



Wisconsin TAX BULLETIN

www.dor.state.wi.us

Number 129

April 2002

Tax Bills Pending in the Legislature

Several proposals that affect Wisconsin tax laws were pending before the Wisconsin Legislature as this issue of the *Wisconsin Tax Bulletin* goes to press.

If any of the proposals become law, explanations of the new tax provisions will be provided in a future issue of the Bulletin. [☞](#)

Information or Inquiries?

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

The listing appears on pages 27 to 30 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. [☞](#)

Grant County Tax in Effect

The county sales and use tax became effective in Grant County on April 1, 2002. This brings to 56 the number of counties that have adopted the 1/2% county tax.

Retailers were reminded about Grant County's adoption of the county tax in the March 2002 *Sales and Use Tax Report* (number 1-02). The Report was sent in late March and early April to all persons registered for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 31 and 32 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 6 of this Bulletin for information about how to obtain copies of Publication 201 by mail, e-mail, fax, or the Internet. [☞](#)

Wisconsin Wins Research Award

Note: This article appeared in the April 8, 2002, issue of "TaxExPRESS," the Federation of Tax Administrators' weekly electronic newsletter.

The Wisconsin Department of Revenue is the 2002 winner of the FTA Research Award, for its work on "The Tax Benefit, Distribution and Asset Composition of Capital Gains in Wisconsin." Using a unique sampling procedure, the department created a database for analyzing the impact of various different capital gains tax proposals on different households and the potential revenue impact for the state. The methodology enabled the state to conduct more detailed analysis than by using other federal data sources. The award will be presented at the 2002 FTA Annual Meeting in June. [☞](#)

Tax Seminar to be Presented in Madison

The Institute for Professionals in Taxation, in cooperation with the Wisconsin Department of Revenue, is presenting a one-day tax seminar in Madison, on May 14, 2002. The all-day seminar, which will be held at the Monona Terrace Community and Convention Center, will include primarily sales tax and property tax issues but will touch on audit issues, as well.

Presentations on a variety of topics will be made by Department of Revenue personnel, as well as other public and private tax experts. Secretary of Revenue Richard Chandler will provide an update on the Budget Reform Bill presently being considered by the Legislature. Harley Duncan, Executive Director of the Federation of Tax Administrators, will present a tax update from Washington, DC.

A panel of tax professionals from businesses will offer their perspectives on the Streamlined Sales Tax Project. Diane Hardt, who is the Administrator of the Department's Income, Sales, and Excise Tax Division and Co-Chair of the Streamlined Sales Tax Project, will moderate a discussion with representatives from J. C. Penney Company, AT&T, and General Electric Company.


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Other topics will include a Wisconsin legislative update, property assessment practices, sales tax update, Sales Internet Process (SIP) filing, and audit issues.


Additional information can be found on the department's Internet web site, www.dor.state.wi.us. Scroll down to "Other Tax and Economic Developments" and click on "IPT/WI Sales/Property Tax Seminar." 

Administrative Rule Would Require Electronic Filing

The Department of Revenue is working to adopt an administrative rule that would require certain tax practitioners to submit their clients' income tax returns to the department through the use of an electronic medium. If the rule is adopted, the mandate is expected to be effective for 2002 tax returns, which will be filed starting in January 2003. The first phase of the mandate would apply only to practitioners who in 2002 prepared 200 or more 2001 Wisconsin individual income tax returns (Forms 1, 1A, and WI-Z) and homestead credit

claims (Schedule H). In addition, the rule would provide for waivers in the case of an undue hardship. Information about the electronic filing program for tax professionals can be found on the Internet at www.dor.state.wi.us/taxpro/prepare.html.

The pending administrative rule would also allow the department to require certain sales and use tax registrants to file sales and use tax returns electronically via the department's Sales Internet Process (SIP). The department is tentatively planning on phasing in the mandate over several months, and directing it at monthly filers. SIP is a secure web site that is easy to use and offers efficiencies to both taxpayers and the department. Information about SIP can be found on the Internet at www.dor.state.wi.us/eserv/sip.html.

Department representatives will be meeting with practitioners, to further define the mandate requirements and determine the best way to implement the rule. It is anticipated that more information will be provided in the next issue of the *Wisconsin Tax Bulletin*. 

Lifeline Program Not Taxable Prior to December 1, 1997

In its recent decision in the case of *SSM Health Care vs. Wisconsin Department of Revenue* (Docket 95-S-97, February 22, 2002), the Wisconsin Tax Appeals Commission held that gross receipts from the sales of emergency response services, through programs like the Lifeline Program, are not telecommunications services subject to Wisconsin sales or use tax under sec. 77.52(2)(a)5, Wis. Stats. See page 24 of this Bulletin for a summary of the Commission's decision, including a description of the Lifeline Program.

The Department of Revenue filed a Notice of Nonacquiescence with respect to the *SSM Health Care* decision. In its Notice of Nonacquiescence, the department indicates that it will extend the sales and use tax treatment determined by the Commission in its *SSM*

Wisconsin Tax Bulletin

Published quarterly by:

Wisconsin Department of Revenue
Income Sales and Excise Tax Division
Mail Stop 6-40
PO Box 8933
Madison WI 53708-8933


Subscriptions available from:

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

Annual cost \$7.00

Health Care decision to other persons providing Lifeline and similar programs prior to December 1, 1997. However, the department also gives notice that the creation of sec. 77.52(2)(a)5m, Wis. Stats., effective December 1, 1997, imposes a sales tax on the gross receipts from Lifeline and similar programs offered by hospitals, nonprofit organizations, and other retailers.

Section 77.52(2)(a)5m, Wis. Stats., imposes a Wisconsin sales or use tax on the sale of services that consist of recording telecommunications messages and

transmitting them to the purchaser of the service or at that purchaser's direction, but not including those services if they are merely an incidental (as defined in sec. 77.51(5), Wis. Stats.) element of another service that is sold to that purchaser and is not taxable under the sales and use tax law. More information about this telecommunications message service can be found in a tax release published in *Wisconsin Tax Bulletin* 127 (October 2001), pages 29 to 32, available at www.dor.state.wi.us/isc/wtb/127tr.pdf. 

Visa Cards Now Accepted **Wisconsin Taxes Can be Paid by Credit Card**

The Wisconsin Department of Revenue, in cooperation with Official Payments Corporation, accepts credit card payments for individual income taxes for balances due on tax returns, extension payments, estimated tax payments, and amounts due on Notices of Adjustment with a payment key (Form I-503 and Form I-509 - the payment key is shown on the form). [Note: This does **not** include Individual Office Audit or Field Audit Notice of Amount Due bills (Form I-438).] Only taxpayers who filed a Wisconsin individual income tax return with the Department of Revenue last year may make credit card payments for these taxes.


Credit card payments are also allowed for full or partial payments of delinquent taxes (all tax types). Only taxpayers who have a "delinquent tax notice payment key" can pay their delinquent taxes by credit card. The payment key is included on the delinquent tax notice.

The following types of credit cards are accepted for credit card payments of Wisconsin taxes:

- American Express
- Discover
- Master Card
- **Visa.**

Visa credit cards were not accepted for credit card payments prior to March 2002. Since Visa has about 48% of the credit card market share, this greatly expands the usefulness of the credit card payment system, offering additional choice, convenience, and flexibility for taxpayers.

Official Payments Corporation imposes a fee for paying by credit card (the Department of Revenue does not). Official Payments Corporation charges the taxpayer a convenience fee of \$1.00 for payments of \$40.00 or less, or 2.5% of the payment amount for payments greater than \$40.00. Taxpayers who choose to pay by credit card will see two separate transactions on their credit card billing statement, one for the tax and one for the convenience fee.

To pay Wisconsin taxes by credit card, or to obtain additional information, simply call Official Payments Corporation at 1-800-2PAY-TAX (1-800-272-9829) or visit their Internet web site at www.officialpayments.com. 

2002 Estimated Tax Requirements for Individuals, Estates, and Trusts

Individuals and fiduciaries that expect to owe \$200 or more of tax (including recycling surcharge) with their 2002 Wisconsin income tax return are required to pay 2002 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 2002 Form 1-ES, Wisconsin Estimated Tax Voucher, is filed with each estimated tax payment.

For calendar year taxpayers, the first estimated tax payment was due on April 15, 2002. Installment

payments are also due on June 17, 2002 (June 15 and 16 are weekend dates), September 16, 2002 (September 15 is a Sunday), and January 16, 2003. For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year.

Estates and grantor trusts that are funded on account of a decedent's death are only required to make estimated tax payments for taxable years that end two or more years after the decedent's death. For example, an individual died on March 28, 2001. A grantor trust that was funded on account of the individual's death is not

required to make estimated tax payments for any taxable year ending before March 28, 2003.

A trust that is subject to tax on unrelated business income is generally required to pay 2002 Wisconsin estimated tax if it expects to owe \$500 or more (including recycling surcharge) on a 2002 Wisconsin franchise or income tax return (Form 4T). A 2002 Form 4-ES, Wisconsin Corporation Estimated Tax Voucher, is filed with each estimated tax payment.

Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If a taxpayer does not make the estimated tax payments when required or underpays any installment, interest may be assessed. [☞](#)

Branch Office Consolidation Continues

As a result of budget constraints placed on all state agencies, the Department of Revenue will soon close three branch offices of its Income, Sales, and Excise Tax Division. The closings are in addition to the four offices closed in 2001. Customer services in those locations will be provided from other area offices.

The last day of service in the Monroe office will be Monday, May 20, 2002. Service will end in the Watertown branch office on Monday, June 17, 2002. The Marshfield office will end service on June 24, 2002.

Although not being closed, the Madison District office will relocate from its current location at 5005 University Avenue to the main Revenue building at 2135 Rimrock Road. The last day of service at the University Avenue location will be Friday, June 7, 2002.

Customers in locations where offices have closed may contact the Madison headquarters office (telephone 608-266-2772) or nearby branch or district offices for assistance. This includes Eau Claire (715-836-2811), Janesville (608-758-6190), Beaver Dam (608-356-8973) and Wisconsin Rapids (715-421-0500). Assistance and information are also available on the department's Internet web site, www.dor.state.wi.us.

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

Twenty-six states enact legislation Streamlined Sales Tax System Moves Closer to the Finish Line

Twenty-six states, including Wisconsin, have now enacted the model legislation required to be part of an interstate agreement to simplify sales tax laws and make them more uniform across the country. The Streamlined Sales Tax Act was included in the Wisconsin Budget Bill (2001 Wisconsin Act 16), effective September 1, 2001.

Other states that have enacted the model legislation include: Arkansas, Florida, Illinois, Indiana, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, and Wyoming. The District of Columbia has also enacted the legislation.

The Streamlined Sales Tax Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project's proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection. The Project's proposals are focused on improving sales and use tax administration systems for both Main Street and remote sellers for all types of commerce.

States that have enacted the model legislation are called the "implementing states." These states are currently reviewing all of the simplifications proposed by the Project. The implementing states expect to approve additional model legislation, including the proposed simplifications in sales tax law, later this summer. Then implementing states will pursue the model legislation in late 2002 and 2003.

The Project has developed issue papers and recommendations for simplifications. These papers and recommendations are located on the Project's web site at www.streamlinedsalestax.org.

In its first three meetings in 2002, the implementing states have approved the basic framework for the model legislation. The model legislation includes state tax administration of local taxes, uniform sourcing rules for transactions, uniform telecommunications sourcing rules, uniform state and local tax bases, and uniform exemption administration. In addition, the implementing states have approved uniform definitions for retail sale, sales price, purchase price, and delivery charges. Also, the states have approved uniform definitions for food and food ingredients, prepared food, candy, soft drinks, and dietary supplements.

The implementing states have also addressed additional issues including: sales tax holidays; caps and thresholds; multiple tax rates; rounding rules; and definitions of leasing, tangible personal property, and clothing.

In a related project, the states have joined with the business community to contract for a retailer Cost of Collection Study. A consultant will be hired in May to analyze the retailer costs of collection both before and after the implementation of the Streamlined Sales Tax System simplifications. The consultant will issue its final report by the end of 2002.

The Wisconsin Department of Revenue has played an active role in the development of the Streamlined Sales Tax System. Diane Hardt, Tax Administrator of the Income, Sales and Excise Tax Division, is Co-Chair of the Project. Dan Davis, Audit Bureau Director, and Tony Kliemann, Computer Audit Specialist, have participated in developing joint audit procedures and technology certification standards. Vicki Gibbons from the Technical Services staff has played a key role in definition development. Yeang Eng Braun from the Research and Policy Division is a consultant on the Cost of Collection Study. Blair Kruger from the Research and Policy Division has analyzed the many proposals for fiscal effects. [☞](#)

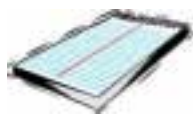


Wisconsin Tax Bulletin Annual Index Available

Once each year the *Wisconsin Tax Bulletin* includes an index of materials that have appeared in past Bulletins. The index will help you locate reference materials including articles, court case

summaries, tax releases, and private letter rulings, to research questions about Wisconsin taxes.

The latest *Wisconsin Tax Bulletin* index available appears in *Wisconsin Tax Bulletin* 128 (January 2002), pages 64 to 95. It includes information for issues 1 to 127 (through October 2001). [☞](#)



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 33 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 68 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*.

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 (1/02)
- 601* Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/02)

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? (3/02)
- 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 (2/02)
- 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 (1/02)
- 504 Directory for Wisconsin Department of Revenue (2/00)
- 509 Filing Wage Statements and Information Returns on Magnetic Media (2/01)
- 700 Speakers Bureau presenting . . . (6/00) [🔗](#)

Question and Answer



Caution: The answers in this article reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date of this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations.

(Sales and Use Tax)

Q Is the charge by a pest control service for the application of pesticides to buildings (such as homes, offices, and warehouses) or to tangible personal property (such as semi-trailers) subject to Wisconsin sales tax?

A The application of pesticides to a building is a nontaxable service to real property. However, the application of pesticides to tangible personal property is a taxable service, unless an exemption applies (for example, the semi-trailer is owned and used by a common or contract carrier exclusively in common or contract carriage).

Q I used a \$1.00 manufacturer's coupon at a store, to purchase a \$3.00 item. Although the store reduced the price of the item by \$1.00, I was still charged sales tax on the full amount of \$3.00. Shouldn't I have been charged sales tax on just \$2.00 rather than \$3.00?

A No. The store correctly charged you sales tax on \$3.00. Since the store received \$2.00 from you and will receive \$1.00 from the manufacturer, the store is liable for sales tax on the full \$3.00 that it receives. The

law allows the store to collect this tax from the customer.

(Homestead Credit)

Q Can I file homestead credit claims for prior years, and if so, how far back can I go, and where can I get forms?

A Yes. A homestead credit claim may be filed up to four years after the due date of the corresponding income tax return for that year. In other words, since your 1998 income tax return was due April 15, 1999, you can file a 1998 homestead credit claim any time up to April 15, 2003. Similarly, a 1999, 2000, or 2001 claim can be filed on or before April 15 of 2004, 2005, or 2006, respectively.

You may obtain forms for prior years by filling in an on-line Request Form, which can be accessed at the department's Internet web site, www.dor.state.wi.us. Click on the brown "Forms" tab, and then scroll down and click on "Request Form." You can also download the forms from that site by clicking on "Prior Year Income Tax Forms," then clicking on "Individual" for the appropriate year, and then scrolling down to "Schedule H." Forms can also be obtained by: (1) writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, PO Box 8951, Madison WI 53708-8951; (2) calling (608) 266-1961; (3) faxing a request to (608) 261-6913; (4) e-mailing a request to forms@dor.state.wi.us; or (5) using the department's Fax-A-Form retrieval system by calling (608) 261-6229 from a fax telephone. [☞](#)

To File or Not to File – Corporation Tax Returns

The Department of Revenue (DOR) sends corporation tax forms and instructions to corporations annually, to help the corporations comply with their filing requirements. Sometimes corporations that are no longer in business, or have never done business after incorporation, receive these tax forms as well. This is because the corporation has not filed a proper return with DOR.

If a corporation dissolves, the corporation must contact the Department of Financial Institutions (DFI) and file an *Articles of Dissolution* form. Many corporations believe that by contacting DFI to dissolve, DOR records will also be updated to reflect the dissolution, and no further action is required. DFI does notify the Department of Revenue of the dissolution; however, the corporation is required to file a tax return with the Department of Revenue as well. Until this is done, DOR will continue to send the corporation tax forms.

Following are various circumstances a corporation may be in, and the proper filing action.

Circumstance	Filing Requirement
Activity in Wisconsin and elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T).
Activity in Wisconsin but not elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T).
No activity in Wisconsin, but activity elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T), and indicate no activity by entering zeros or “none.”
No activity in Wisconsin or elsewhere, but may become active in Wisconsin later.	File Form 4H, <i>Wisconsin Corporation Declaration of Inactivity</i> .
No activity now in Wisconsin or elsewhere, and will not become active in Wisconsin later. *	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T), and check “Final return” in Box E (or Box H of Form 4T).

*This applies whether the corporation had no activity during the year, or it had some activity but is now out of business.

Questions regarding incorporation or dissolution can be directed to:


Wisconsin Department of Financial Institutions
Division of Corporate and Consumer Services
Corporate Section
PO Box 7846
Madison WI 53707

Phone (608) 261-7577
Fax (608) 267-6813

Questions regarding corporation tax filing requirements can be directed to:

Wisconsin Department of Revenue
Corporation Review & Adjustment Unit
Mail Stop 3-14
PO Box 8908
Madison WI 53708-8908

Phone (608) 266-0800
Fax (608) 264-6884
Email: corptax@dor.state.wi.us

All corporation tax forms and instructions can be found on the Department of Revenue's Internet web site at www.dor.state.wi.us. 

Take Advantage of Wisconsin's Voluntary Disclosure Program

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

Benefits of Voluntary Disclosure

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

Taxpayer Qualifications

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

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

How to Apply

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

- Description of Wisconsin activities for the years involved.

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

Taxpayer Responsibilities

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

Department Rights

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

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

Confidential Inquiries About Voluntary Disclosure

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

Voluntary Disclosure Program MS 6-40
Wisconsin Department of Revenue
2135 Rimrock Road
PO Box 8933
Madison WI 53708-8933. [✉](#)

Filing Wisconsin Fiduciary Income Tax Returns (Form 2) for Trusts

(Note: The fiduciary income tax return filing requirements for estates are discussed in the article titled "Filing Wisconsin Tax Returns for a Deceased Taxpayer," on page 12 of this Bulletin. Refer to the section in that article titled "Fiduciary Income Tax Return(s).")

- A Wisconsin "resident" trust must file a Wisconsin fiduciary return if it has (a) any taxable income for the taxable year, or (b) gross income of \$600 or more, regardless of the taxable income.

Gross income means all income, before deducting expenses, reportable to Wisconsin that is received in the form of money, property, or services. It does not include items that are exempt from Wisconsin tax.

Example: A resident trust has \$400 of interest income. It makes no distributions and therefore only has an exemption of \$100, which would result in taxable income of \$300. The trust is required to file

a Wisconsin fiduciary return, because it has taxable income.

- A "nonresident" trust must file a Wisconsin fiduciary return if it has (a) any Wisconsin taxable income for the year, or (b) gross income from Wisconsin sources of \$600 or more, regardless of the taxable income.

Wisconsin source income includes income or gain from:

- Real or tangible personal property located in Wisconsin.
- A business, trade, profession, or occupation carried on within Wisconsin, including a corporation taxed under Subchapter S of the Internal Revenue Code.
- Personal or professional services performed in Wisconsin either as an individual or as a member of a partnership.

- d. Income received from the Wisconsin State Lottery or a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

Resident Trust

A trust created by a decedent's will (testamentary trust) is resident at the domicile of the decedent at the time of the decedent's death, unless transferred by a court having jurisdiction, to another court's jurisdiction.

Inter vivos trusts that are made irrevocable and were administered in Wisconsin before October 29, 1999, shall be considered resident at the place where the trust is being administered.

The following inter vivos trusts that become irrevocable on or after October 29, 1999, or that became irrevocable before October 29, 1999, and are first administered in Wisconsin on or after October 29, 1999, are resident of Wisconsin:

1. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of Wisconsin at the time that the property was placed in the trust if, at the time that the assets were placed in the trust, the trust was irrevocable.
2. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of Wisconsin at the time that the trust became irrevocable if, at the time that the property was placed in the trust, the trust was revocable.

A trust is revocable if the person whose property constitutes the trust may revest title to the property in that person.

A trust is irrevocable if the power to revest title does not exist.

Examples:

Law prior to October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.

- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Florida that is to be administered in Florida. The trust will not be taxable to Wisconsin.

- c. Mary Doe, a resident of Florida, set up an irrevocable trust on October 22, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.

- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is to be administered in Arkansas. The trust became irrevocable at his death on October 22, 1999. James was a Wisconsin resident at death. This trust will not be subject to Wisconsin income tax.

- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On October 22, 1999, she made an irrevocable gift to the trust of her company stock. The earnings on the stock, if taxable at the trust level, would not be taxable to Wisconsin.

- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust administered in Wisconsin in 1997. Martha moved to Florida on October 22, 1999, established Florida residency, and moved her trust to Florida. The trust would no longer be taxable to Wisconsin as the trust would now be administered in Florida.

Law change effective on October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.

- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 1999, in Florida that is to be administered in Florida. The trust will be taxable to Wisconsin. The trust will continue to be taxable to Wisconsin even if Jack Doe changes his domicile to another state.

- c. Mary Doe, a resident of Florida, set up an irrevocable trust on December 15, 1999, in Wisconsin to be administered in Wisconsin. The trust would not be taxable to Wisconsin since Mary Doe was not a Wisconsin resident at the time the trust became irrevocable.

- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is administered in Arkansas. The trust became irrevocable on James's death on December 15, 1999, and James was a Wisconsin resident at the time of death. The trust would be taxable to Wisconsin.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On December 15, 1999, she made an irrevocable gift to the trust of \$2 million of her company stock. The value of the assets in the trust is \$1.5 million before the gift, and \$3.5 million after. All income from the \$2 million which was placed in the trust on December 15, 1999, will be taxable to Wisconsin. The assets put into the trust prior to October 29, 1999, will not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust in Wisconsin on December 15, 1999. In March 2000, Martha moved to Florida and became a Florida resident. The trust would remain taxable to Wisconsin since Martha Doe was a resident of Wisconsin at the time the trust became irrevocable.

This law change provides that any and all trusts funded by a Wisconsin resident, that became irrevocable on or after October 29, 1999, and contributions to such trusts by a Wisconsin resident, are subject to Wisconsin income tax. It exempts from Wisconsin income tax all trusts that became irrevocable on or after October 29, 1999, and are funded by a nonresident, even if administered in Wisconsin.

Qualified Funeral Trust (QFT)

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

Electing Small Business Trust (ESBT)

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

Closing Certificates

A Closing Certificate for Fiduciaries may be requested from the Wisconsin Department of Revenue at the time and on the return, Form 2, that is filed for the year prior to the final year.

Section 71.13(2), Wis. Stats., provides that the department may issue a Closing Certificate for Fiduciaries to an "Executor, administrator, personal representative or trustee applying to a court having jurisdiction" in order to obtain the court's approval for final distribution and discharge of the fiduciary. The department will issue the Closing Certificate for Fiduciaries only in cases where the court has required it to close a proceeding.

Copies of the trust instrument and any amendments, a statement as to why the trust is closing, and copies of the annual court accountings for the previous three years must be attached to the request.

The certificate request should be mailed to:

Wisconsin Department of Revenue
Mail Stop 5-144
PO Box 8904
Madison WI 53708-8904

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return. [☞](#)

Filing Wisconsin Tax Returns for a Deceased Taxpayer

More than one type of Wisconsin tax return may be required for a deceased taxpayer, such as:

- Individual income tax return
- Fiduciary income tax return(s)
- Estate tax return
- Inheritance tax return (for deaths prior to January 1, 1992)

Individual Income Tax Return

A personal representative or petitioner must file an individual income tax return, Form 1, 1A, 1NPR, or WI-Z, for a decedent from the beginning of the year to the date of death. The due date of the individual return is April 15th of the year following death.

The filing requirements for tax years beginning in 2001 are as follows:

- a. Single person - gross income of \$9,000 or more
- b. Married persons filing jointly - gross income of \$18,000 or more
- c. Married person filing separately - gross income of \$9,000 or more (each spouse)
- d. Head of household
 - (1) Under age 65 - gross income of \$10,320 or more
 - (2) Age 65 or over - gross income of \$10,570 or more
- e. Part-year resident or nonresident - gross Wisconsin income of \$2,000 or more

When a surviving heir files a return claiming a refund on behalf of a person who died and the refund is larger than \$100, a completed Form I-804, *Claim for Decedent's Wisconsin Income Tax Refund*, should be attached to the front of the return. If a refund of \$100 or less is being claimed, a note should be attached to the front of Form 1, listing the survivor's name, address, social security number, and relationship to the person who died, and the note should be signed.

The person who files the return should write "deceased" after the decedent's name in the name and address area at the top of the return.

If the taxpayer did not have to file a return but paid estimated tax or had tax withheld, a return must be filed to get a refund.

If a taxpayer's spouse died during 2001 and the taxpayer did not remarry in 2001, a joint return can be filed. A joint return for 2001 can also be filed if a taxpayer's spouse died in 2002 before filing a 2001 return. A joint return should show the deceased spouse's 2001 income before death and the surviving spouse's income for all of 2001. "Filing as surviving spouse" should be written in the area where the return is signed. If someone else is the personal representative, he or she must also sign.

If a refund is being claimed as a surviving spouse filing a joint return with the deceased and the above instructions are followed, a Form I-804 is not required.

Fiduciary Income Tax Return(s)

Resident Estate

Every personal representative or special administrator of an estate of a Wisconsin decedent must file a Wisconsin fiduciary income tax return, Form 2, if the gross income of the estate is \$600 or more. Gross income means all income, before deducting expenses, reportable to Wisconsin that is received in the form of money, property, or services. It does not include items that are exempt from Wisconsin tax.

The decedent is considered a resident of the state in which the decedent was domiciled at the time of death.

Nonresident Estate

A nonresident estate must file a Wisconsin fiduciary return, Form 2, if it has gross income (as described in "Resident Trust" above) of \$600 or more from Wisconsin sources, and a federal fiduciary return is required to be filed with the Internal Revenue Service. Income from sources within Wisconsin includes income or gain from:

- a. Real or tangible personal property located within the state.
- b. A business, trade, profession, or occupation carried on within the state, including a corporation taxed under Subchapter S of the Internal Revenue Code.
- c. Personal or professional services performed within the state as an individual or a member of a partnership.
- d. Income received from the Wisconsin State Lottery or a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

The first fiduciary income tax return filed by a personal representative or petitioner of an estate covers the period from the date of death of the decedent to the end of the first year selected by the fiduciary. The taxable year cannot be longer than 12 months, must end on the last day of the month, and must coincide with the year selected for filing the federal return. The return is due on the 15th day of the 4th month after the close of the taxable year.

Closing Certificates

A Closing Certificate for Fiduciaries may be requested from the Wisconsin Department of Revenue at the time and on the return, Form 2, that is filed for the year prior to the final year.

Section 71.13(2), Wis. Stats., provides that the department may issue a Closing Certificate for Fiduciaries to an "Executor, administrator, personal representative or trustee applying to a court having jurisdiction" in order to obtain the court's approval for final distribution and discharge of the fiduciary. The department will issue the Closing Certificate for Fiduciaries only in cases where the court has required it to close a proceeding.

Copies of the inventory and will including any codicils should be attached with the request. If these documents were previously submitted with a Wisconsin Estate Tax Return, it is not necessary to submit them again.

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return.

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

- a. Complete the top third of the Form 2, page 1
- b. Insert the appropriate statement in line 1:
 - (1) "Gross income is less than \$600 and no 1041 is required" or
 - (2) "A first and final return will be filed upon closing the estate"
- c. Complete the "Information Required" section of Form 2, page 2
- d. Sign and date the Form 2
- e. Attach copies of the inventory and will
- f. Mail the certificate request to:

Wisconsin Department of Revenue
Mail Stop 5-144
PO Box 8904
Madison WI 53708-8904

Estate Tax Return

A tax is imposed upon any transfer of property to any distributee in either of the following cases: (a) when the transfer is from a person who dies while a resident of Wisconsin at death; or (b) when the transfer is of property within the jurisdiction of Wisconsin, and the decedent was not a resident of Wisconsin at death.

Wisconsin Estate Tax Basis - 1/1/92 to 9/30/02

For deaths occurring from January 1, 1992, through September 30, 2002, the Wisconsin estate tax is a tax based on the federal credit for state death taxes. This tax is imposed upon both resident and nonresident decedents. The federal filing requirements are based on the gross estate and are as follows:

<u>Period</u>	<u>Gross Estate</u>
1992 to 1997	\$600,000
1998	\$625,000
1999	\$650,000
2000 and 2001	\$675,000
1-1-2002 to 9-30-2002	\$1,000,000

Wisconsin Estate Tax Basis - 10/1/02 to 12/31/07

(Note: The provisions below are based on Wisconsin law in effect as this issue of the Bulletin went to press. The Wisconsin Legislature was considering changes, and if any changes are made, explanations of the new provisions will be provided in a future issue of the Bulletin.)

For deaths occurring from October 1, 2002, through December 31, 2007, the Wisconsin estate tax will be based on the federal credit for state death taxes and the federal estate tax as computed under the federal estate tax law in effect on December 31, 2000. This means that the filing requirement for filing a Wisconsin estate tax return, Form W706, will differ from the federal filing requirement, which is \$1,000,000 in 2002 and 2003 and goes up in later years. There may be a Wisconsin filing requirement even though no federal estate tax return will be required.

Wisconsin Estate Tax Basis - After 12/31/07

For deaths occurring after December 31, 2007, the Wisconsin estate tax will again be based on the federal credit for state death taxes, and the federal estate tax is to be computed under the federal estate tax law in effect on the date of the decedent's death. Under current

federal law, the federal filing requirements for deaths occurring on or after January 1, 2008, are as follows:

<u>Period</u>	<u>Gross Estate</u>
1-1-2008 to 12-31-2010	no estate tax
1-1-2011 and after	\$1,000,000

The Wisconsin Form W706 should be filed by the person responsible for filing the federal estate tax return (personal representative, special administrator, trustee, distributee, or other person signing the federal Form 706).

The Form W706 is due nine months after the date of death or when the federal estate tax return is required to be filed, as extended, whichever is later. For federal estate tax returns filed after July 25, 2001, the Internal Revenue Service (IRS) provides an automatic six-month extension of time to file the return. A request for an extension must be made on federal Form 4768 and filed with the IRS on or before the due date of the return. Wisconsin will accept the federal extension; a copy of the approved Form 4768 must be filed with the Wisconsin Form W706.

Regardless of when the tax return is filed, the tax is due nine months after date of death. There is no provision for extending the time to pay the Wisconsin tax (even though a federal extension is available for paying the federal tax). If the tax is not paid within nine months of the decedent's death, interest is imposed at 1% per month **from the date of death**.

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


Examples:

1. Decedent A died April 15, 2001. An extension of time to file the federal estate tax return was obtained from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on January 31, 2002, which was within the extension period. Tax of \$1,200 was due. The total amount due is \$1,314, computed as follows:

Tax	\$1,200
Interest	<u>114</u> (1% x 9 1/2 months)
Total	\$1,314
2. Decedent B died April 15, 2001, and did not obtain an extension to file from the IRS. The Wisconsin estate tax return was filed January 31, 2002, and showed no tax due. This estate owes the minimum penalty of \$25.

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

Inheritance Tax Return

There is no Wisconsin inheritance tax for decedents dying on or after January 1, 1992. If death occurred prior to January 1, 1992, you may obtain the appropriate forms by calling (608) 266-2772, or you may access the forms through the department's Internet web site, www.dor.state.wi.us. Click on the brown "Forms" tab, then on "Estate, Inheritance and Gift Tax." 

Farmers Receive More Than \$29 Million in Farmland Credits

Direct benefits of approximately \$29.1 million were distributed to Wisconsin farmers in 2001, primarily for the 2000 tax year, through the farmland preservation credit program and the farmland tax relief credit program. These credits are paid as a reduction in Wisconsin income tax, or as a cash refund if the credits exceed income tax due. The total amount of farmland preservation credit and farmland tax relief credit may not exceed 95% of the farm property taxes.

Farmland Preservation Credit Program

About 21,400 farmers, including about 450 corporations, claimed farmland preservation credits totaling \$17.2 million in 2001. The credit averaged \$806 per claimant. About 37% of farm owners with 35 or more acres claimed the credit, which equaled about 22% of claimants' average property tax bills.

The goals of the farmland preservation credit program are twofold –

- To preserve Wisconsin farmland by means of local land use planning and soil conservation practices.

- To provide property tax relief to farmland owners.

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

Farmland Tax Relief Credit Program

It is not necessary for the farmland to be subject to agricultural zoning or a farmland preservation

agreement to receive farmland tax relief credit. This program provides direct benefits to any qualifying farmland owner with 35 or more acres of farmland. About 57,400 farmers, including about 1,000 corporations, claimed farmland tax relief credits totaling \$11.9 million in 2001, for an average credit of \$208.

The credit is computed on a percentage of up to \$10,000 of property taxes. The Department of Revenue calculates the percentage each year, based on the amount appropriated for the program. The credit for 2000 claims equaled 11% of the first \$10,000 of property taxes on farmland. For the 2001 tax year (credits claimed in 2002), the credit is equal to 13% of the first \$10,000 of property taxes. [↗](#)

Revenue Agent Impersonator Gets Prison

Gary R. Piehl, 47, of Milwaukee, was sentenced in February 2002, to three years in prison for identity theft and impersonating a Wisconsin Department of Revenue agent. Milwaukee County Circuit Court Judge Victor Manion also sentenced Piehl to five years of probation following his prison release, and ordered him to make restitution of \$4,832 to Elan Financial. Piehl had pled guilty to the identity theft and impersonating charges in November 2001.

According to the criminal complaint filed in June 2001, Piehl searched obituary notices to identify deceased persons and their relevant funeral homes. He then tricked the funeral homes into providing the telephone numbers of the surviving spouse. He contacted the spouse, claiming he was a Wisconsin Department of Revenue agent who was checking to see if the surviving spouse had filed a final tax return with their dead mate, to get them 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 operator or tombstone maker, looking for the same personal identifying information about the decedent. He also sifted through discarded mail at a rooming house and on one occasion obtained the identity of a person that he used to acquire an Elan credit card. Using this card, Piehl made 25 cash withdrawals from automatic teller machines and obtained over \$4,800 between November 1999 and January 2000.

Criminal charges were initiated against Piehl after a joint investigation by the Wisconsin Department of Revenue and the U.S. Postal Inspection Service.

Piehl was first suspected of posing as a Revenue Department agent in 1996. In that case Piehl used public newspapers and targeted persons with ages similar to his own, and who had recently received job promotions. He called these persons and told them that the department was processing their income tax return and that he needed their social security number to complete the process. In a 1997 plea bargain, Piehl pled guilty to two misdemeanor counts of financial transaction card crimes for obtaining credit cards using the identities of other persons. Piehl was placed on two years of probation for the 1997 conviction.

Kathryn M. Richardson, 44, of Greenfield, was charged in April 2002, with theft and with filing fraudulent state income tax returns for 1996, 1997, and 1998. The charges were filed by the Milwaukee County District Attorney's Office.

According to the criminal complaint, from 1992 until 1998 Richardson was the office manager for Dr. Deborah Luetzow, who owns and operates a family health practice in South Milwaukee. Richardson had control of both the computerized check register and the doctor's business bank account. The complaint further alleges that In April 1998 Dr. Luetzow learned that Richardson had not been remitting withholding tax payments to the Wisconsin Department of Revenue. She later discovered that Richardson had also forged her signature on a document to the Wisconsin Department of Regulation and Licensing.

The complaint states that after she fired Richardson in May 1998, Dr. Luetzow hired a certified public accountant to audit her business financial records. The accountant discovered that Richardson had embezzled over \$35,000, and Dr. Luetzow contacted the South Milwaukee Police Department. An investigation by the Police Department, along with the State Revenue's Fraud Unit, determined that Richardson embezzled over \$66,500 between 1996 and 1998 from Dr. Luetzow's business practice. The complaint further states that on some occasions Richardson wrote out additional checks to herself, such as for \$500, \$1,000 or \$7,500, or she simply added \$1,000 to her weekly paycheck or wrote out two full paychecks to herself for the same workweek.

The complaint states that Richardson repeatedly falsified Dr. Luetzow's computerized check register, to hide the extra checks she was writing out to herself. On some occasions she recorded them as being paid to another employee, while on other occasions she recorded them as being paid to a medical supply company.

The complaint further states that when confronted by the police and Department of Revenue agents, Richardson attempted to claim that the money she took represented commissions she had earned on collecting receivables on the doctor's business. However, Richardson had no answer as to why she had failed to report any of the alleged "commissions" on any of her income tax returns.

In March 2002, Patricia A. Johnson, 42, Milwaukee, was sentenced to sixty days in jail after pleading guilty to cheating on her taxes. She was also sentenced to an additional nine months in jail, however, this was stayed and she was ordered to spend an additional two years on probation. Milwaukee County Circuit Court Judge Jean Dimotto also ordered Johnson to perform 100 hours of community service and make restitution to the Wisconsin Department of Revenue. As part of a plea agreement, she also cannot file any additional homestead credit claims until the end of tax year 2005.

According to the criminal complaint filed in December 2001, the Department of Revenue investigated fraudulent homestead credit claims filed in Johnson's name for 1993 to 1997. The complaint further stated that Johnson submitted rent certificates with forged signatures and phony rent receipts that would make it appear that she was paying thousands of dollars of rent

to Metropolitan Associates each year and living in apartments in Milwaukee.

The complaint states that, altogether, Johnson received \$6,384 in homestead credit money that she was not entitled to. While the Department of Revenue recovered most of the money paid out, Johnson was also ordered to make restitution for a remaining \$810.

Wisconsin law provides that persons filing fraudulent homestead credit claims can be charged with a felony, with punishment of imprisonment of up to seven years and six months and fines up to \$10,000, or both. In addition to criminal penalties, 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.

In February 2002, an Oak Creek man, Michael A. McElwrath, 32, was ordered to serve nine months in the Dane County Jail for embezzling over \$54,000 from United Rentals, his former employer. Dane County Circuit Court Judge Angela B. Bartell withheld sentence and placed McElwrath on probation for twelve years on the theft count and eight years on the tax evasion count.

McElwrath was found guilty in November 2001 of one felony count of theft by bailee and one felony count of filing a fraudulent Wisconsin income tax return. At the November plea hearing, Assistant District Attorney Ann Sayles stated that McElwrath filed a Wisconsin income tax return for the year 2000, on which he failed to report embezzlement income of over \$54,000.

Boulder Junction marina owner Barry D. Jolin, 48, of Minocqua, pled guilty in January 2002, to three counts of failure to pay withheld taxes, but he was not convicted, pending a three-year deal with the state. Jolin entered into a deferred entry of judgment with DeWitt Strong, Vilas County assistant district attorney, which states that if he abstains from criminal activity and makes timely payments on all income, franchise, sales, and use tax returns for himself and his business for three years, the charges against him will be dropped.

Jolin allegedly submitted a worthless check for almost \$41,000 in July 2001, for sales taxes owed. He was put on notice that he faced criminal charges for past "not sufficient funds" checks. On information from the

Department of Revenue, 18 charges were filed against Jolin, six for failure to pay sales taxes and 12 for failure to pay withheld taxes. Fifteen of the charges were dismissed as part of the plea agreement.

Any violation of the agreement would result in Jolin facing fines of up to \$10,000 and nine months in jail on each count. [!\[\]\(bd1a142de767a21e5362c595f844a4ff_img.jpg\)](#)



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.** *Frances A. and Teresa A. Bera, and James Konrath. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 14, 2001). The issue in this case is whether payments made by James Konrath to Teresa Bera in 1995 and 1996 should be considered child support and thus neither taxable to Teresa nor deductible by James, or alimony or separate maintenance and thus taxable to Teresa and deductible by James.

Taxpayers Teresa Bera and James Konrath were divorced in July 1984. The judgment of divorce provided that James was to pay family support in the amount of

25% of his gross weekly income. In August 1995, Teresa and James stipulated to a reduction in James' support obligation from 25% to 17%, because one of the children had attained the age of majority and graduated from high school.


On their 1995 and 1996 Wisconsin income tax returns, Frances and Teresa did not report any family support payment that Teresa received from James in those years. On his 1995 and 1996 returns, James claimed a deduction for alimony or separate maintenance on all amounts he paid to Teresa in those years.


The department issued assessments in the alternative against the taxpayers, based on the inconsistent treatment of James' family support payments to Teresa. With respect to Teresa, the department included the payments in her gross income. With respect to James, the department denied the alimony deduction he claimed. The taxpayers filed timely petitions for redetermination with the department, the department denied them, and the taxpayers filed timely petitions for review with the Commission.

The Commission concluded that the payments made by James Konrath to Teresa Bera in 1995 and 1996 should be considered alimony or separate maintenance and thus taxable to Teresa and deductible by James. The Commission affirmed the department's action relating to Frances and Teresa Bera and reversed its action relating to James Konrath.

The 1995 document did not change the family support to child support. Since the divorce judgment was entered before December 31, 1984, it is governed by section 71 of the Internal Revenue Code prior to the Tax Reform Act of 1984. Because the 1995 stipulation and order did not provide that the post-1984 treatment of section 71 should apply, the pre-1985 provisions also apply to the 1995 stipulation and order.

Neither the department nor the taxpayers have 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. 

 **Alimony.** *Melvin O. Seamans, Melvin O. Seamans and Tatyana Vedyasheva, and Leah H. Seamans vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 2, 2002). The issue in this case is whether payments that Melvin Seamans made to Leah Seamans constitute alimony or separate maintenance under section 71 of the Internal Revenue Code (“IRC”).

Melvin O. Seamans and Leah H Seamans were divorced in March 1994. The judgment of divorce incorporated the terms of a marital settlement agreement entered into by Melvin and Leah. The marital settlement agreement provided that maintenance to both parties was waived and would be denied, and it also provided for a monthly cash settlement payment payable until Leah’s death or remarriage, or until Melvin’s death, whichever occurs first. Neither the divorce judgment nor the marital settlement agreement contained any provision that the payments would not be includable in Leah’s gross income or deductible by Melvin.


During 1995 through 1998, the years at issue, Melvin paid \$900 per month to Leah. She did not report any of those payments as income on her Wisconsin income tax returns. Melvin claimed the payments as a deduction on his Wisconsin income tax returns for 1995 and 1996, and on the joint returns filed with Tatyana Vedyasheva for 1997 and 1998.

The department issued assessments in the alternative against all of the taxpayers with respect to the payments made by Melvin during the years at issue. The assessment against Leah is based on the premise that the payments were reportable as income as alimony or separate maintenance. The assessments against Melvin, and Melvin and Tatyana, are based on the premise that the payments are not deductible as alimony or separate maintenance.

All of the taxpayers filed timely petitions for redetermination with the department, all of which the department denied. The taxpayers then filed timely petitions for review with the Commission.

The Commission concluded that the payments at issue constitute alimony or separate maintenance under IRC sec. 71 because (1) they were paid under a divorce or separation instrument, (2) the instrument did not designate the payments as not includable in Leah’s income or non-deductible to Melvin, and (3) the payments will terminate upon Leah’s death. The Commission affirmed the assessment against Leah Seamans and reversed the assessments against Melvin Seamans and Melvin Seamans and Tatyana Vedyasheva.

Neither the department nor the taxpayers have appealed this decision. [!\[\]\(3211b5d1d968fc1665909b34f9f16010_img.jpg\)](#)

 **Appeals - frivolous.** *Mark Joseph Rell and Marie Anne Rell vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 11, 2001). There is no genuine issue of material fact in this case. Both parties have filed motions for summary judgment. In addition, the department has also moved for the imposition of an additional assessment against the taxpayers, on the grounds that their position in this proceeding is frivolous or groundless.

The taxpayers filed a 1998 Wisconsin income tax form, with a copy of their 1998 federal Form 1040, two Form W-2 wage statements, and a two-page document titled “Attachment to 1998 Tax Return.” The taxpayers entered zeros on the first 33 lines of the Wisconsin form, and “1018.24” on line 34 (Wisconsin income tax withheld). They requested a refund of that amount on line 43, which the department did refund to them.

The taxpayers filed a 1999 Wisconsin income tax form, with a one-page form titled “Attachment to 1999 Wisconsin Tax Form 1,” a copy of their 1999 federal

Form 1040 with a two-page document captioned “Attachment to 1999 1040,” and a Form W-2 wage statement. The taxpayers entered zeros on the first 31 lines of the Wisconsin form, and “724.06” on line 32 (Wisconsin tax withheld). They requested a refund of that amount on line 41.

In August 2000, the department issued an estimated assessment to the taxpayers for income tax, interest, and a negligence penalty for 1998 and 1999. The taxpayers filed a document that the department deemed a petition for redetermination, and the department denied it. The taxpayers then filed a timely petition for review with the Commission.

The taxpayers assert that wages are not income that is taxable by Wisconsin. They also assert that they did not receive an “assessment” because the communication from the department is captioned “Notice of Amount Due” rather than “Assessment,” that they are being denied due process, that they were denied the “right” to cross-examine department employees, that the assess-

ment is invalidated because some department letters to them were not signed, and that the Wisconsin Legislature improperly delegated its authority by adopting portions of the Internal Revenue Code.

The Commission ruled that the taxpayers' arguments are frivolous, irrelevant, and useless ramblings about the department's authority and the Wisconsin income tax statutes. It also ruled that because the taxpayers have offered nothing but groundless and frivolous arguments,

an additional assessment is proper, as provided in sec. 73.01(4)(am), Wis. Stats.

The Commission granted the department's motion for a summary judgment and dismissed the petition for review, denied the taxpayers' motion for summary judgment, and assessed the taxpayers an additional \$500.

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



Estoppel. *Alfred C. Williams III and Ruth E. Williams vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 29, 2001). The issue in this case is whether the department is estopped from collecting its assessments from Ruth E. Williams ("Ms. Williams") on the basis of information she received from a department auditor.

In February 2000, the department issued assessments in the alternative to Alfred C. Williams III ("Mr. Williams") and to Ms. Williams, for tax year 1993. Also in February 2000, the department issued a second assessment to Ms. Williams, for tax years 1994 and 1995. Both taxpayers filed petitions for redetermination with the department, relating to all three assessments, and the department denied all of the petitions for redetermination. The taxpayers then filed timely petitions for review with the Commission, relating to all three assessments.

Ms. Williams and Mr. Williams were divorced from each other in 1993. Among other things, the divorce judgment required Mr. Williams to pay Ms. Williams family support payments each month, for the support and maintenance of the minor children and Ms. Williams. This requirement was for a period of three years, at which time the matter was to be reviewed. In addition, the family support payments were to terminate earlier upon the death of either party, the remarriage of Ms. Williams, or as otherwise provided by statute or case law.

Mr. Williams made the required payments and deducted those payments on his federal and Wisconsin income tax returns as alimony for 1993, 1994, and 1995. Ms. Williams did not include the payments as income on her federal and Wisconsin income tax returns for 1994 or 1995 (she did not file a 1993 return because she believed she did not receive the minimum amount of income to require filing for that year).

At the divorce hearing in January 1993, the presiding judge and Ms. Williams' attorney told her that she must pay income tax on the payments. When her tax preparer prepared her 1994 and 1995 returns, they also told her the payments were taxable income to her. They required her to sign a waiver of any liability before they would prepare returns without including the payments as income, and Ms. Williams signed the waivers.

Ms. Williams testified that a Department of Revenue auditor advised her (after inquiring if the divorce decree used the terms "child support" or "alimony") that she did not have to pay income tax on family maintenance or family support. She relied on that advice in not filing an income tax return for 1993 and not including the payments on her 1994 and 1995 income tax returns. She did not rely on the advice of the judge, her attorney, or her tax preparer.

The Commission concluded that the department is not estopped from collecting its assessments from Ruth E. Williams on the basis of information she received from a department auditor. Four factors must be proven to find estoppel against a non-government person, and estoppel against the Department of Revenue applies only if the four elements are present and it would be unconscionable to allow the state to revise an earlier position. The four factors are (1) action or non-action, (2) the action includes reliance, (3) the reliance must be to the person's detriment, and (4) the reliance must be reasonable.

The Commission held that the general estoppel doctrine is not a valid defense in this case. The action relating to the auditor's advice was not clearly proven because Ms. Williams' testimony was not consistent. Her reliance was not to her detriment because the income was taxable regardless of whether it was taxed earlier or as a result of the assessments. Her reliance was not reasonable because she was told by the judge, her attorney, and her tax preparer that the amounts were taxable; based on

this, it was unreasonable to not seek clarification from the department auditor.

Based on the Commission's conclusion, the assessments against Ms. Williams were affirmed, and the assessment against Mr. Williams was reversed.

Neither the department nor the taxpayers have appealed this decision. [!\[\]\(e78f798d4ea5c530c9db49e7d26e6b95_img.jpg\)](#)



Interest income, municipal bonds.

Michael and Betty C. Borge vs. Wisconsin Tax Appeals Commission and Wisconsin Department of Revenue (Court of Appeals, District IV, December 28, 2001). The issue in this case is whether distributions received by the taxpayers, shareholders of a mutual fund that invests solely in state and local bonds, are included as taxable income for Wisconsin income tax purposes under sec. 71.05(6)(a)1, Wis. Stats.

The taxpayers held shares in mutual funds that invest in certain state and local bonds. The mutual funds receive interest payments on the bonds, subtract expenses and management fees, and distribute the remaining interest payments to the fund shareholders. The taxpayers received such distributions each year from 1993 to 1996.

The distributions are undisputedly tax-exempt for federal income tax purpose. However, the taxpayers also excluded the distributions on their state income tax re-

turns for those years. The department adjusted the returns, asserting that the distributions were taxable under sec. 71.05(6)(a)1, Wis. Stats. The taxpayers appealed the department's determination, arguing that the statute does not tax the distributions because they characterized them as "dividends." The Wisconsin Tax Appeals Commission ruled that the department's determination was correct, and the Circuit Court affirmed the Commission's decision.

The Court of Appeals concluded that sec. 71.05(6)(a)1, Wis. Stats., unambiguously requires the taxpayers to include in their Wisconsin adjusted gross income "any interest ... which is not included in federal adjusted gross income." And, under 26 U.S.C. secs. 103(a) and (852)(b)(5), the distributions are treated as "an item of interest" that is excluded from federal gross income.

The taxpayers have not appealed this decision. [!\[\]\(fe3aebe81acea8d45108cd2768939da7_img.jpg\)](#)



Retirement funds exempt. *Edward C. and Jean F. Wilkinson vs. Wisconsin Department of Revenue*

(Wisconsin Tax Appeals Commission, January 2, 2002). The issue in this case is whether retirement benefits paid to Edward C. Wilkinson ("the taxpayer") are exempt from the Wisconsin income tax.

The taxpayer taught in the Milwaukee city public schools from 1955 to 1967. As of September 1959, he was a member of the Milwaukee School Teachers' Annuity and Retirement Fund ("MTRF"). In April 1967, the taxpayer submitted a signed application for a refund of his contributions, and in June 1967 he received a complete refund of his contributions. The application provided, in part: "As a member of the FUND, I further agree that payments of said accumulation(s) made shall constitute a full and complete discharge and release of all right, interest or claim on my part to state deposit accumulations which accrued while a member of said FUND."

The taxpayer took a position with the University of Wisconsin-Milwaukee and the University of Wisconsin

Extension. By virtue of his taking this position, he became a member of the Wisconsin State Teachers Retirement System ("STRS") in August 1967. He returned to employment with the Milwaukee public schools in 1974, until his retirement in 1990.

When he retired, the taxpayer received a copy of the department's Publication 108, *How Your Retirement Benefits Are Taxed*, dated June 1989. The publication provided, in part, that some payments received from the Wisconsin Retirement System are exempt for Wisconsin tax purposes, including such payments paid "on the account of a person who was a member of the ... Milwaukee Teacher's Retirement System as of December 31, 1963...." He relied on the publication in preparing the taxpayers' Wisconsin income tax returns for 1991, 1992, and 1993 ("the years at issue"). The taxpayers assert that this publication led them to believe the taxpayer's pension was not taxable, and therefore the department is equitably estopped from imposing Wisconsin income tax on the retirement payments.

Following the withdrawal of his MTRF contribution in 1967, the taxpayer had on account with the STRS no deposits from either him or the state attributable to his teaching service prior to 1967. In 1990, he applied to the Wisconsin Retirement System to purchase previously forfeited years of service under the MTRF. For the years at issue, the taxpayer's retirement benefits from the WRS included benefits for the years previously forfeited.

The taxpayer received payments from the WRS in 1991, 1992, and 1993 but did not include the income on the taxpayers' Wisconsin income tax returns for those years. The department issued an assessment against the taxpayers for those years, on which it asserted that the WRS payments were subject to Wisconsin income tax. The taxpayers filed a petition for redetermination with the department, which it denied, and the taxpayers then filed a timely petition for review with the Commission.


The Department of Employee Trust Funds interprets and applies Wisconsin's law to mean that an eligible employee who purchases previously forfeited creditable service obtains the right to use the purchased years of service only to determine the final amount of that person's retirement annuity and insurance eligibility at retirement, not to reinstate or restore any other rights the person may have had in the retirement system or its predecessor before withdrawing from the system.

The Commission concluded that the retirement benefits paid to the taxpayer are not exempt from the Wisconsin income tax because they were not paid on the account of a person who was a member of an eligible retirement system as of December 31, 1963. After the taxpayer withdrew all of the assets that remained in his MTRF account subsequent to December 31, 1963, there was nothing in the account to which he had a right.

The taxpayers' estoppel argument fails in two respects. First, one of the elements of estoppel against the department is that the conduct of the department must be unconscionable. The department accurately paraphrased a statute in its publication, even though parts of the statute had not yet been construed by the courts and the Commission. It would thus be unconscionable to allow the taxpayers to prevail on this point, as the department did not mislead the public about the meaning of the statute. Second, the taxpayers have not shown that they have suffered a detriment. Their reliance on the publication led them to their failure to report the taxpayer's retirement payments, which in turn led to an assessment for the tax that was not paid but was owed in the first place. This does not constitute a detriment.

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

SALES AND USE TAXES

 **Aircraft - taxable use.** *G & G Trucking, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 3, 2001). The issue in this case is whether the taxpayer made taxable use of aircraft purchased for the purpose of lease or rental.

The taxpayer is a Wisconsin corporation engaged in the business of interstate trucking. During the period under review, the taxpayer purchased aircraft, and maintenance service and repair parts for the aircraft, without payment of Wisconsin sales or use tax.

Prior to purchasing the aircraft, the taxpayer entered into oral lease agreements to lease the aircraft to aircraft charter companies. The oral lease agreements provided that:

- A. Each charter company must take possession of the aircraft it leases and keep the aircraft in its hangar in Wisconsin.
- B. The charter companies are responsible for keeping their leased aircraft in a safe and secure location and for all insurance, registration and licensing, cleaning, and maintenance.
- C. The charter companies must make reasonable efforts to charter the aircraft to people needing the service and must pay the taxpayer a negotiated rental fee based on the number of hours each is chartered.
- D. The charter companies are solely responsible for scheduling the use of their leased aircraft and for selecting, training, and paying pilots. The charter companies may bill the taxpayer for some items, such as maintenance. The taxpayer pays a special monthly fee to have its lessees house the aircraft indoors year-round.

- E. Either party may terminate the agreement by giving a 30 day notice to the other party.

When a third party chartered an aircraft, a flight was scheduled and an initial charter fee was paid. The third party also paid a \$350 pilot fee and a per hour fee of \$850, which included fuel.

When the taxpayer chartered aircraft, the taxpayer would reserve an aircraft but it did not pay an initial charter fee. If one of the aircraft owned by the taxpayer was not available, the taxpayer would either not go on the flight, or arrange alternate transportation consisting of "trading hours" with the owner of another aircraft leased to the charter company. The taxpayer had a special hourly rate, equal to the hourly rate the owner of the other aircraft paid to the taxpayer. The charter company did not separately bill its charges to the taxpayer, but

rather offset them against the rental fee paid to the taxpayer for the lease of the aircraft. The taxpayer also paid for fuel, and other amounts typically charged to third party charter customers, such as the pilot fee.

The Commission concluded that the taxpayer made use of the aircraft as that term is defined in sec. 77.51(22)(a), Wis. Stats. (1999-00), because the taxpayer had the right to use the aircraft, and did use them. The taxpayer's use of the aircraft was more than "solely for lease or rental" as described in sec. Tax 11.29(2)(a), Wis. Adm. Code (June 1991 Register), and the purchase of the aircraft, parts, and maintenance are subject to the use tax.

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

Officer liability. *Eugene C. Rondon vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, January 29, 2002). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated June 5, 2001. See *Wisconsin Tax Bulletin* 127 (October 2001), page 25, for a summary of the Commission's decision. The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of National Vehicle Management, Inc. ("the corporation"), under sec. 77.60(9), Wis. Stats., for the periods of February, May through August, November, and December 1995, and January through July 1996, and for a dealer plate project assessment for January 1992 to December 1995.

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

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

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

The Circuit Court concluded that the Commission properly granted summary judgement to the Department of Revenue in the absence of any disputed issue regarding any material fact.

The taxpayer's claim that the department violated his rights to due process is unfounded because sec. 77.60(9), Wis. Stats., is clear and unambiguous. The department's interpretation of the statute is reasonable, and giving great weight to the Commission's interpretation, the finding of wilfulness is upheld. The taxpayer's claim that the assessment is an "excessive fine" is not supported because the assessment simply recovers the amount of revenue lost to the state as a result of his conduct.

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

Services subject to tax - emergency response services. *SSM Health Care vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 22, 2002). The issues in this case are:

- A. Whether the taxpayer's emergency response services provided in its Lifeline Program telephone or telecommunication services are subject to Wisconsin sales or use tax.

- B. Whether the taxpayer's Lifeline Program is a rental of tangible personal property subject to Wisconsin sales or use tax.
- C. What is the proper interest rate if the service or rental is subject to tax?

The taxpayer is a tax exempt organization engaged in operating nonprofit hospitals and nursing homes and providing health care services.

The Lifeline Program offered by the taxpayer is a 24-hour emergency response system providing security and support to subscribers so they may live independently in their own homes. A person interested in the program completes an information sheet and a monitoring plan agreement specifying the obligations and responsibilities of the subscriber, and the commitments, duties, and responsibilities of the Lifeline Program, and specifically the third party company which actually provides the emergency response service. Upon receipt of the signed monitoring plan agreement, the taxpayer arranges for installation of the emergency response equipment in the subscriber's home. While the equipment is in the subscriber's home, the taxpayer maintains and services the equipment.

The equipment installed in the subscriber's home consists of two units. The first, a communicator, is connected to the subscriber's existing telephone jack. The subscriber's telephone is then connected to the communicator. The second unit is a portable help button worn by the subscriber on either a pendant hung from the neck or a wrist strap. When assistance is needed, the subscriber presses the help button, which sends a radio signal and activates the communicator. The communicator then automatically dials the telephone number of the third party emergency response service provider located in a state outside Wisconsin. The service provider's staff answers the telephone call from the communicator, and attempts to communicate with the subscriber over a powerful speakerphone built into the communicator. If the subscriber is unable to speak, the staff member will call either neighbors or relatives, if available, or local emergency services. The service provider's staff has access to files containing emergency notification information about each subscriber.

In addition to the voice model communicator, the service provider also offers an alarm model communicator, which only dials the service provider's staff and alerts them the subscriber needs assistance. The staff member must then either place a telephone call to the subscriber to make voice contact, or call neighbors or relatives, if

available, or local emergency services. Both communicator models feature a timer allowing the subscriber to set a time period after which, if the timer is not reset, the communicator automatically dials the service provider's staff who then attempts to place a telephone call to the subscriber to make voice contact, or calls neighbors or relatives, if available, or local emergency services.

To use the Lifeline Program, a subscriber must have telephone service through an independent telephone service provider, who bills the subscriber directly. The subscriber is responsible for installation and maintenance of any local and long distance service.

The taxpayer charges a subscriber an initiation fee, part of which goes to the third party service provider, and a monthly Lifeline Program fee for either model of communicator. A portion of the monthly Lifeline Program fee also goes to the service provider.

The Lifeline Program is not regulated by the Federal Communications Commission or the Wisconsin Public Service Commission. The equipment used in the program does need to comply with FCC rules regarding radio communication equipment.

The Commission concluded as follows:

- A. The taxpayer's emergency response services provided in its Lifeline Program are not telephone or telecommunication services subject to Wisconsin sales or use tax. Nothing in the statutes imposes sales tax on the services provided in the Lifeline Program. In *Wisconsin Tax Bulletin* 34 (October 1983), page 13, the department discussed the issue of a "direct connect" burglar and fire alarm protection service in a tax release and concluded that the protection service was not taxable. The Lifeline Program service is similar to the direct connect protection service, and the gross receipts for providing the Lifeline Program service are also not taxable.
- B. The taxpayer's Lifeline Program is not a rental of tangible personal property subject to Wisconsin sales or use tax. The Lifeline Program provides subscribers with two pieces of equipment, the rental of which is not the true objective of the service provided by the taxpayer. Subscribers purchase a service by which they may obtain emergency response assistance, and the equipment is incidental to this service.

- C. It is not necessary to determine the proper interest rate, because the service or rental is not subject to tax.

The department has not appealed this decision but has filed a notice of nonacquiescence with regard to those parts of the decision that state or imply that the Lifeline Program must be specifically enumerated in a tax imposition statute in order to be taxable. The department considers sec. 77.52(2)(a)5m, Wis. Stats., as created by 1997 Wis. Act 27 effective for transactions that occurred

on or after December 1, 1997, to require imposition of tax on Lifeline Program gross receipts after the period involved in this case (1989 through 1992). The effect of this action is that, although the decision is binding on the parties in this case and will be extended to other parties providing or purchasing the Lifeline Program until November 30, 1997, the Commission's conclusion of law, the rationale, and construction of statutes with regard to the Lifeline Program are not binding on or required to be followed by the department in other cases. [!\[\]\(cbe80b694ebd74fcfe136a095b608235_img.jpg\)](#)