any Department of Revenue office or by contacting the department by mail, by phone, or by fax. These limits are imposed in order to maintain a supply of forms for others. You can also receive forms via your fax machine or the Internet.

Some libraries, banks, and post offices have forms during the filing season. Most libraries have a copy of Wisconsin Package WI-X, from which most Wisconsin tax forms can be photocopied.



To Pick Up Forms at a Department of Revenue Office

If you want to pick up forms at a department office, you may visit any of the department’s local offices. The office locations and hours of service are listed in the article titled “Department Offers Taxpayer Assistance” on page 9 of this Bulletin (assistance is also available at these offices).



To Receive Forms in the Mail

You can request that forms be mailed to you (indicate which forms you want, the year, and how many) by:

- Writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, PO Box 8951, Madison WI 53708-8951;
- Calling the department in Madison at (608) 266-1961;
- Faxing your request to the department at (608) 261-6913; or
- E-mailing your request to forms@dor.state.wi.us.



To Receive Forms Via Your Fax Machine

You can receive forms via your fax machine by using the department’s Fax-A-Form system. Individual income tax, homestead credit, farmland preservation credit, corporation franchise and income tax, estate tax, fiduciary income tax, and partnership forms and instructions for 1996 through 2001 are available via Fax-A-Form. For sales/use, withholding, and alcohol beverage taxes, only 2001 forms and instructions are available. In addition, 1996 through 2001 amended individual income tax forms and instructions are available, as well as publications published by the department (see the article titled “Tax Publications Available” on page 18 of this Bulletin).

To use Fax-A-Form, call (608) 261-6229 from the handset of your fax machine or the touch-tone telephone of your fax modem (don’t press “start” yet). If your fax machine does not have a handset, use the keypad if tones are transmitted, or connect a touch-tone telephone if tones aren’t transmitted. Follow the voice prompts and enter the retrieval codes for the items you want, using the keypad. Press “start,” “send,” or “copy” (fax modem users click on “manual receive”). You must leave the handset of your telephone or fax machine off the hook the entire time the forms are being faxed to you.

Fax-A-Form is available 24 hours a day, 7 days a week. The department does not charge a fee for this service (though you will have to pay your normal telephone charges and fax machine operating costs). If you have questions, you may write to Cindy Brene-man, Fax-A-Form Coordinator, at Wisconsin Department of Revenue, Mail Stop 1-151, PO Box 8951, Madison WI 53708-8951, or call (608) 267-2025.



To Receive Forms Via the Internet

Most forms and instructions are available on the Internet. If you have Internet access, you can download and print the forms 24 hours a day, throughout the year.

To download forms, access the department’s Internet web site at www.dor.state.wi.us, and click on “Forms.”



IRS Mileage Rates for 2002 Apply for Wisconsin



The optional standard mileage rates provided by the Internal Revenue Service (IRS) for 2002, for computing automobile expenses for business, charitable, medical, and moving expense purposes, also apply for Wisconsin.

For 2002 the IRS has increased the business standard mileage rate from 34.5¢ per mile to 36.5¢ per mile for all business miles driven. The 36.5¢ per mile rate is allowed without regard to whether the automobile was previously considered fully depreciated.

If the standard mileage rate of 36.5¢ per mile is used, depreciation is considered to be allowed at 15¢ per mile for 2002, the same as for 2001. However, no portion is considered to be depreciation after the adjusted basis of the automobile reaches zero.

For 2002 the allowable standard mileage rate for charitable deduction purposes remains at 14¢ per mile. The rate for medical expense and moving expense deductions has increased from 12¢ per mile to 13¢ per mile. [↗](#)

Clearing up the Confusion on Corporation Extensions

Do you know when to request an extension to file your Wisconsin corporation tax return? Thousands of taxpayers don't. Every year the Department of Revenue approves thousands of Form 830s (Application for Extension of Time to File) unnecessarily.

The Application for Extension of Time to File should only be filed if the corporation **does not** obtain a federal extension. If the corporation obtains a federal extension (federal Form 7004) and attaches it to the last page of the Wisconsin return, the Department of Revenue automatically grants the taxpayer an additional 30-day extension on top of the federal extension of six months. That's right – corporations have an automatic seven-month extension with the Department of Revenue by obtaining the federal extension.

Does the approval of the Wisconsin Application for Extension of Time to File extend that seven months to an eight-month extension? No. A taxpayer who ob-

tains both the federal and Wisconsin extension still has only a seven-month extension for Wisconsin.

What if a corporation does not obtain the federal extension but wants an extension for Wisconsin? The taxpayer should file the Form 830 to receive a 30-day extension for Wisconsin. Wisconsin allows corporations an extension of 30 days if they file a Form IC-830 and it is approved by the department. If you need more time to file the Wisconsin return than one month, you need to obtain and attach a copy of the federal automatic extension form (federal Form 7004) to the Wisconsin return.

By filing a Wisconsin extension application only when necessary, you could save both yourself and the Department of Revenue unnecessary effort.

Questions pertaining to corporation extensions of time to file may be directed to the department's Corporation Review and Adjustment unit at (608) 266-0800. [↗](#)

Preparers – Don't Forget About Use Tax!

When preparing individual income tax returns this tax season, don't forget to ask your clients if they made any out-of-state purchases subject to Wisconsin use tax. A line is included on the individual income tax returns (Forms 1, 1A, WI-Z, and 1NPR) to make the reporting of use tax easier for individuals. This line, "Sales and use tax due on out-of-state purchases" should be mentioned to each of your clients.

The Department of Revenue has contacted thousands of individuals regarding use tax. A common complaint the department receives is "Why didn't my preparer tell me about use tax? My preparer is supposed to know about taxes, not me!"

Help your clients by informing them about taxes that apply to them, **including use tax**. [↗](#)

Credit Card Payment Options Expanded

***** NEW *****

The Department of Revenue began accepting credit card payments for “Income Tax Notice of Adjustment” bills in December 2001. When a taxpayer underpays income tax, a bill is issued to the taxpayer that must be paid by the due date. The credit card payment option is available to both electronic and paper filers. Taxpayers can make their bill payments by telephone or by the Internet. Additional credit card information is available at the department’s Internet web site, www.dor.state.wi.us.

Credit cards are accepted for:

- Individual Income Tax Balances Due on Return
- Individual Income Tax Extension Payments
- Individual Income Tax Estimated Payments
- Delinquent Tax Payments
- Individual Income Tax Notices of Adjustment

Participating credit card companies are:

- American Express
- Discover/Novus
- MasterCard

Official Payments Corporation charges the taxpayer a convenience fee of 2.5% of the payment amount, with a minimum fee of \$1.00 on tax payments less than \$40.00.

The Department of Revenue does not charge this fee. The fee appears as a separate charge on the taxpayer’s credit card statement. You can find more information about Official Payments Corporation on their Internet web site at www.officialpayments.com/taxpreparers or by calling 1-877-754-4420. Materials designed exclusively for tax professionals and their clients are available on the Official Payments Corporation web site.

Benefits of offering the credit card payment option are:

- *Gives customers a more flexible payment option.* Customers have the flexibility to pay the taxes over several months, they receive a 30-day grace period, and they have the option to pay off the entire balance due at any point.
- *Gives customers a more convenient payment option.* For example, a customer can wait until April 15 to complete the tax return and then decide to use the credit card payment option, to save time. Faced with long lines at the post office, it is more convenient to pay by credit card.
- *Gives customers credit card rewards.* Customers using a credit card with a bonus rewards program may be able to earn rewards, points, cash back, or frequent flyer miles for paying the taxes. The taxpayer may defer the payment for 30 days and still gain from the rewards program.
- *Eliminates the threat of contaminated envelopes.*




Form 1099-Gs and 1099-INTs Mailed to Taxpayers

The Department of Revenue mailed nearly a million federal Form 1099-Gs and Form 1099-INTs in January 2002. Federal law provides that the department must furnish 2001 Form 1099-Gs to persons who received a Wisconsin income tax refund in 2001 and claimed state income tax payments as an itemized deduction on the federal tax return for the year to which the refund applies. Form 1099-INTs must be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue.

Regardless of whether a taxpayer receives a Form 1099-INT, all interest received from the depart-

ment in 2001 must be reported as income on the taxpayer’s 2001 federal and Wisconsin tax returns. In addition, all or a portion of a state income tax refund from Form 1099-G may be includable in federal taxable income. However, **the refund should not be included** in Wisconsin taxable income.

Form 1099-G explains how the refund reported to the Internal Revenue Service (IRS) was determined. The first line shows the amount of the refund. Subsequent lines show adjustments for: amounts applied to next year’s estimated taxes; endangered resources donations; late filing penalties and interest; homestead, farmland preservation, farmland tax relief, and earned income credits; retirement plan penalties; and other adjustments. The last line shows the refund reported to the IRS. 

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.....	266-2890
Corporation Franchise and Income Taxes	266-1143
Delinquent Taxes.....	266-7879
Electronic Filing:	
Individual Income Tax	264-9959
Sales Tax	261-6261
Electronic Funds Transfer	264-9918
Estimated Taxes	266-9940
Fiduciary, Estate Taxes	266-2772
Forms Request:	
Taxpayers	266-1961
Practitioners.....	267-2025
Fax-A-Form.....	261-6229
Homestead Credit.....	266-8641
Individual Income Tax	266-2486
Motor Vehicle Fuel Tax	266-3223
Refunds.....	266-8100
Sales, Use, Withholding Taxes	266-2776
TTY	267-1049

District Offices

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



Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars in March and April. The seminars will include information on differences between the two states' laws. All of the seminars are for general businesses.

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


March 12, 2002 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

March 19, 2002– Hudson, Wisconsin
Hudson House
1616 Crestview Drive

April 9, 2002 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Road



Wisconsin Tax Bulletin Annual Index Included

This issue of the Wisconsin Tax Bulletin includes (on pages 64 to 95) the annual index of articles, tax releases, court case summaries, private letter rulings, and other materials that have appeared in past Bulletins. The index includes information for issues 1 to 127 (through October 2001). 



Use Sales Internet Process to File

If you're a tax practitioner and would like to file your clients' sales and use tax returns electronically, the department invites you to do so using its Sales Internet Process ("SIP").


SIP is a secure Internet process that provides the convenience of filing sales and use tax returns (Form ST-12) from your computer desktop. This new technology is more efficient and flexible than filing a paper ST-12 and will save you time and money in the long run.

SIP offers many advantages over filing paper ST-12s. Using SIP eliminates the worry about whether the department receives your clients' ST-12s on time. For example, it eliminates any concerns about the postal service delivering your clients' returns by the due date. Another advantage is that SIP will do many of the computations for you. However, you will need to make a few manual pre-calculations in order to arrive at the data to enter into SIP. Perhaps the biggest advantage SIP of-

fers is the flexibility to file your clients' sales and use tax returns before the due date, and yet they can make their payments later (on the due date). SIP also gives you a receipt that confirms the filing date for each of the returns you file.

In order to use SIP, you must apply for a logon ID and password by completing a SIP application (Form S-002). Further, each client for which you will be using SIP must fill out a Form S-002, giving you permission to use SIP to file their sales and use tax returns.

For more information about SIP and to obtain a SIP application, please visit the department's Internet web site at www.dor.state.wi.us/eserv/efiling.html. You can also review (and download, if you wish) a publication about SIP, Wisconsin Publication 227 titled "*E-File Sales Tax returns with S.I.P.*," at www.dor.state.wi.us; click on "Publications" and then "Tax Publications."

If you have more questions about SIP after visiting the web site, contact the department's Inquiry and Technical Assistance unit at (608) 261-6261. 

Negligence Penalties May Be Imposed in Field Audits

The Field Audit Section of the Wisconsin Department of Revenue has the authority to impose various civil penalties during the field audit of a taxpayer's franchise, income, withholding, or sales and use tax returns.

Following are the main factors considered by the department in determining whether penalties should be imposed, and statistics indicating the percentage of assessments in the past four years that include negligence penalties.

The main factors considered by the department for the imposition of negligence penalties include:

- Taxpayer's awareness of the taxability of items adjusted, including whether taxpayer should have been aware.
- Certainty or uncertainty of the taxable status of the item.

- Knowledge, education, and expertise of the person(s) responsible for filing the return.
- Prior audit history and prior penalty imposition.
- Adequacy of the records and taxpayer's efforts to establish adequate records.
- Consistency and pattern of errors.
- Any other arguments that relate to whether or not there was good cause for underreporting.

Field Audit Negligence Penalties Imposed:

	1998	1999	2000	2001
Number of Actions	1385	1454	1424	1409
Number of Penalties	337	335	344	330
Percentage	24.3%	23.0%	24.2%	23.4%



Sampling Used in Field Audits

The Department of Revenue uses sampling in many field audits. In general, sampling is used when it is not efficient to review 100% of the taxpayer's records. Section 77.59(2), Wis. Stats. (1999-00), provides that the department may use sampling "whether or not the person being audited has complete records of transactions and whether or not the person being audited consents."

Not all audits involve sampling. Even if sampling is used in the examination of a certain area, a 100% review of the transactions could be made for other areas of the taxpayer's business. For example, vehicle sales by an automobile dealership are not normally sampled.


The department uses both statistical and non-statistical samples. The two most common non-statistical samples used are the alpha sample and the time-based sample (for example, one-month-per-year).

Statistical samples use random selection techniques to ensure that every sampling unit has an equal chance of selection. The results of a statistical sample are evalu-

ated using probability theory. Statistical samples are computer-generated using programs that the department has written. In order to perform a statistical sample, taxpayer records are needed in a computer-readable format.

The department averages 30-35 statistical samples per year. On average, 850 non-statistical samples are completed per year. One audit may have several non-statistical samples associated with it.

In order to ensure that proper sampling procedures are used and that procedures are consistently employed, the department maintains a staff of sampling specialists. The auditor's supervisor and a sampling specialist review all samples. It is the department's goal that every sampling procedure used is understood by the taxpayer.

Wisconsin Publication 515, "*Non-Statistical Sampling*," discusses the department's use of non-statistical sampling. To obtain a copy of this publication, go to the Department of Revenue's Internet web site, www.dor.state.wi.us. Click on "Publications" and then "Tax Publications." 

Field Audit Appeals

The Department of Revenue, in its Strategic Plan, identifies the following three goals to achieve its vision of "Making taxpaying less taxing":

- Implement good tax policy
- Deliver good customer service
- Operate efficiently

Tax fairness, good customer service, and efficiencies are measured by the number of finalized actions appealed to the Resolution Unit, and the number of finalized actions appealed to the Wisconsin Tax Appeals Commission.

The following Field Audit Appeal statistics demonstrate the department's commitment to making taxpaying less taxing:

	Fiscal Year Ending	
	6/30/00	6/30/01
Number of Final Field Audit Actions	1532	1451
Number of Appeals to the Department's Resolution Unit	197	169
Percent of Actions Appealed to Resolution Unit	12.86%	11.65%
Number of Appeals to Wisconsin Tax Appeals Commission	27	25
Percent of Appeals to Wisconsin Tax Appeals Commission	1.76%	1.72%



How to Obtain Copies of Your Tax Returns

What Is Available

Upon request, the Department of Revenue will provide taxpayers with copies of their previously filed tax returns (or information regarding them). Copies of returns

or information are generally mailed within 10 days after a request is received.

The chart at the end of this article lists returns and information that are available, and the number of prior years for which they are available.

When a copy is requested, a copy of the federal return will also be provided if it is a part of the Wisconsin re-

turn. Wage statement copies are not always available with Forms 1A and WI-Z.

Copies of tax returns are generally available within four months after the returns are filed.

Who May Request Copies

Taxpayers, partners in a partnership, or corporation officers may request copies of their own tax returns. Other persons may also request copies, if they provide a power of attorney form or other written authorization, signed by the taxpayer, partner, or corporation officer, and specifying the type of tax return and periods requested.

Requests for copies of a deceased taxpayer's tax returns must include a certified domiciliary letter and be signed by the personal representative of the estate. If there is no estate, a certified copy of the death certificate and a statement of the reason for the request are required.

Fees

The fee is \$5.00 for each return or information request. There is an additional fee of \$1.00 per return for a certified copy. **Payment must be sent with the request.** Checks or money orders should be made payable to "Wisconsin Department of Revenue."

How to Request

All requests for copies of returns or information must be made in writing (the written request may be faxed) or in person. Requests by telephone will not be accepted.

Requests must include the following:

1. Name on the requested tax return.
2. Social security number (including spouse's social security number, if applicable), or other identification number of the taxpayer.

3. Type of return and year(s) or period(s) of the tax return being requested.
4. Name and address to which the copies are to be mailed.
5. Signature of the taxpayer, partner, corporation officer, or authorized representative.
6. Payment of appropriate fees for requested information.

Where to Direct Requests

Written Requests: Mail your request to Wisconsin Department of Revenue, Electronic Records & Document Management, Mail Stop 2-232B, PO Box 8903, Madison WI 53708-8903.

In-Person Requests: Make your request at the Department of Revenue, Customer Service, 2135 Rimrock Road, Madison, Wisconsin. Office hours are 7:45 a.m. to 4:30 p.m. Proper identification (for example, a driver's license) is required.

Questions

If you have questions, you may call the Department of Revenue in Madison, at (608) 266-2890.

Returns/Information Available	# of Years
Corporation tax returns	20
Gift tax reports	5
Homestead credit claims	10
Individual income tax returns	4
Insurance tax returns	6
Partnership tax returns	4
Sales/use tax returns	10
Trust fiduciary returns	4
Microfilmed withholding tax deposit reports	10



Focus on Publications: Sales Tax Brackets

Is there one document that provides all of the different sales tax brackets for collecting state, county, stadium, and premier resort area sales taxes? Now the answer is "Yes." The department's newest sales tax publication, Publication 229 titled "*Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales*," describes the "bracket system" for collecting sales taxes from custom-

ers on retail sales. Bracket charts included are as follows:

- 5% state sales tax.
- 5.1% state and baseball stadium sales taxes.
- 5.5% state and county or state and football stadium taxes.
- 5.6% state, county, and baseball stadium sales taxes.
- 6% state, county, and premier resort area sales taxes.

Publication 229 also describes the “mathematical computation” that may be used to collect sales taxes in lieu of the brackets.

See the article titled “Tax Publications Available” on page 18 of this Bulletin for ways to obtain copies of Publication 229 or any of the other Department of Revenue publications. [🔗](#)



Focus on Publications: Taxation of Native Americans

How do individual and corporate income/franchise taxes apply to Native Americans? What about sales/use taxes, excise taxes, and property taxes? The answers to these and other questions can be found in the department’s new comprehensive publication, Publication 405 titled “*Wisconsin Taxation of Native Americans*.”

Publication 405 also provides definitions of Native American-related terms and discusses federal preemption, withholding tax, recycling surcharge, and

information returns. In addition, it discusses other taxes and fees, who to contact for assistance, and business development.

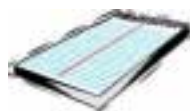
A copy of Publication 405 appears on pages 41 to 63 of this Bulletin. See the article titled “Tax Publications Available” on page 18 of this Bulletin for ways to obtain additional copies of Publication 405 or any of the other Department of Revenue publications. [🔗](#)

Withholding Tax Update Sent to Employers

The annual Withholding Tax Update was sent in December 2001, along with Forms WT-7, *Employer’s Annual Reconciliation of Wisconsin Income Tax With-*

held from Wages, to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update appears on pages 39 and 40 of this Bulletin. [🔗](#)



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 issue, 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 97 of this Bulletin. The Index is also on the department’s Internet web site at www.dor.state.wi.us. Just click on “Publications.” [🔗](#)

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 1-151, PO Box 8951, Madison WI 53708-8951; call (608) 266-1961; or fax a request to (608) 261-6913.

By E-Mail

You may e-mail your request to forms@dor.state.wi.us.

Via Your Fax Machine

Use the department's Fax-A-Form system by calling (608) 261-6229 from a fax telephone and entering the retrieval code "10" plus the publication number.

Via the Internet

Access the department's Internet web site at www.dor.state.wi.us, and click on "Publications" and then "Tax Publications."

Note: The numbers of some publications are followed by an asterisk. These are publications that are new or have been revised since the last issue of the *Wisconsin Tax Bulletin*. (Publication 119 was revised effective 12/01, but a date of 12/00 was erroneously printed on the cover.)

Income and Franchise Taxes

- 102* Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/01)
- 103* Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (11/01)
- 104 Wisconsin Taxation of Military Personnel (10/01)
- 106* Wisconsin Tax Information for Retirees (1/02)
- 109* Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2001 (11/01)
- 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) (12/00)
- 120* Net Operating Losses for Individuals, Estates, and Trusts (11/01)
- 121* Reciprocity (12/01)
- 122* Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2001 (11/01)
- 123* Business Tax Credits for 2001 (12/01)
- 125* Credit for Tax Paid to Another State (11/01)
- 126* How Your Retirement Benefits Are Taxed (11/01)
- 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 (11/01)
- 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)
- 229* Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales (11/01)

Other Taxes and Credits

- 127* Wisconsin Homestead Credit Situations and Solutions (12/01)
- 128* Wisconsin Farmland Preservation Credit Situations and Solutions (12/01)
- 400* Wisconsin's Recycling Surcharge (12/01)
- 403 Premier Resort Area Tax (2/98)
- 410 Local Exposition Taxes (5/01)
- 503* Wisconsin Farmland Preservation Credit (12/01)
- 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 (12/01)
- 140 A Tax Practitioner's Guide to Electronic Filing (6/00)
- 401* Extensions of Time to File (11/01)
- 405* Wisconsin Taxation of Native Americans (12/01)
- 500* Tax Guide for Wisconsin Political Organizations and Candidates (11/01)
- 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) [!\[\]\(e40bb48ad1470e3a14017c64c5673877_img.jpg\)](#)

Question and Answer



(Individual Income Tax)

Q May a deduction be claimed for contributions to an Internal Revenue Code sec. 529 qualified state tuition program established by a state other than Wisconsin?

A No. Section 71.05(6)(b)32, Wis. Stats. (1999-00), provides a deduction of up to \$3,000 for an amount paid into a college savings account, as described in sec. 14.64, Wis. Stats. Section 14.64 provides for the Wisconsin college savings account (known as EdVest). Even though the EdVest program must meet the requirements of sec. 529, IRC, it is the EdVest program that is described in sec. 14.64. Thus only contributions to the EdVest program qualify for the Wisconsin deduction. Contributions to other state-sponsored programs do not qualify. (**Note:** The American Express Company markets a Wisconsin EdVest program that is called “tomorrow’s scholar.” This program is also established under sec. 14.64, and contributions to the program qualify for the deduction.)

Q Under federal law, an individual may roll over amounts from one sec. 529 account to another. May a deduction be claimed when an amount is rolled over from a sec. 529 account in another state to an EdVest account?

A Yes. Assuming the beneficiary is the account owner or his/her dependent child, the rollover is an

amount paid into the college savings account, and a deduction of up to \$3,000 could be claimed.

Example: If \$5,000 was rolled over from a New York sec. 529 plan to an EdVest account, the individual could claim a deduction of \$3,000 in the year of the rollover.

(Homestead Credit)

Q What is the procedure for filing a homestead credit claim when I have already filed an income tax return?

A If you have filed your Wisconsin income tax return and now wish to file a homestead credit claim, follow these four steps:

1. Write “Income Tax Return Separately Filed” at the top of your homestead credit claim, Schedule H.
2. Attach a **complete** copy of your Wisconsin income tax return (Form 1, 1A, WI-Z, or 1NPR). This includes copies of wage statements and all Wisconsin schedules. (**Note:** If you filed your Wisconsin income tax return using TeleFile or NetFile, attach copies of your Wisconsin TeleFile/NetFile worksheet and wage statements.)
3. Write “Duplicate” at the top of the Form 1, 1A, WI-Z, or 1NPR copy.
4. If your Wisconsin return is a Form 1 or 1NPR, attach a copy of your federal income tax return and supporting schedules. [☞](#)

Manufacturing Penalty Revised

(*Note: This article was prepared by the Manufacturing and Telco Assessment Bureau of the department’s State and Local Finance Division.*)

The 2001-2003 Budget Bill, Wisconsin Act 16, revised penalties assessed to owners of manufacturing property, for failing to file self-reporting forms (M-Forms) under sec. 70.995(12)(c), Wis. Stats., effective January 1, 2002. The minimum and maximum penalties have changed, along with the time increments. The statutes

now provide that “...the taxpayer shall pay to the department of revenue a penalty of \$25 if the form is filed 1 to 10 days late; \$50 or 0.05% of the previous year’s assessment, whichever is greater, but not more than \$250, if the form is filed 11 to 30 days late; and \$100 or 0.1% of the previous year’s assessment, whichever is greater, but not more than \$750, if the form is filed more than 30 days late.” As in the past, penalties are due 30 days after they are assessed and are delinquent if not paid on or before that date. [☞](#)

Waste Treatment Property Tax Exemption Revised

(Note: This article was prepared by the Manufacturing and Telco Assessment Bureau of the department's State and Local Finance Division.)

The 2001-2003 Budget Bill, Wisconsin Act 16, revised the exemption approval process of industrial waste treatment property under sec. 70.11(21), Wis. Stats., effective January 1, 2002. A waste treatment facility is property (land, land improvements, building, machinery) used for the treatment of industrial waste or air contaminants as defined in secs. 281.01(5) and 285.01(1), Wis. Stats.

The formal Department of Revenue approval process and the Form PA-008, "Application for Exemption of

Waste Treatment Facility," have been eliminated for non-utility waste treatment property.

A company classified and assessed as a "manufacturer" by the Department of Revenue under sec. 70.995, Wis. Stats., will report waste treatment property on the manufacturing self-reporting forms. Waste treatment personal property costs must be reported on the M-P Wisconsin Manufacturing Personal Property Return, Schedule Y-P line 23. Real estate costs related to waste treatment must be reported on the M-R Wisconsin Manufacturing Real Estate Return, Schedule Y-R, Part 1 line 6 and on Schedule R-6. Owners must retain a listing of assets classified as exempt waste treatment on these forms, at their place of business, for inspection by the Department of Revenue. [☞](#)

Historical Society Curator Imprisoned

David Wooley, 53, a former curator at the Wisconsin State Historical Society Museum, was sentenced in November 2001, to 15 years in prison for stealing more than \$100,000 worth of the museum's Indian artifacts, and for failure to file Wisconsin income tax returns for three years. Dane County Circuit Judge Moria Krueger also sentenced Wooley to 30 years of probation.

Wooley had earlier pled guilty to 14 counts of felony theft and three counts of failing to file state income tax returns. Another 21 counts of theft were dismissed as part of a plea agreement but were considered for sentencing. As part of his probation, Wooley was banned from working as a museum curator, entering any Wisconsin Historical Society building, or buying, selling, or collecting any Indian artifacts. He could have been sentenced to up to 100 years in prison.

Also in November 2001, H. Jeannine Selvaag, 69, was sentenced to seven years probation after she was convicted of taking nearly \$45,000 from the South Central Federation of Labor and of failing to file a Wisconsin income tax return. Selvaag, who was the union organization's bookkeeper for about 30 years, pled no contest to theft by bailee and failure to file a 1999 Wisconsin income tax return.

Dane County Circuit Judge David Flanagan also ordered Selvaag to serve 60 days in jail, although that time was expected to be spent outside the jail on electronic

monitoring, in accordance with a plea agreement. She was also ordered to make full restitution.

Michael A. McElwrath, 31, of Oak Creek, was found guilty in November 2001, on one count of theft by bailee and one count of state income tax evasion. Dane County Circuit Judge Angela B. Bartell pronounced McElwrath guilty after he pled no contest to each felony count. He also admitted to committing five additional counts of forgery that were dismissed as part of a plea agreement.

The District Attorney stated that McElwrath filed a 2000 Wisconsin income tax return on which he failed to report embezzlement income of over \$54,000. The case was prosecuted by the Dane County District Attorney's Office following an investigation by the Department of Revenue's Fraud unit.

In addition to any criminal penalties that were to be imposed, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the tax, penalty, and interest due follows the conviction for criminal tax violations.

Gary R. Piehl, 47, Milwaukee, pled guilty in November 2001, in Milwaukee County Circuit Court, to felony charges of posing as a Wisconsin Department of Revenue agent and for identity theft. The charges, initiated following a joint investigation by the Department of Revenue and the U. S. Postal Inspection Service, involved a scheme to get information about recently

deceased people to falsely obtain credit cards. Piehl could be sentenced to up to 15 years in prison.

According to the criminal complaint, Piehl searched obituary notices to identify deceased persons and their respective funeral homes. He then tricked the funeral homes into providing the telephone number of the surviving spouse. Piehl then contacted the spouse and claimed he was an agent with the Wisconsin Department of Revenue and was checking to see if the spouses had filed a final tax return. He tried to get the surviving spouse to divulge the decedent's social security number, date of birth, etc. On other occasions, Piehl called a surviving spouse and posed as a funeral home employee or tombstone maker looking for the same information.

Piehl also sifted through discarded mail at a rooming house, and on one occasion he obtained the identity of a person, which he used to acquire a credit card. Using this card, he made 25 cash withdrawals totaling nearly \$5,000 between November 1999 and January 2000.

Piehl was first suspected of posing as a Department of Revenue agent in 1996, when he used newspapers and targeted persons who had recently received job promotions. He then allegedly called these persons and told them the Department of Revenue was processing their income tax returns and needed their social security number to complete the processing. In a 1997 plea bargain, Piehl pled guilty to two misdemeanor counts of financial transaction crimes for obtaining credit cards using the identities of other persons.

In December 2001, Barry D. Jolin, 48, Minocqua, owner of Jolin's Marine Center, Inc. in Boulder Junction, made

an initial appearance in Vilas County Circuit Court, before Judge James Mohr. He appeared to answer a complaint alleging six felony counts of theft of sales taxes and twelve misdemeanor counts of failing to file withholding tax returns and remit withholding taxes collected.

According to the complaint, Jolin intentionally failed to pay sales taxes collected from customers for the months of May and June of 1998, June, August, and December of 1999, and June of 2001. The amounts collected but not remitted totaled over \$175,000. The misdemeanor charges further allege that Jolin willfully failed to file reports and make payroll tax deposits of \$12,088 withheld from his employees during 12 reporting periods from February through July of 2000.

The complaint states that a special agent of the Department of Revenue examined corporate records that showed that Jolin paid other creditors, including himself, in preference to paying the sales and withholding taxes to the state. Sales tax returns signed by Jolin were filed for all the periods in question. They were filed either without payment or with not sufficient funds ("NSF") checks. The withholding tax returns were not filed but the amount withheld from employees was established from payroll records of Jolin's Marine Center.

Information in the complaint indicates that Jolin paid all amounts due when he became aware of a pending complaint in early 2001. Then, in July 2001, Jolin sent an NSF check for \$40,999 supposedly in payment for June sales taxes collected. That amount was unpaid on the date the complaint was filed, November 14, 2001.

If convicted on all counts, Jolin faces a total of 79 years in prison and \$150,000 in fines. [!\[\]\(758ebdf4629c903da74c2e079717ae32_img.jpg\)](#)



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.

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INDIVIDUAL INCOME TAXES



Alimony. *Jeanie Lass and David J. Lass, Sr. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 12, 2001). The issue in this case is whether payments made by David J. Lass, Sr. to Jeanie Lass were alimony or separate maintenance under Internal Revenue Code section 71 and, therefore, taxable to Ms. Lass and deductible by Mr. Lass.

The taxpayers were divorced from each other in January 1989. One provision in the Judgment of Divorce was that, along with regular maintenance payments, “additional maintenance” in the form of a monthly wage assignment was imposed on Mr. Lass for continued health insurance coverage of Ms. Lass.

A December 1992 “Stipulated Addition to Amended Post Judgment Orders” continued Mr. Lass’ obligation to pay for Ms. Lass’ health insurance coverage. The obligation was again restated in a May 1993 “Findings of Fact and Order.” A July 1994 “Stipulation and Order” directed Mr. Lass’ counsel to establish a new trust fund for Ms. Lass’ medical insurance and expenses. The funds in the trust fund were applied to pay her medical insurance and expenses.

In March 2000, the department issued an assessment to each taxpayer for tax years 1995 through 1998. Each taxpayer filed a timely petition for redetermination, both of which the department denied. Both taxpayers then filed timely petitions for review with the Commission.

The Commission concluded that the payments made by David J. Lass, Sr. to Jeanie Lass were alimony or separate maintenance under Internal Revenue Code section 71 and, therefore, taxable to Ms. Lass and deductible by Mr. Lass. The department’s denial of Ms. Lass’ petition for redetermination was affirmed, and the denial of Mr. Lass’ petition for redetermination was reversed.

Neither the department nor either taxpayer has 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. [🔗](#)



Appeals - failure to prosecute; Appeals - frivolous.

Gary and Joan Pansier vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 20, 2001). The issues in this case are whether the taxpayers' petition for review should be dismissed on the basis that they failed to prosecute their appeal, and whether the taxpayers have offered only groundless and frivolous arguments to disprove the department's assessment, thereby subjecting them to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

In November 1999, the department issued an estimated assessment to the taxpayers for tax years 1995 through 1998, based on their failure to file Wisconsin income tax returns for those years. The taxpayers' former representative filed a document, which the department deemed a petition for redetermination. The department denied the petition for redetermination, and the taxpayers filed a timely petition for review with the Commission.

The taxpayers sent two sworn affidavits to the department's chief counsel, "which deny the existence of" the department. The taxpayers then sent a letter to the chief counsel, in which, among other things, they declared the tax warrants against their property void, declared the department nonexistent, asserted that the assessment against them was void, and stated that the department was "acting as [their] alien enemy."

The Commission scheduled a telephone conference and informed the representative to provide his telephone

number, which he did not do. The representative did participate in the telephone conference and indicated the taxpayers would file a motion for summary judgment. The Commission ordered the taxpayers to file the original and three copies of the motion for summary judgment, brief, and supporting papers by a specific date. The taxpayers did not comply with this order.

The Commission later notified the parties of another telephone conference, but the taxpayers could not be reached by telephone to participate. During the telephone conference, the department stated that it planned to file a dispositive motion. The department then filed a motion to dismiss the taxpayers' petition for review for their failure to prosecute their appeal.

The Commission concluded that taxpayers failed to prosecute the appeal they filed with the Commission. They merely responded with a series of statements that did not address the assessment. The Commission granted the department's motion and dismissed the petition for review.

The Commission further concluded that the taxpayers' arguments in the matter are frivolous and groundless, and the Commission thus assessed an additional \$500, pursuant to sec. 73.01(4)(am), Wis. Stats.

The taxpayers have not appealed this decision.



Appeals - failure to state a claim; Appeals - frivolous.

Joseph D. Meyer vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, September 13, 2001). The issues in this case are whether the taxpayer's petition for review should be dismissed on the basis that it fails to state a claim upon which relief can be granted, and whether the taxpayer's documents contain only frivolous and irrelevant arguments to disprove the department's assessment, thereby subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

In January 2000, the taxpayer filed an incorrect and incomplete 1999 Wisconsin income tax return, with zeroes written on each line until the line titled "Wisconsin income tax withheld," on which "\$7,911.30" was written. That amount was also entered on the refund line. No Form W-2 was attached to the tax return, but a 1999 Form W-2 was issued to the taxpayer, reflecting wages

of \$122,557.04 and Wisconsin income tax withheld of \$7,911.30.

In March 2000, the department issued an assessment to the taxpayer, regarding his 1999 income tax return. The taxpayer wrote a letter objecting to the assessment, which the department deemed a petition for redetermination. On May 15, 2000, the department denied the petition for redetermination. It was personally served on the taxpayer on July 7, 2000. The taxpayer wrote a letter to the Commission on July 12, 2000, which requested it to "review my 1999 WI Tax return and subsequent Department of Revenue (DOR) redetermination . . ." The \$25 filing fee required under sec. 73.01(5)(a), Wis. Stats., for an appeal to the Commission was not included.

On October 5, 2000, the taxpayer filed with the Commission a letter, with exhibits, appealing the department's denial of his petition for redetermination.

No filing fee was included. The Commission requested the \$25 filing fee, and it was received on October 20, 2000.


The 60-day period from the July 7, 2000, date of the taxpayer's receipt of the department's denial of the petition for redetermination, within which he was required to file an appeal to the Commission, expired on September 5, 2000.

The department filed with the Commission a motion to dismiss for untimely filing, or alternatively to dismiss for the failure of the taxpayer to state a claim upon which relief can be granted. The department further moved for the imposition of an additional assessment against the taxpayer under sec. 73.01(4)(am), Wis. Stats. The taxpayer also filed a motion for summary judgment under sec. 802.08, Wis. Stats.

The Commission concluded that there is no genuine issue as to any material fact in the petition for review, and that it does not state a claim upon which relief can be granted. It granted the department's alternative motion and dismissed the petition for review.

The Commission further denied the taxpayer's motion for summary judgment and concluded that the taxpayer's documents contained only frivolous, irrelevant, and useless ramblings about the department's authority and the Wisconsin income tax statutes. The Commission assessed the taxpayer an additional \$500, pursuant to sec 73.01(4)(am), Wis. Stats.

The taxpayer has not appealed this decision. [!\[\]\(de95854c7ee024cfadc48187bbb781b2_img.jpg\)](#)


 **Appeals - jurisdiction.** *Jerome Redcay vs. Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission* (Circuit Court for Wood County, June 21, 2001). This is an action for judicial review of a Wisconsin Tax Appeals Commission decision dated April 3, 2001. See *Wisconsin Tax Bulletin* 127 (October 2001), page 20, for a summary of the Commission's decision.

The taxpayer filed a petition for rehearing with the Commission, and the Commission denied the petition on April 30, 2001. The taxpayer then filed a petition for judicial review with the Circuit Court but did not serve a copy of it upon the department by personal delivery or certified mail, as required under sec. 227.53(1)(c), Wis.

Stats. The department has filed with the Circuit Court a motion to dismiss, for lack of personal and subject matter jurisdiction, since the taxpayer failed to comply with statute.

The Circuit Court concluded that since strict compliance with sec. 227.53(1)(c), Wis. Stats., is required and the taxpayer failed to comply with the statute, the Circuit Court lacks both subject matter jurisdiction to hear the case, and personal jurisdiction over the department. The Circuit Court therefore dismissed the action for judicial review.

The taxpayer has not appealed this decision. [!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd_img.jpg\)](#)

 **Appeals - premature; Appeals - failure to state a claim; Appeals - frivolous; Protective order - interrogatories; Protective order - department assertions.** *Gary J. Simon vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 17, 2001). The issues in this case are:

- A. Whether the taxpayer's petition for review regarding a September 11, 2000, letter from the department was premature.
- B. Whether two other petitions for review should be dismissed on the basis that they fail to state a claim upon which relief can be granted.

- C. Whether the taxpayer is entitled to an order protecting him from the department's assertions that he owes Wisconsin income tax.
- D. Whether the department is entitled to a protective order from the taxpayer's interrogatories.
- E. Whether the taxpayer's documents contain only groundless and frivolous arguments, thereby subjecting him to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

On September 11, 2000, a department auditor acknowledged receipt of the taxpayer's 1993 through 1996 Wisconsin income tax forms, which requested a refund of all income taxes withheld for those years. The auditor

stated that wages are taxable and requested the taxpayer to file and sign income tax returns reporting all income received. The auditor stated that if proper returns were not filed the department would issue an assessment based on an estimate of the taxpayer's income for those years.

The taxpayer appealed this letter to the Commission by filing a petition for review. On appeal, the department moved to dismiss the petition for review under secs. 71.88 and 73.01(5)(a), Wis. Stats., on the basis that it was filed prematurely.

In October 2000, the department issued an estimated assessment to the taxpayer for tax years 1996 through 1999. In January 2001, the department issued an estimated assessment to the taxpayer for tax years 1993 through 1995. In response to each assessment, the taxpayer filed a petition for redetermination, which the department denied. The taxpayer filed two petitions for review with the Commission, one relating to each assessment.

For tax years 1993 to 1995, the taxpayer reported income of \$120, \$76, and \$24, respectively. He reported no income on his 1996 to 1999 forms. Wage statements attached to the forms reflected wages of approximately \$35,000 to \$44,000 each year. Each form requested a refund of all Wisconsin taxes withheld for that year, ranging from \$2,250 to \$2,850. The department moved to dismiss both petitions for review under sec. 802.06(2)(a)6, Wis. Stats., on the basis that the taxpayer has failed to state a claim on which relief can be granted.


The taxpayer opposed the department's motions and moved for an order protecting him from the department's assertions that he owes Wisconsin income tax.

In May 2001, the department received a 5-page document from the taxpayer, entitled "Interrogatories." The questions had nothing to do with whether the taxpayer filed complete and correct Wisconsin income tax returns. Examples of the taxpayer's attempt to elicit blatantly irrelevant information include requests for personal information about the department's attorney handling the case and each person who generated the assessments, and the name of the person in charge of the department's computer system and how long the person

had held the position. The department moved for a protective order under sec. 804.01(3), Wis. Stats., on the grounds that the interrogatory was an annoyance, irrelevant, and an undue burden and expense without any material benefit to the taxpayer.

The Commission concluded as follows:

- A. The petition for review relating to the September 11, 2000, letter is premature and is therefore dismissed. The statutes require that before appealing to the Commission, a person must contest an assessment by filing a petition for redetermination with the department, which the department must deny in whole or in part. There was no such petition or action by the department.
- B. The two petitions for review relating to the two assessments covering the tax years 1993 through 1999 fail to state a claim upon which relief can be granted and are therefore dismissed. Rather than filing correct and complete Wisconsin income tax returns, the taxpayer responded to the department's assessments and its denial of his claims for refund with a series of statements that do not address the department's actions.
- C. The taxpayer's motion for an order protecting him from the department's assertions that he owes Wisconsin income tax is denied.
- D. The department's motion for a protective order from the taxpayer's interrogatories is granted, and the department is not required to answer them. The interrogatories constitute an annoyance and oppression, and they represent an undue burden and expense to the department without any material benefit to the taxpayer.
- E. The taxpayer is assessed an additional \$500, pursuant to sec. 73.01(4)(am), Wis. Stats. The taxpayer's documents contain only frivolous, irrelevant, groundless, and useless ramblings about the department's authority and practice about the Wisconsin income tax statutes.

The taxpayer has appealed this decision to the Circuit Court. 

**Assessments - correctness; Appeals - frivolous.**

John Gutsch vs. Wisconsin Department of Revenue (Circuit Court for Dunn County, September 6, 2001). This is a review of a decision of the Wisconsin Tax Appeals Commission dated March 23, 2001. See Wisconsin Tax Bulletin 125 (July 2001), page 13, for a summary of the Commission's decision.

The Circuit Court reviewed the record and submissions submitted by the taxpayer on appeal. The Court found

the taxpayer's arguments frivolous, just as the Commission did.

The Circuit Court concluded that the Commission was correct in granting summary judgment in favor of the department, and it therefore affirmed the Commission's decision.

The taxpayer has not appealed this decision.

**Hearing notice - failure to appear; Appeals - primarily for delay.**

Thomas J. and Christine Shewczyk vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, August 9, 2001). The issues in this case are whether the taxpayers' failure to appear at trial bars them from questioning the assessment at issue, and whether the taxpayers maintained this proceeding primarily for delay, thus subjecting them to an additional assessment of \$1,000, pursuant to sec 73.01(4)(am), Wis. Stats.

In March 1998, the department issued an income tax assessment to the taxpayers for the years 1993 through 1996. The taxpayers filed a petition for redetermination, which the department granted in part and denied in part. The taxpayers then filed a timely petition for review with the Commission.

During each of the first four scheduling/status conferences held in this matter, the taxpayers failed to provide the department with substantiation of their position on disputed items. The Commission then served a Scheduling Order Memorandum, which required the taxpayers to serve on the department, within 24 days, a description of each adjustment they were to raise at trial, copies of all exhibits to be introduced at trial, and names and ad-

resses of each witness they were to call at trial. The taxpayers did not comply with the Scheduling Order Memorandum.

After the deadline for the taxpayers to provide the information had passed, the department filed a Notice of Motions and Motion to Dismiss and, in the alternative, Motion in Limine. The taxpayers did not respond to the motions. In response to the Commission's inquiry whether the taxpayers intended to go ahead with the trial, neither the taxpayers nor their representative informed the Commission of their intent. The trial was held as scheduled, and the taxpayers and their representative failed to appear.

The Commission concluded that the taxpayers' failure to appear at trial bars them from questioning the assessment at issue. The Commission thus granted the department's motion and dismissed the petition for review. In addition, since it appears that the taxpayers maintained this proceeding primarily for delay, the assessment is increased by \$1,000, pursuant to sec 73.01(4)(am), Wis. Stats.

The taxpayers have appealed this decision to the Circuit Court.

**Retirement funds exempt.**

John Q. and Ruth R. Kamps vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 31, 2001). The issue in this case is whether Wisconsin Retirement System payments received by Ruth R. Kamps are exempted from Wisconsin's income tax by sec. 71.05(1)(a), Wis. Stats.

Ruth R. Kamps ("the taxpayer") taught in the Milwaukee public schools from 1957 to 1961. As a result of this employment, she was a member of the Milwaukee Public School Teachers' Annuity and Retirement Fund ("MTRF") during these years.

In 1961, the taxpayer applied to withdraw her contributions from the MTRF. She agreed that withdrawal of her payments "shall constitute a full and complete discharge and release of all right, interest or claim on [her] part to state deposit accumulations which accrued while a member of said combined group." The application was approved and she was paid her full and complete refund, leaving in her account no contributions from either her or the state.

The taxpayer became a member of the State Teachers Retirement system ("STRS") in 1973. In 1996, she purchased 2.5 years of her previously forfeited service. She

retired in 1996, and these years of service were included in the calculation of her retirement benefits paid by the Wisconsin Retirement System (“WRS”).

On their 1996, 1997, and 1998 Wisconsin income tax returns, the taxpayers reported the WRS retirement payments of \$7,832, \$20,382, and \$20,254, respectively. In January 2000, the taxpayers filed amended returns for 1996, 1997, and 1998, seeking refunds based on their assertion that the taxpayer’s WRS retirement payments were not taxable by virtue of sec. 71.05(1)(a), Wis. Stats.

In Wisconsin Tax Bulletins 76 (April 1992) and 98 (July 1996), the department advised the public that retirement payments paid to a member of the STRS who withdrew STRS deposits prior to 1964 and then received credit for a portion of forfeited STRS service by virtue of sec. 42.245, Wis. Stats. (1965-66), were exempt from taxation pursuant to sec. 71.05(1)(a), Wis. Stats. The taxpayers learned of these Tax Bulletins and assumed that the reasoning in the bulletins applied to them. They relied on this reasoning in filing their January 2000 claims for refund. In *Wisconsin Tax Bulletin* 118 (January 2000), the department retracted the statements in Tax Bulletins 76 and 98, effective with tax years beginning after January 1, 2000.

In July 2000, the department denied the claims for refund and the taxpayers filed timely petitions for

redetermination. The department denied the petitions for redetermination, and the taxpayers filed timely petitions for review with the Commission.

The Commission concluded that the Wisconsin Retirement System payments received by Ruth R. Kamps are not exempted from Wisconsin’s income tax by sec. 71.05(1)(a), Wis. Stats. The Commission noted that it had consistently held that sec. 71.05(1)(a) does not exempt retirement benefits paid to annuitants who were members of a qualifying pension fund but forfeited their accumulations and later purchased forfeited years of service.

The taxpayers’ argument that the department should be precluded from denying their refunds under the doctrine of equitable estoppel (reliance on Wisconsin Tax Bulletins 76 and 98) also fails. Reliance on those bulletins was not reasonable because the taxpayer was not a member of the STRS, which was the fund discussed in those bulletins.

The taxpayers have appealed this decision to the Circuit Court.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. [!\[\]\(cf531ed27e91483460120fcc057b3901_img.jpg\)](#)



Retirement funds exempt. *William K. and Virginia K. Thomas vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 9, 2001). The issue in this case is whether, after William Thomas withdrew his employee contributions from the Milwaukee Teachers Retirement Fund (“MTRF”) in 1965, there remained anything in his MTRF account upon which his subsequent retirement benefit was based, thus making those benefits exempt from the Wisconsin income tax under sec. 71.05(1)(a), Wis. Stats.

The taxpayers filed amended income tax returns claiming refunds of Wisconsin income tax paid on retirement annuity payments received by William Thomas in 1995 through 1998 from the Wisconsin Retirement System (“WRS”). From 1955 to 1965, Mr. Thomas was a member of the Milwaukee Teachers Retirement Fund (“MTRF”). In October 1965, he withdrew his employee contributions and forfeited all employer contributions. He signed a waiver that released the MTRF from “all

right, interest or claim on [Mr. Thomas’s] part to state deposit accumulations which accrued while a member” of the MTRF. Years later, prior to his retirement, he bought back his withdrawn contributions for the years at issue.

The department argued that even if the Commission assumed that the facts alleged in the petition for review are true, they do not constitute a valid reason to reverse the department’s action on the taxpayer’s petition for redetermination. The Commission construed this as a motion to dismiss the petition for review for failure to state a claim on which relief can be granted.

The Commission concluded that the taxpayers have failed to state a claim upon which relief can be granted. The Commission therefore granted the department’s motion and dismissed the petition for review.

The taxpayers have not appealed this decision. [!\[\]\(56549452e01ca28bdf2500ced9653143_img.jpg\)](#)

CORPORATION FRANCHISE AND INCOME TAXES



Delinquent interest on underpayment interest.

General Casualty Company of Wisconsin ad Regent Insurance Company vs. Wisconsin Department of Revenue (Circuit Court for Dane County, September 4, 2001). This is a judicial review of a decision of the Wisconsin Tax Appeals Commission dated January 25, 2001. See *Wisconsin Tax Bulletin* 124 (April 2001), page 21, for a summary of the Commission's decision. The issue in this case is whether the 18% delinquent interest provision of sec. 71.84(2)(a), Wis. Stats., was properly applied under circumstances where an audit retroactively creates an underpayment of estimated tax.

In 1990, General Casualty and its subsidiary, Regent Insurance, were acquired by Winterhur U.S. Holdings. In 1997, Winterhur entered into a settlement agreement with the Internal Revenue Service ("IRS") with respect to the amortizable life of intangible assets attributed to each acquired company. The settlement agreement created additional federal taxable income for the taxpayers, thereby increasing their Wisconsin franchise tax liability for the audit tax years 1990 through 1995 ("the audit period").

During the audit period, each taxpayer's franchise tax returns were prepared on a calendar-year basis. On the due date (March 15 each year) for each year except 1993, the taxpayers had paid at least 90% of the estimated taxes on each return as filed, pursuant to sec. 71.29(10), Wis. Stats. After the returns for each year were adjusted by the audits in 1997, the income on each return was retroactively increased with the result

that the taxpayers had not paid at least 90% of the estimated tax due. From that 1997 perspective, the taxpayers had underpaid their estimated taxes for the audit years, thereby not satisfying the requirements of sec. 71.29(10).

After the audit, the department issued an assessment to each taxpayer. Each assessment was comprised of franchise tax, normal 12% interest, additional estimated tax payments for each quarter, 12% interest on the underpayment of estimated taxes, and 18% delinquent interest on the underpayment interest pursuant to sec. 71.84(2)(a), Wis. Stats. It is the 18% delinquent interest that both taxpayers challenge.

Both taxpayers filed timely petitions for redetermination, which the department denied. Both taxpayers filed timely appeals with the Commission, and the Commission affirmed the department. The Commission held that under sec. 71.84(2)(a), Wis. Stats., the department correctly imposed delinquent interest on the regular interest assessed on the additional estimated taxes due in the taxpayers' assessments.

The Circuit Court concluded that the Commission misapplied the law and that the department's imposition of the delinquent interest penalty contradicts the Wisconsin Supreme Court's decision in *Wrigley v. DOR*, 176 Wis. 2d 795 (1993), which controls the resolution in this matter. The Circuit Court set aside the Commission's decision and order and remanded the matter for further proceedings consistent with this opinion.

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

SALES AND USE TAXES



Amusement devices - leased or used by vendor?

Amusement Devices, Inc. vs. Wisconsin Department of Revenue (Court of Appeals, District IV, November 1, 2001). On September 14, 2000, the Circuit Court for Dane County affirmed the Wisconsin Tax Appeals Commission decision dated December 15, 1999. See *Wisconsin Tax Bulletin* 123 (January 2001), page 24 and *Wisconsin Tax Bulletin* 119 (April 2000), page 18, for summaries of the Circuit Court and Commission decisions. The issues in this case are:

- A. Whether the taxpayer's purchases of amusement devices were subject to the Wisconsin sales or use tax.
- B. Whether the department properly imposed the negligence penalty for the taxpayer's filing of an incorrect return due to neglect.

The taxpayer paid sales tax on the majority of amusement devices and their related parts and accessories purchased from Wisconsin vendors, but did not pay sales or use tax on those purchased from out-of-state vendors. Although the taxpayer gave exemption certificates claiming resale to suppliers when it purchased items it intended to resell, it did not use exemption cer-

tificates claiming resale when purchasing the amusement devices from the out-of-state vendors.

The taxpayer placed the coin-operated amusement devices in business establishments such as hotels, motels, taverns, bowling alleys, restaurants, convenience stores, and schools. The devices provide amusement to the establishments' patrons, and the patrons are considered the taxpayer's customers.

The Circuit Court affirmed the Commission's decision that the taxpayer's purchases of the amusement devices were taxable because they were used or consumed in the taxpayer's business of furnishing and selling amusement services. The Circuit Court also affirmed the Commission's decision that the department properly imposed the negligence penalty because the taxpayer "knew or should have known that sales or use taxes were payable on all disputed purchases..."

The Court of Appeals concluded that the Commission's interpretation of the meaning of "sale" is a reasonable one, and the amusement devices were not sold to the taxpayer's device-playing customers. It cannot reasonably be said that the taxpayer "transferred" any property interest to the persons who used its machines. During

use of the machines by those persons, the taxpayer retained all of its rights to possession and enjoyment of the machines. When a person placed coins in the machine, a "sale" of the machine did not occur. The term "enjoyment" in the statute does not mean the pleasure that the person obtained from using the machine, but rather the more traditional legal meaning of "enjoy" – "to occupy or have the benefit of (property)." Black's Law Dictionary 550 (7th ed. 1999) (emphasis added). The taxpayer retained the economic benefit of the property as a revenue source at all times. 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 amusement devices used by its customers are subject to Wisconsin use tax.

The Court of Appeals also agreed that the Commission's conclusion that the taxpayer should have known the use tax was due when it paid tax on similar purchases within Wisconsin is a reasonable one, and the negligence penalty was properly assessed.

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



Appeals - jurisdiction. *Ronald J. Hergert, d/b/a Aero Expo Corporate Services vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, July 11, 2001). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated January 8, 2001. See *Wisconsin Tax Bulletin* 124 (April 2001), page 25, for a summary of the Commission's decision. The issue in this case is whether the Circuit Court has subject matter jurisdiction over the case.

The Commission held that the taxpayer's contracts with renters were subject to the sales tax under sec. 77.52(2)(a)1., Wis. Stats., because the taxpayer furnished accommodations to the public and made lodging available to transients. The taxpayer filed a petition for review with the Circuit Court and a copy with the department on February 7, 2001. However, the petition filed with the Clerk of Court was not accompanied by

the required filing fee, which was received by the Clerk of Court on February 9, 2001, two days after the 30-day deadline for filing the petition. The department argues that since the petition was not filed within the required 30 days, the Circuit Court lacks subject matter jurisdiction and must dismiss the petition for review.

The Circuit Court concluded that it did not have subject matter jurisdiction over this case, because strict compliance with the 30-day requirement is essential to confer subject matter jurisdiction upon the Circuit Court, and the Clerk of Court did not abuse her discretion in failing to file stamp the petition without the required fee. The Circuit Court granted the Department's motion to dismiss the petition for review.

The taxpayer has not appealed this decision. [!\[\]\(f60b7a900783ac3fd531bfd9c111be6d_img.jpg\)](#)



Tax Releases

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

The following tax releases are included:

Individual Income Taxes

1. Claim for Refund Filed for the Same Issues After Appeal Period Expires..... 31
2. Claim for Refund of a Paid Assessment 32

INDIVIDUAL INCOME TAXES

1 Claim for Refund Filed for the Same Issues After Appeal Period Expires

Statutes: Section 71.88 (1)(a), Wis. Stats. (1999-00)

Wis. Adm. Code: Section Tax 2.12(4)(b)2 (May 1996 Register)

Background: Section 71.88(1)(a) Wis. Stats. (1999-00), reads in part “. . . any person feeling aggrieved by a notice of additional assessment, refund, or notice of denial of refund may, within 60 days after receipt of the notice, petition the department of revenue for redetermination . . .”. If the taxpayer does not file a petition for redetermination to a notice of refund, the adjustments made in the notice are final and conclusive. The taxpayer is not entitled to a refund on any subsequent claim for refund based on the same adjustments as those in the notice of refund.

Facts and Question 1: Taxpayer files a timely 2000 Wisconsin individual income tax return. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a timely petition for redetermination. Is the taxpayer entitled to a refund on

any subsequent claim for refund for the disallowed business expenses?

Answer 1: No. The notice of refund is final; the taxpayer is not entitled to a refund on any subsequent claim for refund for the disallowed business expenses.

Facts and Question 2: Taxpayer files timely 1999 and 2000 Wisconsin individual income tax returns. The department completes an audit of the returns and issues a notice of refund dated March 30, 2004. The notice of refund allows an additional itemized deduction credit for each year but also disallows a portion of the claimed business expenses for each year, with the net result being a refund for each year. The taxpayer does not file a timely petition for redetermination. Can the taxpayer file a claim for refund for the disallowed business expenses?

Answer 2: No. The notice of refund is final; the taxpayer is not entitled to a refund on any subsequent claim for refund for the disallowed business expenses.

Facts and Question 3: Taxpayer files a timely 2000 Wisconsin individual income tax return. In December 2002, the taxpayer files an amended 2000 Wisconsin individual income tax return, Form 1X, to claim a refund as a result of claiming additional business expenses. The amended and original returns are office audited, and the department disallows a portion of the claimed additional expenses, based on a difference in interpretation of the law. A notice of reduced refund is issued March 1, 2003. The taxpayer does not file a timely petition for redetermination. In December 2003, the taxpayer files another amended return, claiming the same additional business deductions as those disallowed in the prior notice of reduced refund. Is the taxpayer entitled to a refund on any subsequent claim for refund for the disallowed business expenses?

Answer 3: No. The notice of reduced refund is final, the taxpayer is not entitled to a refund on any subsequent claim for refund for the disallowed business expenses.

Facts and Question 4: Taxpayer files an amended 2000 Wisconsin individual income tax return to claim additional business expenses. The department disallows a portion of the claimed additional expenses, due to lack of substantiation of the expenses as requested in a letter to the taxpayer. A notice of reduced refund is issued

March 1, 2003. The taxpayer does not file a timely petition for redetermination. In December 2003, the taxpayer submits adequate substantiation to support the full deduction. Is the taxpayer entitled to the refund once the substantiation is submitted?

Answer 4: No. The deduction is not allowed and no additional refund will be issued. Since no timely petition for redetermination was filed for the notice of reduced refund, the notice of reduced refund is final and conclusive.

Facts and Question 5: Taxpayer files a timely 1998 Wisconsin individual income tax return claiming a refund of earned income credit and excess income tax withheld. During the processing of the return, the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. The taxpayer does not respond to the request for additional information. A notice of reduced refund is issued in July 1999, which allows the refund of the excess income tax withheld only. The taxpayer does not file a timely petition for redetermination. The taxpayer files a timely 1999 income tax return claiming a refund of earned income credit and excess income tax withheld. During the processing of this return, the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. This letter requests the same information that was requested for the processing of the 1998 return. The taxpayer submits the additional information that was needed for both the 1998 and the 1999 returns. Is the taxpayer entitled to the additional earned income credit for 1998?

Answer 5: No. Since the taxpayer did not submit a timely petition for redetermination for the 1998 notice of reduced refund, that notice of reduced refund is final and conclusive. A notice of refund for the earned income credit is issued for 1999 only. [✎](#)

2 Claim for Refund of a Paid Assessment

Statutes: Section 71.75(5), Wis. Stats. (1999-00)

Note: The provisions in this tax release apply for individual income tax, corporation franchise or income tax, recycling surcharge, and homestead and farmland preservation credit purposes. The provisions do not apply for sales and use tax purposes.

Background: A claim for refund may be made after an assessment is issued by office audit or field audit, if the assessment is paid and it was not the subject of an appeal.

For tax years beginning on or after January 1, 2000, the claim for refund must be made within four years of the notice date of the assessment. No refund claim may be filed under this provision for any year that resulted in a refund or no change in the amount owed. However, if the net result of a multiple year office audit or field audit is a refund, a refund claim may be filed for any year included in the refund notice that resulted in an assessment.

For tax years beginning before January 1, 2000, a claim for refund must be made within two years of the notice date of the assessment. A claim for refund may only be made for an office audit or field audit that resulted in an assessment.

Facts and Question 1: The taxpayer files timely 1999 and 2000 Wisconsin individual income tax returns. The returns are subject to an office audit in January 2002. The office audit disallows a portion of the itemized deduction credit claimed on each return. The Notice of Additional Tax Due is dated February 4, 2002. The taxpayer does not file an appeal for this notice but pays the tax due. What is the latest date a claim for refund of the additional tax paid is allowed?

Answer 1: Section 71.75(5), Wis. Stats., provides for a four-year period to file a claim for a refund of a paid assessment due to an office audit for tax years beginning on or after January 1, 2000. The portion of the Notice of Amount Due that applies to tax year 2000 may be the subject of a claim for refund if filed on or before February 4, 2006.

Section 71.75(5), Wis. Stats., provides for a two-year period to file a claim for a refund of a paid assessment due to an office audit for tax years beginning before January 1, 2000. The portion of the Notice of Amount Due that applies to tax year 1999 may be the subject of a claim for refund if filed on or before February 4, 2004.

Facts and Question 2: The taxpayer files timely 2000 and 2001 Wisconsin individual income tax returns. The returns are subject to an office audit in January 2003. The office audit allows an additional itemized deduction credit for 2000 and disallows a dependent credit for 2001. The taxpayer receives a Notice of Refund dated February 7, 2003, explaining the refund for 2000 and the additional tax due for 2001. The taxpayer does not file an appeal for this notice. Does the taxpayer have any recourse to file a claim for refund for the dependent credit issue?

Answer 2: Yes. Section 71.75(5), Wis. Stats., provides for a four-year claim for refund of a paid assessment for tax years beginning on or after January 1, 2000, whether or not there is a net assessment or a net refund as a result of an audit for two or more tax years on the same notice. The taxpayer has until February 7, 2007, to file a claim for refund for the dependent credit issue in tax year 2001.

Facts and Question 3: The taxpayer files a timely 2000 Wisconsin individual income tax return. An adjustment is made to that return to correct a mathematical error when the return is processed by the department. The correction of the mathematical error results in reducing the refund the taxpayer claimed on the return. The taxpayer is issued a Notice of Refund explaining the correction and the amount of refund due, on May 1, 2001. The taxpayer does not file an appeal. Is the taxpayer allowed to file a claim for refund upon his discovery of a larger amount of a deduction claimed on the original return?

Answer 3: Yes. The deduction was not the issue in the prior adjustment. The taxpayer is permitted to file an amended return per sec. Tax 2.12, Wis. Adm. Code, to claim a larger amount of deduction on the original return and claim the additional refund that is properly due. The deadline for filing a claim for refund is the usual four-year period from the due date of the return, April 15, 2005.

Section 71.75(5), Wis. Stats., does not apply to the subsequent claim for refund in this example, since the claim for refund on a larger amount of deduction was not the issue in the prior adjustment. The issue in the prior adjustment was the mathematical error.

Facts and Question 4: The taxpayer files a timely 2000 Wisconsin individual income tax return. In December 2002, the taxpayer files an amended 2000 Wisconsin individual income tax return, Form 1X, to claim a refund as a result of claiming a deduction that was not reported on the original return. The original and amended returns are office audited, and the taxpayer is requested to submit documentation to substantiate the deduction. The taxpayer fails to submit the documentation. A notice of refund denial is issued on March 4, 2003. The taxpayer does not file an appeal within 60 days of the refund denial. Does the taxpayer have any recourse to present documentation for the issue and have the claim for refund reconsidered?

Answer 4: No. Section 71.75(5), Wis. Stats., provides for a four-year claim for refund of a paid assessment. In this instance there was no additional tax paid; the claim for refund was merely denied, and only one tax year was included in the notice of refund denial. Since the taxpayer did not file an appeal, the matter is closed. [!\[\]\(830769b31eeeaca920791081939ff8ba_img.jpg\)](#)



Private Letter Rulings

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

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

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

The following private letter rulings are included:

Sales and Use Taxes

Admissions - recreational facility

W 0147008 (p. 34)

Service enterprises - information services

Incidental

W 0142007 (p. 35)

✱ W 0147008 ✱

August 31, 2001

Type Tax: Sales and Use Taxes

Issue: Admissions - recreational facility

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

This letter responds to your request for a private letter ruling regarding the sales and use tax status of shareholder contributions to the ABC Company. Thank you for the additional information you provided in your letters.

Facts, as stated in your request:

ABC Company (“The Club”) owns sports fields in a Wisconsin County at which it plays approximately 12

competitive games per year. The Club also scrimmages on those fields.

The Club consists of approximately eight shareholders, who own the field, and approximately five non-shareholders. The Club charges dues to the non-owners, for the right to play on the field. These receipts are not sufficient to pay the expenses associated with the field, including real estate taxes, insurance, and maintenance. Accordingly, the shareholders contribute annually to pay the Club’s expenses. The owner contributions are not related to their right to use the field individually since, as owners, they can use the fields as they see fit.

Active shareholders, to wit, those that participate in the sport, are expected to make contributions for the Club’s operating expenses; all shareholders would be expected to contribute to any major capital expenditures. Absent a precedent, the Club does not know what would happen if a shareholder failed to make the contribution.

Shareholders can use the fields as they see fit, including scrimmages and competitive games. They can and do also use the field to engage in Activity D and Activity E, exercise their dogs, host picnics and provide family or customer entertainment – and any other conceivable use for a flat, open field with a picnic area.

An excerpt from the Club’s Board minutes of Date X, reads as follows:

“Board reiterated that the grounds fees are only charged to non-shareholders; and that shareholders have the right to use the field at any time for any purpose.”

Request:

Is the ABC Company required to collect a sales tax on the amounts received from owners?

Ruling:

Yes.

Analysis:

Section 77.52(2)(a)2, Wis. Stats. (1999-00), imposes sales tax on the gross receipts from:

“The sale of admissions to amusement, athletic, entertainment or recreational events or places except county fairs...and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships.”

Section Tax 11.65(1)(b), Wis. Adm. Code (June 1991 Register), provides that the sales tax applies to the gross receipts of organizations which have as an objective the supplying of amusement, athletic, entertainment, or recreational facilities to their members. The proceeds received from initiation fees, special assessments, dues, and stock sales of clubs supplying amusement, athletic, entertainment, or recreational facilities to members are charges for the privilege of obtaining access to the clubs and are taxable receipts of the clubs.

Because the sports fields are primarily used as amusement, entertainment, athletic, or recreational facilities, and the amounts contributed by the shareholders to the Club are “dues, fees or other considerations” for the privilege of having access to the sports field (i.e., shareholders are expected to contribute for the Club's operating expenses and major capital expenditures for the right to use the field; non-shareholders pay dues for the right to play on the field), the amounts are subject to tax under sec. 77.52(2)(a)2, Wis. Stats. (1999-00). [✎](#)

✱ W 0142007 ✱

June 28, 2001

Type Tax: Sales and Use Taxes

Issue: Service enterprises - information services
Incidental

Statutes: Section 77.51(13)(e), Wis. Stats. (1999-00)

This letter responds to your request for a private letter ruling, and your subsequent correspondence.

Facts:

- XYZ Company (“XYZ”) is a privately held investment services firm with its headquarters in another state.

- XYZ has an office located in a City in Wisconsin.
- The TUV Company (“TUV”) web site provides persons visiting the web site with access to charts, spreadsheets, and other financial information for no fee. Other products and services, such as “The TUV Professional Service,” are offered to customers for a fee.
- XYZ subscribes to The TUV Professional Service (“TPS”).
- XYZ pays a monthly subscriber fee to TUV, which is a licensing fee that allows XYZ access to information from TUV's web site. Upon subscribing, TUV sends an application program to XYZ electronically over telephone lines. This application program gives XYZ authority to use and access to TUV's web site information. XYZ can then electronically access the TUV information from XYZ's own computer(s) at XYZ's business site.
- XYZ also rents a computer keyboard and flat-panel computer monitor from TUV. The keyboard is similar to a common personal computer keyboard, except for special additional keys not found on the common keyboard. Such keys are used to more quickly access certain information on the TUV system. Similarly, the flat-panel monitor is set up for specific information or applications desired by the user.
- XYZ's rental of the keyboard and monitor are optional. XYZ is not required to use either of these items in order to fully utilize the online services, nor does XYZ rent these items for purposes other than using the TUV service.
- TUV's billing system does not separately state the cost of the TPS and the equipment rental. XYZ estimates that the equipment rental represents less than 4% of the total charge to XYZ.

Request:

1. Is TUV's charge to XYZ for the TPS subject to Wisconsin sales or use tax?
2. Is TUV's rental of the keyboard and monitor subject to Wisconsin sales or use tax, or is the rental incidental to the TPS service provided?
3. If it is determined by the Wisconsin Department of Revenue that XYZ's rental of tangible personal

property is subject to Wisconsin sales and use tax and TUV is unable to separately state the invoice for such amounts, is it the conclusion of the Wisconsin Department of Revenue that all such amounts are subject to Wisconsin sales and use tax?

Ruling:

1. TUV's charge to XYZ for the TPS, with the exception of the optional charge for the keyboard and monitor, is not subject to Wisconsin sales or use tax. TUV's charge for the keyboard and/or monitor is subject to Wisconsin sales and use tax.
2. TUV's rental of the keyboard and monitor is subject to Wisconsin sales and use tax.
3. TUV's charge for 1) the TPS, and 2) the keyboard and monitor are two separate sales. While the department may presume that the entire charge is taxable because taxable and nontaxable receipts are not separately stated, if TUV can show what portion of the selling price is not taxable, an allocation may be done to determine the taxable portion. Although TUV charges XYZ one fee for both sales, only TUV's sale (i.e., rental) of the keyboard and monitor is subject to sales and use tax.

Analysis:

1. Access to Database

Providing information via electronic access to a database is not a service that is specifically subject to tax under sec. 77.52(2)(a), Wis. Stats. (1999-00).

2. Lease or Incidental Transfer

Section Tax 11.67(1), Wis. Adm. Code (April 2000 Register), states that "(w)hen a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser shall determine whether the transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal prop-

erty, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred."

In *Wisconsin Department of Revenue v. Dow Jones & Company, Inc.*, Wisconsin Court of Appeals, January 26, 1989 (CCH 203-024), the Court concluded that equipment charges for teleprinters provided to subscribers of a news service were incidental to the service of providing hard-copy news releases. Therefore, the equipment charges were not subject to sales tax. The Court found that the teleprinter was only incidental to providing hard-copy news since it was the only manner in which a subscriber could obtain the service.

The lease or rental of tangible personal property (i.e., keyboard and monitor) in Wisconsin is subject to Wisconsin sales or use tax. TUV's optional rental of the keyboard and monitor to XYZ is a separate sale from its sale of the TPS service.

3. Single Charge

TUV receives consideration for its rental of the equipment; however, TUV's invoice does not separately state the two sales.

Section Tax 11.67(2)(c), Wis. Adm. Code (April 2000 Register), provides that "(i)f there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax...."

Similarly, when a nontaxable service and tangible personal property not transferred incidentally with the service are sold for a single price, the amount subject to tax can be computed as follows:

TUV's price for the TPS service and equipment rental
 Less: Amount that TUV would charge for the TPS service without the equipment rental
 Equals: Amount of consideration that TUV receives for the equipment rental (taxable). 