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SPECIAL BULLETIN

MAJOR TAX BILLS ENACTED

Two major tax bills have just been passed by the Legislature and signed into law by Governor Dreyfus.

Attached to this issue of the Wisconsin Tax Bulletin you will find a supplement containing brief descriptions of the new individual income, corporation franchise/income, homestead credit, inheritance, gift and sales and use tax law provisions.

NEW SECRETARY APPOINTED

Governor Dreyfus has appointed Mark E. Musolf as Secretary of the Wisconsin Department of Revenue.

Mr. Musolf received a B.A. degree in finance from the University of Wisconsin in 1963 and a law degree from the University in 1966. He has practiced law with the Madison firm of McBurney, Musolf & Whipple since 1967, specializing in tax, small business, and real estate law.

Musolf is a member of the American Bar Association, the State Bar of Wisconsin, and the Dane County Bar Association. He was also treasurer of the New Republican Conference and president of the WHA Radio Association; however, he resigned from these positions when he became secretary of the department.

NEW PUBLICATIONS

The Income, Sales, Inheritance and Excise Tax (I.S.I. & E.) Division of the Wisconsin Department of Revenue recently began publishing a new form of informational material called "publications". They are intended to aid the public in understanding the Wisconsin tax laws administered by the Division and the policies and procedures pertaining to such laws. Copies of the publications are available at each of the Division's 37 offices located throughout Wisconsin.

IN THIS ISSUE

To date the following publications have been issued:

- Publication 101 — 1978 Wisconsin Tax Requirements for Nonresidents
- Publication 102 — 1978 Wisconsin Tax Requirements for Part-Year Residents
- Publication 500 — Tax Guide for Wisconsin Political Organizations and Candidates
- Publication 501 — Field Audit of Wisconsin Tax Returns
- Publication 502 — 1978 Special Property Tax/Rent Credit for Wisconsin Residents
- Publication 503 — Wisconsin Farmland Preservation Tax Credit for 1978

Additional topics will be covered in the future. If you have any suggestions for subjects for these new publications, please submit your suggestions to the Wisconsin Department of Revenue, Division of Income, Sales, Inheritance and Excise Taxes, Director of Technical Services, P.O. Box 8910, Madison, Wisconsin 53708.

FILING DEADLINES FOR 1978 RETURNS

Income Tax

April 16 is the deadline for filing a 1978 calendar year Wisconsin individual income tax return. Taxpayers waiting until the deadline to file should be sure that their returns bear an April 16 postmark. Returns postmarked after April 16 will be subject to late filing penalties.

Homestead Credit

The Wisconsin Homestead Credit Claim (Schedule H) for 1978 is not due until December 31, 1979. However, if an individual is filing a 1978 income tax return and also claims homestead credit, the department prefers that the Schedule H accompany the 1978 income tax return.

Farmland Preservation Credit

December 31, 1979 is also the filing deadline for a 1978 Wisconsin Farmland Preservation Credit Claim (Schedule FC) filed by a calendar year taxpayer; however, claimants are encouraged to attach Schedule FC to their 1978 Wisconsin income tax returns which are required to be filed earlier.

1978 Special Property Tax/Rent Credit

Most homeowners and renters eligible for the 1978 special property tax/rent credit will claim this credit on their 1978 income tax return or Homestead Credit claim. For those who do not file a 1978 Wisconsin income tax return or Homestead Credit claim, the credit should be claimed by filing Schedule PC. Regardless of the manner in which this credit is claimed, the claim must be filed no later than December 31, 1979. No extensions are allowed.

Alternative Energy System Tax Benefit Claims

Claims for income tax credits (or special write-off provisions for corporations) based on expenditures incurred for qualifying alternative energy systems installed during 1977 and 1978 are to be filed on Wisconsin Schedule AE. The claim is to be attached to the owner's 1978 Wisconsin individual income or corporation franchise/income tax return. Claims based on expenses incurred during 1977 and 1978 must be filed no later than 4 years from the due date of the owner's 1978 income or franchise tax return (e.g., no later than April 18, 1983 for an individual on a calendar year basis for 1978).

EXTENSIONS OF TIME TO FILE TAX RETURNS FOR INDIVIDUALS

A. Forms 1 and 1A

Any extension of time granted by the Internal Revenue Service for filing federal returns shall extend the time for filing the corresponding Wisconsin individual income tax returns, provided that a copy of the federal extension (Form 4868 for a 60-day extension, or Form 2688 for an additional extension) is filed with the Wisconsin return. If the Internal Revenue Service for any reason refuses to grant an extension or terminates one previously granted, the Wisconsin income tax return is due on the same date as the federal return.

Instead of an extension allowed by the Internal Revenue Service, extensions may also be granted by the Wisconsin Department of Revenue for 30 days. A request for such a 30-day extension must be filed with the Department prior to the due date of your return.

If an individual who has been granted an extension files a return and has a tax due, the amount due is subject to interest at the rate of 9% per year for the extension period (s. 71.10(5)(b)). To avoid the payment of interest, individuals may pay the tax due on or before the original due date of the return.

Applications for extensions and related correspondence should be sent to:

Wisconsin Department of Revenue
P.O. Box 8903
Madison, WI 53708

B. Schedules H (Homestead), FC (Farmland Preservation Credit), and PC (1978 Special Property Tax/Rent Credit)

No extensions of time are available for filing claims for the above credits.

1978 Homestead claims and Special Property Tax/Rent Credit claims must be filed no later than December 31, 1979. Farmland Preservation Credit claims for 1978 must be filed no later than 12 months after the farmland owner's 1978 taxable year ends (e.g., December 31, 1979 for calendar year taxpayers).

FIRST 1979 ESTIMATED TAX PAYMENT IS DUE APRIL 16

Every individual, whether or not a resident of Wisconsin, is required to file a 1979 declaration of Wisconsin estimated tax (Form 1-ES) if the individual expects his or her Wisconsin income tax liability to exceed withholding upon wages, if any, by $60 or more.

A trust or estate is not required to file a declaration.

Individuals required to file a 1979 declaration during the first quarter of 1979 must do so on or before April 16. Installment payments are also due on June 15, 1979, September 15, 1979, and January 15, 1980.

DON'T OVERLOOK GIFT TAX RETURNS

With the exception of gifts of real estate and tangible personal property located outside of Wisconsin, all gifts made by Wisconsin residents are taxable. It does not matter whether the recipient lives in Wisconsin or in another state, a gift received from a Wisconsin resident is still taxable.

Also taxable are all gifts made by nonresidents of Wisconsin of property (both real estate and tangible personal property) which is located in Wisconsin. Such gifts are taxable regardless of where the recipient resides.

Wisconsin gift tax reports must be filed for any calendar year in which the total value of taxable gifts made by one donor (person giving the gift) to one donee (person receiving the gift) in that year exceeds $3,000.

The donor reports gifts made on Form 7. On this form the donor enters the description and value of the gifts made to each donee.

The donee reports the gifts he or she received on Form 6, and includes the description and value of the gifts received from one donor. If the donee receives gifts from more than one donor during that year, the donee must file a separate report of gifts received from each donor. The computation of the gift tax due must be made on Form 6.

DO YOU HAVE SUGGESTIONS FOR 1979 TAX FORMS?

Each year the Department receives helpful suggestions from the public regarding changes or improvements which can be made to the various Wisconsin income tax reporting forms. Because many of the suggestions submitted have been useful in evaluating and updating these forms and instructions, the Department is seeking your comments as we begin preparing the 1979 forms.

You may wish to communicate your suggestions as to how the Department might improve Forms 1 (individual long form) or 1A (individual short form) or Schedules H (Homestead) or FC (Farmland Preservation Credit) or their instructions. You may send them to the Wisconsin Department of Revenue, Division of Income, Sales, Inheritance and Excise Taxes, Director of Technical Services, P.O. Box 8910, Madison, Wisconsin 53708. Because of printing deadlines which must be met for the 1979 forms, please submit your suggestions by July 1, 1979.

REMINDER! TAXPAYERS MUST NOTIFY DEPARTMENT OF REVENUE OF FEDERAL ADJUSTMENTS AND AMENDED RETURNS

If an individual or corporation taxpayer's federal income tax return is adjusted by the Internal Revenue Service (IRS), and the adjustments affect the amount of Wisconsin income reportable or tax payable, such adjustments must be reported to the Wisconsin Department of Revenue within 90 days after they become final. In addition, taxpayers filing an amended return with the IRS or another state must also notify the Department within 90 days of filing if any information contained in the amended return affects the amount of Wisconsin income reportable or tax payable.

If a taxpayer fails to notify the Department of federal audit adjustments or an amended return filed, the statute of limitation for adjusting the Wisconsin return for the year involved is extended from the normal 4 year period to 10 years. Administrative Rule Tax 2.105 provides additional information regarding this reporting requirement and indicates when adjustments made by the IRS are considered to become final.

To simplify the filing of an amended return, Wisconsin Form 1X for individuals and Form 4X for corporations may be used. These forms are available at any Department office. The amended Wisconsin return or copy of the federal audit report should be sent to:

Wisconsin Department of Revenue
Audit Bureau
Post Office Box 8906
Madison, Wisconsin 53708

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

INCOME TAXES

Capital Loss Deduction

Under s. 71.05 (1) (j), Wis. Stats., a subtraction modification is available for amounts of long-term capital loss which are not allowable as a deduction in computing federal adjusted gross income.

For federal income tax purposes, only 50% of a net long-term capital loss can be used to reduce ordinary (other than capital gain) income. The subtraction modification available for Wisconsin purposes provides that capital losses are deductible in full (subject to an annual limitation of $1,000) on the Wisconsin income tax return. The Department has received inquiries regarding the proper application of this modification in the following situation:

A taxpayer has a Wisconsin long-term capital loss carryforward of $5,000 available for the taxable year 1978. No loss carryforward is available for federal purposes for 1978. During July 1978 this taxpayer sold stock realizing a long-term capital gain of $3,000 and received wages in the amount of $15,000.

On the 1978 Wisconsin income tax return, this individual should report the following:

Federal adjusted gross income (includes $1,500 of long-term capital gain and $15,000 of wages) - line 25, Form 1	$16,500
Addition modification (½ of capital gain not included in federal income) - line 26, Form 1	1,500
Subtraction modification - line 29, Form 1	(4,000)
Wisconsin Total Income	$14,000

A Wisconsin capital loss carryforward claimed as a subtraction modification under s. 71.05 (1) (j) may be used to offset the entire amount of capital gain income includable in Wisconsin income plus $1,000 of other income. In the above example, the subtraction modification of $4,000 offsets the $3,000 of gain included in income, plus an additional $1,000 of income.

SALES TAX

When and Where a Sale Takes Place

Section 77.51 (4r) of the sales and use tax law locates a sale involving the transfer of the ownership of property both as to time and place as follows:

> "A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or his agent to the purchaser or his agent, except that for purposes of this subsection a common carrier or the U.S. postal service shall be deemed the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid."

The effect of this statute on the determination of whether a sale is a Wisconsin or out-of-state sale is illustrated by the following examples:

1. When a Wisconsin seller transfers possession of tangible personal property to the purchaser at the seller's Wisconsin plant or other Wisconsin place of business, and the buyer removes the property in its own truck or other conveyance, possession transfers to the buyer in Wisconsin and there has been a Wisconsin sale. It is immaterial that the purchaser may, subsequent to the sale, transport the property out of the state. This sale is subject to the Wisconsin tax, except when some other exemption applies to the transaction.
2. When a Wisconsin seller carries the property in its own conveyance from its place of business in Wisconsin to Chicago, and delivers the property to an Illinois customer, possession has transferred in Illinois and the sale is not a Wisconsin sale. In this situation the result would be the same if the seller moved the goods in a conveyance operated by an employe, or by an independent contractor engaged by the seller for such hauling.
3. When property is transferred between the seller and the buyer by a common carrier or by the United States Postal Service, such property is deemed to come into the possession of the buyer when turned over to the buyer or the buyer's agent by the carrier or postal service at destination regardless of the f.o.b. point and regardless of the method by which the freight or postage is paid. Accordingly, sales made by a Wisconsin seller to a nonresident buyer which are shipped by common carrier f.o.b. the seller's Wisconsin plant and delivered by such common carrier to the purchaser in Illinois, are not Wisconsin sales.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

Department of Revenue vs. Romain A. Howick (Circuit Court of Washington County, Case No. 78-CI-0544, November 6, 1978.) The taxpayer purchased securities prior to becoming a Wisconsin resident and then sold them after becoming a resident of this state.

Securities from 12 corporations were sold in 1970 and stocks from 3 additional corporations were sold in 1973. The Department computed gain or loss from each security using either the stock's market value on the date taxpayer's Wisconsin residence was established or the stock's federal basis. The Department did not compute a gain on any sale for Wisconsin purposes when federal loss actually occurred.

The issue involved in this case is how income or losses arising from capital gains or losses should be measured for Wisconsin individual income tax purposes when the taxpayer acquired the securities prior to moving to Wisconsin and sold the securities after becoming a Wisconsin resident.

The taxpayer contended that his original cost was his basis. The Department contended that the taxpayer's basis is the fair market value of the stock on the date the taxpayer became a Wisconsin resident. (The Department's position on this issue is contained in Administrative Rule Tax 2.97, "Sale of constant basis assets acquired prior to becoming a Wisconsin resident".)

The Tax Appeals Commission held in favor of the taxpayer. The Commission found that the Department's position had the ultimate effect of creating artificial gain from actual loss when the sales for the 2 years under review were viewed on a net, rather than an individual, sale basis.

The Circuit Court of Washington County held in favor of the taxpayer. The Court stated that the Department's interpretation may violate the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.

The Department has appealed this decision.

William B. Riley vs. Department of Revenue (Wisconsin Tax Appeals Commission, December 12, 1978.) In 1972, taxpayer was a partner in a Wisconsin partnership. On October 1, 1972, when taxpayer was not a resident of Wisconsin, the capital assets of the partnership were sold to a Wisconsin corporation for $140,000. In addition, the corporation agreed to collect and pay to the partners the partnership's outstanding accounts receivable.

Under the terms of the purchase, taxpayer was to receive 33⅓% of the $140,000 and 40% of the receivable collections over 4 years. On October 18, 1972, the Department advised taxpayer that his sale of the partnership interest was an intangible following residence and not subject to Wisconsin income taxation.

In 1978, the Department issued an assessment for income taxes covering 1973, 1974 and 1975, taxing the receivables collected and paid to the taxpayer during the period. The Department contended that the collection and payment of the receivables to the taxpayer was a transaction separate from the sale of the partnership interest and therefore, taxable as a distributive share of a Wisconsin partnership's net income.

Taxpayer contended that the October 1, 1972 sale included both capital assets and receivables made when he was not a Wisconsin resident. The commission held in favor of the taxpayer, stating that the sale of both accounts receivable and capital assets was consumated on October 1, 1972. Thus, taxpayer's gain while he was a nonresident is not taxable.

The Department has appealed this decision.