



Wisconsin TAX BULLETIN

www.dor.state.wi.us

Number 130

July 2002

New Tax Laws

The following are brief descriptions of two new Wisconsin laws that make changes to the sales and use tax law effective June 1, 2002, and to laws of several tax types effective October 1, 2002.

- 1. Allow Prior Trade-In Allowance on Replacement Vehicle Purchased With Lemon Law Proceeds** (2001 Act 45, create secs. 77.51(4)(b)3m and (15)(b)4m and 218.0171(2)(cq), effective for Lemon Law refunds made on or after June 1, 2002.)

If a person received a trade-in allowance on the purchase of a motor vehicle ("lemon" vehicle) and then receives a payment from the manufacturer refunding the amount the person paid for the "lemon" vehicle under sec. 218.0171, Wis. Stats. ("Lemon Law refund"), gross receipts or sales price of a replacement motor vehicle purchased by the person may be reduced by the trade-in amount that was allowed on the purchase of the "lemon" vehicle, if all of the following conditions are met:

- The customer provides to the seller of the replacement vehicle a statement from the manufacturer indicating the (1) trade-in amount previously applied toward the sales price of the "lemon" vehicle and (2) date of the Lemon Law refund.

(Continued on page 3)

We Want to Talk to You

(by Diane L. Hardt, Co-Chair of the Streamlined Sales Tax Project)

If you are not familiar with the work of the Streamlined Sales Tax Project, we want to talk to you. The Project has undertaken perhaps one of the most significant efforts to improve tax administration ever. It is precedent setting in that never before have governments and the private sector worked together to accomplish so much. And yet, there is much work left to do.

The Wisconsin Department of Revenue, like many of the revenue departments around the country, has been actively engaged in the discussion and development of the simplifications and procedures. The business community – including retailers, telecommunication

companies, manufacturers, leasing companies, printers, airlines, accounting and law firms, and e-commerce businesses – have devoted their tax professionals to developing the simplifications and procedures. It's expected that as many as 20 – 30 states will pursue the model legislation in 2003.

(Continued on page 4)

New Electronic Funds Transfer ("EFT") System is Unveiled

Effective July 1, 2002, the Department of Revenue has implemented a new and secured electronic funds transfer ("EFT") system that is available 24 hours a day – seven days a week. Anexsys is the vendor that designed the system and will provide ongoing support to its components.

- The new EFT system contains a telephone filing component, an on-line filing component, and a batch filing component for service providers. The transition from the former telephone filing system to the new system was "seamless." In fact, the EFT Unit encourages current system users to take advantage of the on-line and batch filing enhancements being offered. New users of the system need only obtain their EFT number and password from the Department of Revenue.

(Continued on page 4)

Department Will Offer Free Electronic Filing

The department will offer a new electronic filing ("e-filing") service, beginning with 2002 income tax returns filed in 2003. The new service will offer basic on-line instructions and fill-in forms on which taxpayers can enter information on-line and submit their return electronically. Initially, it will be restricted to income tax returns with no federal schedules or with only Schedule A and/or B attached.

The department's free e-filing product will not handle more complex tax returns. Indeed, many taxpayers will still choose a professional tax preparer or professional tax preparation software, which offer expert tax planning advice and other services beyond those available from the Department of Revenue.

In This Issue**Articles –**


New Tax Laws.....	1
We Want to Talk to You	1
New EFT System Unveiled	1
Free Electronic Filing	1
Rules Require Electronic Filing	2
States Approve Simplifications.....	5
File Sales Tax Returns With SIP.....	6
Automatic Extension Expires	6
Wisconsin/Minnesota Seminars	7

Integrated Tax Information	7
Treasury Offset Program Pays	7
Field Audit Results.....	7
Taxes Paid by Credit Card	8
Any Suggestions for Forms?	8
Information or Inquiries?	9
Campground Food Sales.....	9
Travelers Subject to Use Tax	9
Cleaning Fees Help Environment.....	10
Index of Reference Material	10
Tax Publications Available.....	11
Licenses Can Be Revoked	13

Don't Ignore Inquiries.....	13
Bulletin Index Available.....	14
Question and Answer.....	14
Accountant Imprisoned	15
Administrative Rules in Process	17
Rules Summarized.....	17
Report on Litigation	20
Tax Releases	29
Attachments –	
Integrated Tax System Flyer	33
June Tax Report	35
Order Blank.....	37

The free e-filing service will help the department fulfill its goal of making taxpaying less taxing. The free Internet income tax filing service is one of the ways the department is meeting its budget reduction targets while still maintaining and improving its quality of service to the taxpayers of Wisconsin.

The free electronic income tax filing program will save taxpayers' money, because e-filed returns require less processing. Paper tax forms need to be opened, sorted, reviewed, and coded. Then each line on the tax form must be scanned or manually re-keyed into Department of Revenue computers. But with electronic filing, the taxpayer's keystrokes are the department's keystrokes.

This exciting new initiative is something taxpayers have been asking for, and the Department of Revenue is pleased that it will be able to deliver that service to them in time for next year's filing and processing season. 

Administrative Rules May Require Electronic Filing

Administrative rule section Tax 2.08 has been amended to require certain higher volume tax practitioners to file individual income tax returns electronically. Electronic filing ("e-filing") prevents the most common errors on tax returns, verifies certain information, provides confirmation of receipt, and gets refunds to taxpayers faster - usually a lot faster.

The rule will be implemented in a phased approach. No later than October 2002, the department will notify practitioners who will be affected by the rule change. The first year of the mandate, practitioners who filed 200 or more 2001 Wisconsin individual income tax returns in 2002 will be included in the mandate. The second year of the mandate, practitioners who filed 100 or more 2002 Wisconsin individual income tax returns in 2003 will be included in the mandate. The threshold will remain at 100 for future years.

While the Department of Revenue is committed to advancing the use of e-filing, the new rule adopts a measured approach to implementation and allows for a waiver in the case of undue hardship.

- Less than 10% of tax practitioners will be required to e-file. Based on data reviewed, nearly 44,000 practitioners who file Wisconsin returns will not be mandated, as they file fewer than 100 Wisconsin individual income tax returns per year (it is estimated that the mandate will apply to only about 2,000 practitioners the first year and 3,600 practitioners the following years).
- Minnesota, Louisiana, Mississippi, New York, South Carolina, Tennessee, and Texas have similar requirements, while Alaska and California have similar legislation pending.

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

- Any practitioner can ask for a waiver from the electronic filing requirement if the requirement results in a hardship to the practitioner. In addition if a taxpayer wishes to file a paper tax return, the practitioner is not required to electronically file that return.

For more information about registering to submit individual income tax returns electronically, go to <http://www.dor.state.wi.us/eserv/e-ero.html> or contact the department by any of the following methods:

Mail: Wisconsin Department of Revenue
Electronic Filing Unit
PO Box 8977
Madison WI 53708-8977

Phone: (608) 264-6886

Fax: (608) 264-6884

E-mail: efiling@dor.state.wi.us

Administrative rule section Tax 11.01 has also been amended, to require certain sales and use tax returns to be filed electronically. Sales and use tax registrants will be given 90 days notice before the due date of the first period required to be filed electronically, beginning with sales and use tax registrants with a monthly filing


frequency. The rule allows for waiver of the requirement to file electronically due to hardship. The first step to begin using the free and secure Sales Internet Process (SIP) to file sales and use tax returns electronically is to download and print the application form (Form S-002) available at www.salestax.dor.state.wi.us and follow the mailing instructions. This paper process is necessary to maintain the high level of security in using this system. For more information about SIP, see the article titled “File Sales and Use Tax Returns Electronically With SIP” on page 6 of this Bulletin, go to the web site <http://www.dor.state.wi.us/eserv/sip.html>, or contact the department by any of the following methods:

Mail: Wisconsin Department of Revenue
Inquiry & Technical Assistance
PO Box 8902
Madison WI 53708-8902

Phone: (608) 261-6261

Fax: (608) 267-1030

E-mail: sales10@dor.state.wi.us

The text of the amended rules, sections Tax 2.08 and 11.01, relating to the electronic filing of returns, is reproduced in an article titled “Soon-to-Be Adopted Rules Summarized” on page 17 of this Bulletin. 

New Tax Laws (Continued from page 1)

- The replacement motor vehicle is purchased within 60 days from the date the person receives the Lemon Law refund.
- The replacement vehicle is the first motor vehicle purchased by the person after receiving the Lemon Law refund.

The trade-in amount allowed against the selling price of the replacement vehicle may not exceed the selling price of the replacement vehicle.

Example: Customer A purchases a new motor vehicle for \$35,000, trading in a vehicle valued at \$30,000 and paying \$5,000 in cash. Customer A pays \$250 of Wisconsin sales tax on the purchase of the new vehicle (\$35,000 selling price – \$30,000 trade-in = \$5,000 x 5% sales tax rate). The new vehicle is ultimately returned to the manufacturer because it is a “lemon.” The manufacturer refunds \$35,000 plus the \$250 of sales tax to Customer A under sec. 218.0171, Wis. Stats. The manufacturer

provides a statement to Customer A indicating a \$30,000 trade-in was previously applied to the “lemon” vehicle and the date the refund was provided to Customer A. Within 60 days of receiving the Lemon Law refund, Customer A purchases a replacement vehicle for \$38,000.

The amount of sales or use tax due on the purchase of the replacement vehicle is \$400 (\$38,000 selling price – \$30,000 trade-in previously allowed on the “lemon” = \$8,000 x 5% sales tax rate).

Under prior law, the trade-in of a vehicle in a prior transaction could not be used in a subsequent transaction.

- Provide Simplified Procedures for the Merger and Conversion of Business Entities** (2001 Act 44, amend sec. 77.21(1e) and create secs. 71.80(21) and (22), 73.03(58), 77.25(6d) and (6m), and 77.61(15), effective October 1, 2002.)

This Act simplifies the procedures for limited partnerships, limited liability companies, business

corporations, and nonstock corporations to convert or merge into any other form of business entity.

For Wisconsin franchise and income tax purposes, the conversion of a business entity to another form of business entity under sec. 179.76, 180.1161, 181.1161, or 183.1207, Wis. Stats., shall be treated in the same manner as the conversion is treated for federal income tax purposes. The merger of a business entity with one or more business entities under sec. 179.77, 180.1101, 180.1104, 181.1101, 181.1104, or 183.1201, Wis. Stats., shall be treated in the same manner as the merger is treated for federal income tax purposes.

Under current law, the real estate transfer fee does not apply to a conveyance pursuant to mergers of corporations. This Act amends the definition of “mergers of corporations” as follows: “Mergers of corporations” means the merger or combination of two or more corporations, nonstock corporations, limited liability companies, or limited partnerships or any combination thereof, under a plan of merger or a plan of

consolidation permitted by the laws that govern the entities.

In addition, the Act exempts the conveyance of property pursuant to the conversion of a business entity to another form of business entity under sec. 179.76, 180.1161, 181.1161, or 183.1207, Wis. Stats., if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion. Conveyances pursuant to partnerships registering as limited liability partnerships under sec. 178.40, Wis. Stats., are also exempt from the real estate transfer fee.

For sales and use tax purposes, a business entity that converts to another business entity under sec. 179.76, 180.1161, 181.1161, or 183.1207, Wis. Stats., shall be subject to the provisions applicable to liquidations, reorganizations, and business entity formations. [✎](#)

We Want to Talk to You (Continued from page 1)

The Wisconsin Department of Revenue will continue to educate individuals and groups about the proposed legislation. Our activities will include:

- Speaking to businesses and their associations, accounting and law firms, tax practitioners, and governments
- Educating lawmakers and their staffs

- Providing information on our web site about the components of the Wisconsin bill to be introduced in early 2003.

If you would like more information about the proposed legislation, or if you would like a speaker at an upcoming event, please call Vicki Gibbons at (608) 266-3873. You can also visit our web site at www.dor.state.wi.us or the Streamlined Sales Tax Project web site at www.streamlinedsalestax.org. [✎](#)

New EFT System (Continued from page 1)

They can then register on the system for the tax types for which they wish to make payments, and actual payments can be scheduled for the next business day or for up to 365 days into the future.

- The telephone filing component is similar to the former system, which used an interactive voice response (IVR) unit to guide the user through the actions needed to register and make payments. This component is accessible through the EFT toll free touch-tone telephone number – 1-888-EFT-WISC (1-888-338-9472).
- The new on-line filing component allows the user to file through a secure web site using a personal computer. Menus and pull-down options guide the

user through registration and payment actions. This is a faster and simpler process than telephone filing. This component is accessible through the EFT web site at www.witaxeft.com.

- The new on-line batch filing component is primarily for use by service providers who have multiple business accounts for whom they make tax payments to Wisconsin. The payment can be made out of the service provider’s bank account or each taxpayer’s bank account. Service providers will register through the EFT web site at www.witaxeft.com, but further client registrations and payments will be handled through batch files transmitted between the service provider and Anexsys.

All three components share a common database so the user, once registered on the system, can easily use any

of the three components to make payments or update a payment profile.


The system is designed to handle payments of the following tax types: withholding tax, estimated recycling surcharge, estimated tax (trust, estate, individual, corporation), sales and use tax, motor fuel tax, petroleum inspection fees, general aviation fuel tax, liquor and wine tax, beer tax, cigarette tax, tobacco products tax, and unemployment insurance.

System users are asked to provide an e-mail address. The intent is to communicate electronically with system users about system status, pass on general information, and provide problem resolution.

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

taxpayers to make EFT payments for both taxes and unemployment insurance. The new EFT system is intended to improve the operational efficiency of both departments, and to maximize collections by having funds available on tax due dates.

EFT collections continue to grow in the Department of Revenue. In fiscal year 2001, \$5.5 billion was collected by EFT, which is 52% of total collections. In fiscal year 2000, \$3.1 billion was collected by EFT, which is 27% of total collections.

If you have questions regarding the department's EFT program or if you wish to register for EFT, you may call the EFT information line at (608) 264-9918 or write to Wisconsin Department of Revenue, EFT Unit, Mail Stop 3-14, PO Box 8912, Madison WI 53708-8912. You may also visit the department's Internet web site at www.dor.state.wi.us for general EFT information and EFT information for financial institutions. Click on the brown "E-services" tab to access EFT information. 

"Implementing States" of the Streamlined Sales Tax Project Approve Simplifications

The numbers are growing. In the April 2002 *Wisconsin Tax Bulletin*, it was reported that 26 states had enacted the model legislation required to be part of an interstate agreement to simplify sales tax laws and make them more uniform. It's now 34 states and the District of Columbia.

States that have enacted the model legislation include: Alabama, Arizona, Arkansas, Florida, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Michigan, Minnesota, Missouri, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.


These "implementing states" of the Streamlined Sales Tax Project 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. In fact, the initial draft of the legislation was discussed at the Project's meeting in Salt Lake City, Utah, on July 10 – 12, 2002.

The key features of the Streamlined Sales Tax System include:

- Uniform definitions within tax bases
- Simplified exemption administration
- State administration of all state and local sales tax
- Uniform sourcing rules for property and services
- Simplified audit procedures for retailers who use a technology model specified by the states

Uniform definitions to be included in the model legislation include:

- Tangible personal property
- Food and food ingredients, prepared foods, candy, soft drinks, and dietary supplements
- Drugs, prescription drugs, and over-the-counter drugs
- Durable medical equipment, prosthetic devices, and mobility enhancing equipment
- Software, prewritten computer software, software delivered electronically, and load and leave software

Most "implementing states" are expected to pursue the model legislation in the 2003 legislative sessions. Wisconsin is expected to do the same. 

File Sales and Use Tax Returns Electronically With SIP

If you are a business person or a tax practitioner responsible for filing Wisconsin sales and use tax returns, you are invited to try the Department of Revenue's fast and efficient Sales Internet Process ("SIP").


SIP is the Wisconsin Department of Revenue's secure web-based application that combines the convenience of filing your sales and use tax return from your computer desktop, along with the speed and flexibility of making your tax payment by electronic funds transfer ("EFT"). SIP offers the following advantages over filing a paper return:

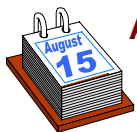
- Saves postage costs.
- Stores return information for you.
- Provides a receipt showing when the return was received.
- Allows an EFT payment to be initiated or warehoused all within the same filing transaction. (Unlike filing a paper return, a separate phone call is not needed to initiate an EFT transaction when using SIP.)
- Performs most of the calculations needed to fill out the return. (Note: a few manual pre-calculations are needed to arrive at some of the data to be entered into SIP.)

In order to use SIP, a sales and use tax return filer must have a state issued logon ID. Applying for the logon ID is easy:

1. Download and print the application form (Form S-002) by using the "Apply" link at www.salestax.dor.state.wi.us.
2. Complete and mail the SIP application to the Department of Revenue.
3. Receive a logon ID and a one-time password in the mail.
4. Log onto SIP at www.salestax.dor.state.wi.us.
5. SIP will automatically test the applicant's Internet browser for compatibility and will alert the person to any needed adjustments.
6. Follow the online instructions to complete the sales and use tax return.

More information can be found in Wisconsin Publication 227, *E-File Sales Tax Returns With SIP*, available at any Department of Revenue office or online at www.dor.state.wi.us/pubs/01pb227.pdf. See the article titled "Tax Publications Available" on page 11 of this Bulletin for other methods of obtaining publications.

If you have any questions about SIP after reviewing Publication 227, you may contact the department's Inquiry & Technical Assistance Unit, by phone at (608) 261-6261 or e-mail at sales10@dor.state.wi.us. 



Automatic 4-Month Extension Expires August 15


If your 2001 Wisconsin and federal individual income tax returns were due April 15, 2002, but you filed an application for an automatic 4-month extension for filing your federal return with the Internal Revenue Service ("IRS"), both your federal and Wisconsin returns are due August 15, 2002. When you file your Wisconsin return, be sure to attach a copy of the federal extension application, Form 4868.

Any filing extension available under federal law may be used for Wisconsin purposes, even if you are not using that extension to file your federal return. If you did not file a federal extension application but needed a 4-month extension for Wisconsin only, your 2001

Wisconsin return, ordinarily due April 15, 2002, must be filed by August 15, 2002.

If you are extending the time to file your Wisconsin return only, attach one of the following items to the 2001 Wisconsin return you file:

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

Note: You were not required to pay your 2001 taxes by April 15, 2002, as a condition for receiving an extension of time to file your Wisconsin tax return. 



Wisconsin/Minnesota Sales Tax Seminars

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

You are invited to attend any of the following seminars, free of charge. All seminars are from 9:00 a.m. to 12:30 p.m., at the locations indicated. To register or for more information, call the Minnesota Department of Revenue at (651) 297-4213.

October 1, 2002 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

October 8, 2002 – Hudson, Wisconsin
Hudson House
1616 Crestview Drive


October 15, 2002 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Street



Flyer Provides Integrated Tax System Information for Practitioners

"Release 1" of the Department of Revenue's Integrated Tax System ("ITS") will be in effect as of November 2002. To provide information about ITS for practitioners, the department has developed a flyer, titled "What Tax Practitioners Should Know About the Integrated Tax System (ITS)."

The flyer describes what ITS is, what it will initially include and what will come later, and changes and benefits that sales and use tax filers will see with the November implementation. It also discusses past ITS project successes and provides contact information.


A copy of the ITS flyer appear on pages 33 and 34 of this Bulletin. 

Treasury Offset Program Pays Big Dividends

The Department of Revenue has collected over \$5.8 million in delinquent income taxes through the Treasury Offset Program ("TOP"), a federal offset program implemented in Wisconsin in February 2001.

Since the program's inception, the department has certified more than \$210 million of unpaid income taxes to Financial Management Services, the branch of the U.S. Treasury that disperses federal payments, including

federal income tax refunds. More than 9,000 delinquent taxpayers in Wisconsin have had their federal refunds intercepted, either in whole or in part, as a result of the program.

The Treasury Offset Program, an off-shoot of a larger program that offsets most types of federal payments on behalf of federal agencies, was first opened to state revenue departments in January 2000. To date, twenty-four states have collected approximately \$150 million in delinquent income tax through TOP. 

Field Audit Results Can Be "Projected"

The Department of Revenue has begun projecting sales and use tax field audit results to subsequent years. The policy was instituted as a result of requests from taxpayers who wanted to project audit results.

At the conclusion of a field audit, there is often an additional year or years that are open to adjustment but are not included as part of the original audit period. Projecting the sales and use tax audit results forward to

the subsequent years, and including any additional sales and use taxes that may result for those years as part of the field audit assessment, can offer benefits to both the department and the taxpayer. Taxpayer benefits include less interest owed due to earlier assessment for the later years, and time saved by not going through a full audit or the preparation of amended returns for those years.

For all sales and use tax audits with years open to adjustment subsequent to the initial years audited, the auditor may consider projecting the audit results to

subsequent open years. A determination whether the taxpayer qualifies for a projection of audit results will be made on a case-by-case basis. Factors that do not automatically preclude a projection, but may indicate the taxpayer is not a good prospect for this treatment, include the following:

- Changes in the taxpayer's business operations.
- Changes in the method of reporting sales and use tax, or in personnel responsible for the reporting.
- Tax law changes that affect the taxpayer.

No projection into subsequent years will be made if the taxpayer does not agree in full with the results from the

original years audited. In addition, the taxpayer must agree to the projection.

For additional information about projecting field audit results, you may contact Jean Gerstner, Chief, Audit Technical Services Section, either by phone at (608) 266-8643, by e-mail at jgerstne@dor.state.wi.us, or by mail at the following address:

Wisconsin Department of Revenue
Attention Jean Gerstner
Mail Stop 5-257
PO Box 8906
Madison WI 53708-8906



Wisconsin Taxes Can be Paid by Credit Card

The Wisconsin Department of Revenue, in cooperation with Official Payments Corporation, accepts credit card payments for the following taxes:


- Balances due on individual income tax returns.
- Extension payments of individual income taxes.
- Estimated individual income tax payments.
- 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).]
- Full or partial payments of delinquent taxes (all tax types).

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. Only taxpayers who have a "delinquent tax notice payment key" may 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.

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, you may call Official Payments Corporation at 1-800-2PAY-TAX (1-800-272-9829), or you may visit the company's Internet web site at www.officialpayments.com. 

Any Suggestions for 2002 Tax Forms?

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

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

Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division and the Processing and Customer Services Division. A comprehensive listing of telephone numbers and addresses appears in *Wisconsin Tax Bulletin* 129 (April 2002), pages 27 to 30.

Madison – Main Office Area Code (608)

Appeals.....	266-0185
Audit of Returns: Corporation, Individual, Homestead	266-2772
Beverage Tax	266-6702
Cigarette, Tobacco Products Taxes	266-8970
Copies of Returns	266-2890
Corporation Franchise and Income Taxes	266-1143
Delinquent Taxes	266-7879
Electronic Filing:	
Individual Income Tax.....	264-6886
Sales Tax	261-6261
Electronic Funds Transfer (“EFT”).....	264-9918
Estimated Taxes	266-9940
Fiduciary, Estate Taxes	266-2772
Forms Request:	
Taxpayers	266-1961
Practitioners	267-2025
Fax-A-Form.....	261-6229
Homestead Credit.....	266-8641
Individual Income Tax	266-2486
Motor Vehicle Fuel Tax	266-3223
Refunds	266-8100
Sales, Use, Withholding Taxes	266-2776
Sales Internet Process (“SIP”)	261-6261
TTY	267-1049

District Offices

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



Campground Food Sales May Be Taxable

Sales of certain food, food products, and beverages by campgrounds are taxable. However, sales of certain other food, food products, and beverages by campgrounds are nontaxable if the items are for consumption at the purchaser's campsite.

Information about the taxability or nontaxability of food, food products, and beverages sold by campgrounds can be found in Part VI of the June 2002 *Sales and Use Tax Report* (number 2-02). The Report was sent in late June and early July to all persons registered for Wisconsin sales and use tax purposes.

A copy of the June Sales and Use Tax Report appears on pages 35 and 36 of this Bulletin. [↗](#)

Travelers May be Subject to Use Tax

Travelers who have purchased merchandise in other states or in foreign countries, and have brought the items into Wisconsin, may be subject to Wisconsin use tax on their purchases.

All merchandise stored, used, or consumed in Wisconsin, that is taxable under Wisconsin's sales tax law, is subject to Wisconsin use tax if Wisconsin sales tax has not been paid. Examples of taxable merchandise include:

Antiques	Furs
Art works	Glassware
Books	Jewelry
Cameras	Musical instruments
Carpeting, rugs	Paintings
Chinaware	Precious metals, gemstones
Clothing	Silverware
Computers	Stereo equipment
Crystal	Tapes
Furniture	

Wisconsin allows a credit for sales tax paid to another state, up to the 5% use tax charged by Wisconsin. Wisconsin also allows a credit for a similar local tax paid to another state, up to the 0.5% Wisconsin county tax and/or the 0.1% or 0.5% Wisconsin stadium tax. However, a credit is not allowed for foreign sales taxes or custom duty charges that may have been paid.

The department regularly audits U.S. Customs records and exchanges information with other states to ensure that use tax owed on foreign or out-of-state purchases is remitted to the department.

For more information about use tax on items purchased in other states or foreign countries, refer to Wisconsin

Publication 213, *Travelers - Don't Forget About Use Tax*. See the article titled "Tax Publications Available" on page 11 of this Bulletin, for information about how to obtain publications. [↗](#)

Dry Cleaning Fees Help the Environment

Dry cleaning facilities are required to report and remit a special dry cleaning facility license fee, which is used to help fund the cleanup costs of lands contaminated by dry cleaning chemicals. This cleanup effort will help ensure that groundwater and the environment are maintained in good stewardship for future generations.

Persons who dry clean items at a dry cleaning facility in Wisconsin must be registered with the Wisconsin Department of Revenue to hold a Dry Cleaning Facility License. Along with holding a Dry Cleaning Facility License, cleaners are responsible to report and remit a 1.8% dry cleaning facility license fee on their dry cleaning receipts once each calendar quarter.

The Department of Revenue has registered many dry cleaning facilities. However, a recent audit of accounts shows that not *all* dry cleaning facilities are registered for this license, which has been **required under state**

law since October 14, 1997. When the Department of Revenue contacts a dry cleaning facility that has failed to register for this license, costly negligence penalties can result. If the department has not previously contacted a cleaning facility, the facility can still register under a "voluntary disclosure" process that will eliminate the costly negligence penalty and will even reduce late payment interest.

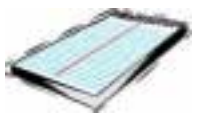
Questions regarding registration of a dry cleaning facility, or how to obtain voluntary disclosure treatment, can be directed to:

Wisconsin Department of Revenue
Customer Service and Taxpayer Education
Technical Assistance – Business
PO Box 8902
Madison WI 53708-8902

Phone: (608) 266-2776

Fax: (608) 267-1030

E-Mail: sales10@dor.state.wi.us.



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 37 of this Bulletin. The Index is also on the department's Internet web site at www.dor.state.wi.us. Just click on the brown "Publications" tab. [↗](#)

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 may be 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 (3/02)
- 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) [🔗](#)

Occupational Licenses Can Be Revoked or Denied for Delinquent Taxes

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

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

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

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

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

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

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

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

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

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

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

Don’t Ignore Department of Revenue Inquiries

If a client receives a letter or notice from the Department of Revenue (“DOR”) asking that they file a

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

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

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

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

subsequently furnished **and** the tax return or information indicates that there is no filing requirement.

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

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

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

For a list of Department of Revenue office locations and hours, or for further information regarding delinquent tax collection, you may access DOR's Internet web site at www.dor.state.wi.us and click on the brown "FAQS" (frequently asked questions) tab. [↗](#)



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). [↗](#)

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 I operate a motel, and occasionally I rent a roll-away bed to a guest, to accommodate an additional

person in the room. Is the charge for the additional bed subject to Wisconsin sales tax?

A Yes. Although motel operators are considered consumers of tangible personal property they use in providing lodging services, separate rentals of tangible personal property such as roll-away beds, refrigerators, microwave ovens, audio-visual equipment, etc., are subject to Wisconsin sales tax.

Q A local charity is conducting a fundraiser. My business has donated some inventory items to the charity for its raffle. I had purchased the inventory items without tax for resale. Do I owe use tax on these donated items?

A If you donated the items to an organization that holds a Certificate of Exempt Status (issued by the Department of Revenue) or to a Wisconsin governmental unit, you do not owe use tax on these items. However, if you donated the inventory items to an organization that does not hold a Certificate of Exempt Status (for example, VFW or Kiwanis Club), you owe use tax on the donated items, assuming an exemption (for example, meat) does not apply.

Q I was charged sales tax on a repair to my car. Are services subject to sales tax?


A Certain services are subject to Wisconsin sales and use tax. These taxable services are listed in Wisconsin Publication 201, *Wisconsin Sales and Use Tax Information*, on pages 15 to 19. Taxable services include the repair of all items of tangible personal property (for example, a car). The service provider was correct in charging you sales tax on the repair to your car.

Publication 201 is available on the department's Internet web site, www.dor.state.wi.us. See the article titled "Tax

Publications Available" on page 11 of this Bulletin for other methods of obtaining publications.

Q I am a retailer located in Wisconsin, and I sell items of tangible personal property to customers located in Wisconsin and in other states. I send the items to my customers using the U.S. Postal Service or a common carrier (such as UPS). Do I have to charge Wisconsin sales tax on items sold that are sent outside Wisconsin?

A No. Your sales of tangible personal property to the out-of-state customers take place outside of Wisconsin. Sales of tangible personal property are completed at the time when and the place where the seller or the seller's agent transfers possession to the buyer or the buyer's agent. A common carrier or the U.S. Postal Service is the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid. Because possession of the items transfers from your agent (the U.S. Postal Service or common carrier) to your customers outside Wisconsin, you do not owe Wisconsin sales tax on the sales.

Exception: If you have direct or indirect knowledge that the items you sell are intended to be stored, used, or consumed in Wisconsin, you are subject to Wisconsin tax on your sale at the time of the storage, use, or consumption, unless an exemption applies. 

Accountant Imprisoned for Tax Evasion, Other Crimes

Accountant Patricia J. Coster, 30, of Madison, was sentenced in April 2002, to ten years in the Wisconsin state prison system for evading state income taxes, embezzlement, forgery, and issuing worthless checks. Coster is the former business accountant of Orion Progressive Lens Lab, Inc., in Madison.

From February 2000 through May 2001, Coster embezzled \$74,722 from Orion. In addition, she issued numerous worthless, counterfeit, or forged checks totaling over \$21,000 between November 2000 and June 2001. Coster did not report any of the stolen money on her 2000 or 2001 Wisconsin income tax return.

In January 2002, Coster was charged with fifteen felonies. The charges include three counts of theft in a business setting, four counts of issuing worthless checks, seven counts of forgery, and one count of state

income tax evasion. Coster was charged with a second felony count of state income tax evasion and bail jumping in April.

Dane County Circuit Court Judge Steven D. Ebert sentenced Coster to ten years in the state prison system on one of the theft counts. The sentence includes one year in confinement and nine years of extended supervision. Judge Ebert withheld sentence on the remaining counts and placed Coster on 15 years probation. Among the conditions of probation are that Coster pay restitution to Orion and the Wisconsin Department of Revenue. Coster was also ordered to undergo psychological evaluation and drug and alcohol assessment.

Filing a fraudulent Wisconsin income tax return is a felony, punishable by imprisonment of up to seven years, six months and fines of up to \$10,000, or both. In addition to the criminal penalties, Wisconsin law

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

In June 2002, Darryl Welch and his former girlfriend, Shannon Jefferson, made their initial appearance before Circuit Court Judge Victor Manian. Welch, age 40, currently incarcerated at the Dodge Correctional Institution, was charged by the Milwaukee County District Attorney's Office with one count of filing a fraudulent income tax return and two counts of failure to file timely tax returns. Jefferson, age 28, currently incarcerated at the Robert E. Ellsworth Correctional Center was charged with two counts of failure to file timely tax returns. In 2002, Welch and Jefferson pled guilty to Medicaid Fraud. The criminal tax charges followed an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

According to the criminal complaint, Darryl Welch filed a fraudulent 1997 income tax return, failing to report over \$51,000 of income. Also, according to the complaint, he failed to file timely 1999 and 2000 tax returns. During those years, the complaint alleges, Welch's taxable income exceeded \$217,000 in 1999 and he had gross receipts, gambling winnings and interest income that exceeded \$101,000 in 2000. If convicted on all counts, Welch faces a maximum penalty of up to nine years imprisonment, fines of up to \$30,000, or both, together with the cost of prosecution.

According to the criminal complaint, Shannon Jefferson failed to file 1999 and 2000 income tax returns. During those years, the complaint alleges, she had a net profit of over \$89,000 in 1999 and gross receipts of over \$182,000 in 2000. If convicted on all counts, Jefferson faces a maximum penalty of up to 18 months imprisonment, fines of up to \$20,000, or both, together with the cost of prosecution.

Failure to file a Wisconsin income tax return when due is a crime punishable by up to nine months imprisonment, up to \$10,000 in fines, or both, together with the cost of prosecution. In addition, civil penalties apply to the civil tax liability, as well as assessment and collection of the taxes, penalties, and interest due.

charged by Shawano County District Attorney Gary Bruno, with crimes he allegedly committed in 2000 and 2001. The charges include failing to submit registration and title certificates to the Department of Transportation for cars he sold to numerous customers, one felony count of theft for failing to remit the fees he collected from customers on those transactions, three felony counts of sales tax theft, and three misdemeanor counts of failure to file sales tax returns.

According to the criminal complaint, Kendall failed to send in the paperwork and over \$1,000 in title and registration fees to the Department of Transportation, which resulted in complaints from 23 people, stating that they had not received titles for vehicles they had purchased from him. An investigation revealed that Kendall also failed to remit to the Department of Revenue nearly \$7,000 in state and county sales tax he collected from customers in the fourth quarter of 2000 and the first two quarters of 2001. In addition, he did not file required sales tax returns for any of those three quarters.

If convicted on all counts, Kendall faces 40 years in prison and \$41,700 in fines and forfeitures.

Also in April, Michael R. and Deirdre A. Fesenmaier, both age 42, of Lake Geneva, were charged by the Walworth County District Attorney's Office with three counts each of failure to file Wisconsin income tax returns.

According to the criminal complaint, the Fesenmaiers failed to file income tax returns for the years 1998, 1999, and 2000. During those years, the complaint alleges, the Fesenmaiers' income exceeded \$50,000. The gross income filing requirement for 2001 state income tax returns is \$9,000 for a single individual and \$18,000 on a joint return.

If convicted on all three counts, the Fesenmaiers each face a maximum penalty of up to 27 months imprisonment, fines of up to \$30,000, or both, together with the cost of prosecution. Failure to file a Wisconsin income tax return when due is a crime punishable by up to nine months imprisonment, up to \$10,000 in fines, or both, together with the cost of prosecution, civil penalties on the civil tax liability, and assessment and collection of the taxes, penalties, and interest due. [!\[\]\(0d5ec72f61334709c3fc9450209b754f_img.jpg\)](#)

In April 2002, John P. Kendall, 30, now of Madison and a former auto dealer at Wittenberg Auto Sales, was

Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of July 1, 2002.

The listing includes rule numbers and names, and whether a rule is amended (A), repealed and recreated (R&R), or a new rule (NR).

To order up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 37 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Scope Statement Published

- 11.19 Printed material exemptions – A (published June 30, 2002)
- 11.33 Occasional sales – A (published June 30, 2002)
- 11.46 Summer camps – A (published May 31, 2002)
- 11.48 Landlords, hotels and motels – R&R (published June 30, 2002)
- 11.50 Auctions – A (published June 30, 2002)
- 11.57 Public utilities – A (published June 30, 2002)

- 11.65 Admissions – A (published May 31, 2002)
- 11.87 Meals, food, food products and beverages – A (published May 31, 2002)

Rules Sent to Revisor for Publication of Notice

- 2.03 Corporation returns – A (published May 31, 2002)
- 2.12 Amended returns – A (published May 31, 2002)
- 3.91 Petition for redetermination – A (published May 31, 2002)
- 6.40 Waste treatment facilities (industrial/utility) – A (published June 30, 2002)
- 11.11 Industrial or governmental waste treatment facilities – A (published June 30, 2002)
- 12.40 Waste treatment facilities (industrial) – A (published June 30, 2002)

Rules Adopted but Not Yet Effective

- 2.08 Returns of persons other than corporations – A (anticipated effective date August 1, 2002)
- 11.01 Sales and use tax return forms – A (anticipated effective date August 1, 2002). [☞](#)

Soon-to-Be-Adopted Rules Summarized

Summarized below is information regarding two administrative rules that have been revised: sections Tax 2.08 relating to returns of persons other than corporations, and Tax 11.01 relating to sales and use tax return forms. The effective date of the revisions is scheduled to be August 1, 2002.

In addition to the summary of the changes, some of the text of the revised rules is reproduced. In the amendments, material that is lined through (~~lined through~~) represents deleted text, and material that is underscored (underscored) represents new text.

To order up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 37 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Tax 2.08 Returns of persons other than corporations. Subsections (1)(a)2. and (1)(a)3. are revised, to conform language to Legislative Council Rules Clearinghouse (“Clearinghouse”) standards.

Subsections (1)(a) 4., 5., 6. to 15., and 17. to 28. and (1)(b)5. and 6. are renumbered (1)(a)5., 6., 9. to 22., 24., and 26. to 32. and (1)(b)7. and 8., due to the addition and deletion of forms as described below. As renumbered: par. (a)6. is revised, to provide that Form 1X is used to amend telefile and netfile original returns; par. (a)15. is revised, to include information about newly created Forms 1CNA and 1CND; and pars. (a)18. and (b)7. are revised, to correct the name of Schedule DC.

Subsections (1)(a)4., 7., 8., 23., and 25. and (1)(b)5. and 6. are created, to list new or previously unlisted forms.

Subsection (1)(a)16. is repealed, to remove the reference to obsolete Schedule EICW.

Subsection (1)(b)3. is revised, to change the name of Form 3S as a result of replacing the temporary recycling surcharge with a recycling surcharge.

Subsection (3) is renumbered (3)(a)(intro.) and revised, to reflect the creation of subdivisions 1. to 3. and subs. (3)(b) to (3)(e), as explained below.

Subdivisions 1. to 3. are created, to provide updated filing procedures, including filing by electronic means and delivering as prescribed per the creation of sec. 71.01(5g), Wis. Stats., and the amendment to sec. 71.80(18), Wis. Stats., by 1997 Wis. Act 27.

Subsections (3)(b) to (3)(e) are created, to provide authority for the department to require certain tax return preparers and tax preparation firms to file returns by electronic means, and to provide exceptions to the requirement and **waivers**.

Both notes at the end of Tax 2.08 are revised, to update the department office location and mailing address and to include additional statutory references.

The text of Tax 2.08(1)(a) 4., 7., 8., 23., and 25., (1)(b)5. and 6., and (3), and the notes at the end of Tax 2.08, is as follows:

Tax 2.08(1)(a)4. Telefile and netfile worksheet. Income tax. This is a worksheet that may be used by single individuals under age 65 who file by telephone using telefile or by computer using netfile. Only eligible individuals who have been selected by the department to file in this manner may use telefile or netfile.

7. Form 1CNA. Combined individual income tax return for nonresident members of professional athletic teams.

8. Form 1CND. Combined individual income tax return for nonresident directors of corporations.

23. Schedule MS. Manufacturer's sales tax credit.

25. Schedule RS. Recycling surcharge.

(1)(b)5. Form 3U. Underpayment of estimated recycling surcharge by partnerships.

6. Schedule 3Z. Manufacturer's sales tax credit.

(3) FILING RETURNS. (a) All forms and information required to be filed or furnished by persons other than corporations shall be filed or furnished by providing the information requested on the appropriate forms, signing the returns or forms as appropriate, ~~and delivering them to the department or mailing them to the address specified by the department on the form or in the instructions.~~ and submitting them by one of the following means:

1. Mailing them to the address specified by the department on the form or in the instructions.

2. Delivering them to the department or to the destination that the department or the department of administration prescribes.

3. Filing them by the use of electronic means as prescribed by the department.

Note: The destination for delivering forms that the department or the department of administration prescribes and the type of electronic means the department prescribes for filing forms shall be stated on the forms or in the instructions, on the department's internet web site at www.dor.state.wi.us, or in the department's quarterly newsletter titled "Wisconsin Tax Bulletin" or other written material.

(b) Except as provided in pars. (c) and (d), the department may require a tax return preparer or tax preparation firm that prepared the threshold number, as described in subs. 1. and 2., of Wisconsin individual income tax returns for the prior taxable year, to file individual income tax returns prepared by that tax return preparer or tax preparation firm by electronic means. The department shall notify tax return preparers and tax preparation firms by October 1 of any year of the requirement to use electronic means. The requirement to file returns by electronic means shall be effective beginning January 1 of the year following notification. The threshold number of returns prepared in the prior taxable year is as follows:

1. For taxable year 2002, 200 or more returns.

2. For taxable year 2003 and thereafter, 100 or more returns.

(c) Paragraph (b) does not apply to a return on which the taxpayer has indicated that the taxpayer did not want the return filed by electronic means.

(d) The secretary of revenue may waive the requirement to file by electronic means when the secretary determines that the requirement causes an undue hardship, if the tax return preparer or tax preparation firm otherwise required to file by electronic means does all of the following:

1. Requests the waiver in writing.

Note: Written waiver requests should be addressed to Wisconsin Department of Revenue, Secretary's Office, Mail Stop 3-258, PO Box 8903, Madison WI 53708-8903.

2. Clearly indicates why the requirement causes an undue hardship.

(e) In determining whether the electronic means requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from filing by electronic means.

Example: The tax return preparer does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Note: Forms may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin. Blank forms may be obtained at the same location; by calling (608) 266-1961; by writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, PO Box 8951, Madison WI 53708-8951; or by accessing the department's internet web site at www.dor.state.wi.us.

Note: Section Tax 2.08 interprets ss. 71.01(5g), 71.03(2), 71.20(1), 71.55(3) and 71.80(18), Stats.

Tax 11.01 Sales and use tax return forms. Subsection (1)(title) is created, to clarify the context of the subsection.

Subsection (1)(b) is revised, to provide that Form S-012 may also be used to file refund claims or report additional taxes for prior periods.

Subsections (1)(c), (1)(d), (1)(e), and (1)(h) are repealed, to remove references to obsolete Forms S-013, S-014, SU-002, and S-108.

As a result of the above repeals, subs. (1)(f), (1)(g), and (1)(i) to (k) are renumbered (1)(c), (1)(d), and (1)(e) to (g). As renumbered, sub. (1)(d) is revised, to reflect the new number of the Department of Transportation form for aircraft sales, Form DT 1556.

Subsection (2) is repealed and recreated, to provide updated filing procedures, including filing by electronic means and delivering as prescribed per the creation of sec. 77.51(3r), Wis. Stats., by 1997 Wis. Act 27; to provide authority for the department to require that certain sales and use tax returns be filed by electronic means and provide exceptions to the requirement; and to move an address to a note, per Clearinghouse standards.

Both notes at the end of Tax 11.01 are revised, to provide the department office location and update the mailing address, and to include an additional statutory reference.

The text of Tax 11.01(1)(title), and (2), and the notes at the end of Tax 11.01, is as follows:

Tax 11.01(1)(title) FORMS.

(2) **FILING RETURNS.** (a) Forms required to be filed shall be submitted by one of the following means:

1. Mailing them to the address specified by the department on the forms or in the instructions.
2. Delivering them to the department or to the destination that the department prescribes.

3. Filing them electronically via the department's sales internet process, or "SIP," or some other electronic means prescribed by the department.

Note: Information about SIP is found in Wisconsin Publication 227, "E-File Sales Tax Returns With S.I.P.," which is available from any Wisconsin Department of Revenue office or online at www.dor.state.wi.us/html/taxpubs.html.

(b) The department may require a person registered or required to be registered for Wisconsin sales and use tax purposes to file its sales and use tax return by electronic means. The department shall notify the person at least 90 days prior to the due date of the first sales and use tax return required to be filed by electronic means of the requirement to file by electronic means. In its notice, the department shall indicate the period covered for the first return to be filed by electronic means.

(c) The secretary of revenue may waive the requirement for a person to file by electronic means when the secretary determines that the requirement causes an undue hardship, if the person does all of the following:

1. Requests the waiver in writing.

Note: Written requests should be addressed to Wisconsin Department of Revenue, Secretary's Office, Mail Stop 3-258, PO Box 8903, Madison WI 53708-8903.

2. Clearly indicates why the requirement causes an undue hardship.

(d) In determining whether the electronic means requirement causes an undue hardship, the secretary of revenue may consider the following factors:

1. Unusual circumstances that may prevent the person from using electronic means.

Example: The person does not have access to a computer that is connected to the internet.

2. Any other factor that the secretary determines is pertinent.

Note: Department of Revenue forms may be delivered in person to the Department of Revenue at 2135 Rimrock Road, Madison, Wisconsin. Blank Department of Revenue forms may be obtained at the same location; by calling (608) 266-2776; by writing to Wisconsin Department of Revenue, Mail Stop 5-77, PO Box 8902, Madison WI 53708-8902; or by accessing the department's internet web site at www.dor.state.wi.us.

Note: Section Tax 11.01 interprets ss. 77.51(3r), 77.58 and 77.75, Stats. [§](#)



Report on Litigation


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

The following decisions are included:

Individual Income Taxes

Alimony	
<i>Verdell Linton, and Lynn R. and Sandra R. Linton</i>	20
Alimony	
Dependent credit	
<i>Robert L. Daher, and Robert J. and Dianna Buffham</i>	21
Appeals - jurisdiction	
<i>Robert J. Quinnell</i>	22
Assessments - estimated	
Appeals - frivolous	
<i>Roy M. and Lori A. Guralski</i>	22
Assessments - presumption of correctness	
Partnerships - basis	
<i>Gayle R. Dvorak, and Gayle R. and Norene M. Dvorak</i> ..	23
Business expenses	
<i>Margaret J. Dye</i>	24
Refunds, claims for - timeliness expenses	
<i>Daniel and Kathleen Berg</i>	25
Corporation Franchise and Income Taxes	
Underpayment of estimated taxes	
<i>Online Packaging, Incorporated</i>	26
Sales and Use Taxes	
Boats, vessels and barges - nonresident purchases	
<i>Gregory Thornton</i>	26
Leases and rentals - real vs. personal property	
<i>All City Communication Company, Inc. and Waukesha Tower Associates</i>	27

INDIVIDUAL INCOME TAXES

 **Alimony.** *Verdell Linton, and Lynn R. and Sandra R. Linton vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 2, 2002). The issue in this case is whether Lynn R. Linton's payments to Verdell Linton from 1995 through

1998 were deductible by him and includable in her taxable income.


Lynn R. Linton ("Lynn") and Verdell Linton ("Verdell") were divorced in March 1985. There were three children of the marriage, born in December 1971, May 1975, and April 1981. The Judgment of Divorce awarded custody of the three children to Verdell.

The Judgment of Divorce provided that, with respect to family support, Lynn was to pay \$500 per month "...for the support, welfare and maintenance of [Verdell] and the minor children of the parties...." The judgment contained no other material terms concerning family support, child support, or maintenance.

Pursuant to the divorce judgment, Lynn paid \$500 per month to Verdell from July 1985 until June 1999. On their Wisconsin income tax returns for 1995 through 1998, Lynn and Sandra Linton deducted the amounts Lynn paid to Verdell as alimony or separate maintenance. Verdell did not report the payments as income on her 1995 through 1998 Wisconsin income tax returns.

In February 2000, the department issued assessments in the alternative against Verdell Linton and against Lynn and Sandra Linton, based on their inconsistent reporting of Lynn's payments from 1995 through 1998. The taxpayers filed timely petitions for redetermination, which the department denied. The taxpayers then filed timely petitions for review with the Commission.

The Commission concluded that the family support payments that Lynn R. Linton paid to Verdell Linton from 1995 through 1998 constituted alimony or other maintenance under section 71 of the Internal Revenue Code, as incorporated into sec. 71.06, Wis. Stats. As such, the payments in those years were deductible by Lynn and Sandra Linton and includable in Verdell Linton's income. Verdell's argument that the payments should be considered child support because they ceased two months after the 18th birthday of the youngest child fails, because that contingency was not contained in the divorce judgment.

Neither Verdell Linton, Lynn R. Linton, Sandra R. Linton, nor the department has appealed this decision. 



Alimony; Dependent credit. *Robert L. Daher, and Robert J. and Dianna Buffham vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 18, 2002). The issues in this case are:

- A. Whether, and if so the extent to which, Robert Daher's payments to Dianna Buffham in 1995 were deductible by him and includable in her income.
- B. Whether Robert Daher or Dianna Buffham was entitled to claim a dependent credit for their son Michael Daher for 1995, 1996, and 1997.

Robert L. Daher ("Mr. Daher") and Dianna Buffham ("Mrs. Buffham" in this summary, even though she was known as Dianna Daher during certain events material to this matter) were divorced in October 1991. They entered into a Final Stipulation, which was made a part of the Divorce Judgment.

There are two children of the marriage, Robert L. Daher, Jr., born in September 1976, and Michael P. Daher, born in August 1980. The taxpayers were awarded joint custody of the two children. Primary physical placement of Robert Daher was with Mr. Daher, and primary physical placement of Michael Daher was with Mrs. Buffham.

The Final Stipulation provided that Mr. Daher was to pay family support to Mrs. Buffham until June 1997, deductible by him and taxable to her. At that time, he was to commence paying child support or "family support" to her, until Michael Daher reached age 18, or 19 under certain circumstances. The Final Stipulation also contained a hand-written statement, initialed "RLD," providing that family support was to terminate upon death or remarriage of Mrs. Buffham.

The Final Stipulation provided that Mrs. Buffham may claim no income tax exemptions for the children, and that Mr. Daher may claim them for tax purposes. Mrs. Buffham was to provide a written waiver of her right to claim the children and to permit Mr. Daher to claim them.

Robert Buffham and Dianna Buffham were married July 22, 1995. After the marriage, Mr. Daher ceased making family support payments to Mrs. Buffham and instead made child support payments.

Mr. Daher claimed a deduction of \$6,510 for alimony or separate maintenance on his 1995 Wisconsin income tax

return, of which \$4,650 was paid prior to Mrs. Buffham's marriage to Robert Buffham. The Buffhams reported none of the \$6,510 on their 1995 Wisconsin income tax return.

During the years 1995, 1996, and 1997, Michael Daher lived with Mrs. Buffham the majority of the time. Mrs. Buffham did not execute a Form 8332 waiving her right to claim Michael Daher as a dependent. For those three years he was claimed as a dependent by both Mr. Daher and the Buffhams.


The department issued assessments in the alternative to both Mr. Daher and the Buffhams, based on the inconsistent reporting of Mr. Daher's payments in 1995 and the fact that both Mr. Daher and the Buffhams claimed Michael Daher as a dependent. Both Mr. Daher and the Buffhams filed petitions for redetermination, which the department denied. They then filed petitions for review with the Commission.

The Commission concluded as follows:

- A. Mr. Daher is entitled to a deduction for payment of alimony or other maintenance of \$4,650 in 1995, and the Buffhams must include that amount as income for 1995. Under the provisions of the Final Stipulation, payments of family support made prior to the marriage of the Buffhams were clearly alimony or other maintenance under section 71 of the Internal Revenue Code. No deduction is permitted for the remaining payments Mr. Daher made to Mrs. Buffham after the marriage (and those payments are not includable in her income), because Mr. Daher conceded that those amounts were child support and not family support.
- B. The Buffhams are entitled to claim Michael Daher as a dependent for 1995, 1996, and 1997, and Mr. Daher is not, because Mrs. Buffham did not execute a waiver Form 8332 for those years. For divorces granted after 1984, the execution of such a form by the custodial parent is the only exception under which the parent without physical custody is entitled to claim the child as a dependent.

Neither Robert L. Daher, Robert J. Buffham, Dianna Buffham, nor the department has appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only.

 **Appeals – jurisdiction.** *Robert J. Quinnell vs. Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission.* (Court of Appeals, District IV, January 29, 2002, and Wisconsin Supreme Court, April 10, 2002). This is an appeal from an order of the Circuit Court dated June 12, 2001, dismissing the taxpayer's appeal of a decision of the Wisconsin Tax Appeals Commission, and a petition for review of the Court of Appeals' decision. See *Wisconsin Tax Bulletin* 127 (October 2001), page 19, for a summary of the Circuit Court's decision.


Without the authority or jurisdiction to act, the Circuit Court dismissed the taxpayer's petition for review of the Commission's February 20, 2001, decision, because it was not timely filed. The 30-day period for filing a petition for review of the Commission's decision lapsed on March 22, 2001. The taxpayer's petition for review was filed with the Circuit Court on March 23, 2001. Even though the petition for review was only one day late, the Circuit Court held, it has no authority to hear it, regardless of any merit it may have. The deadline may not be extended or ignored by the court.

The taxpayer argues that Article I, Section 4 of the Wisconsin Constitution does not contain any time limit for filings. He further asserts that section 227.42(1)(a) and (d), Wis. Stats., gives him a right to a hearing at the Circuit Court.

The Court of Appeals concluded that neither Article I, Section 4 of the Wisconsin Constitution nor section 227.42(1)(a) and (d), Wis. Stats., permit the taxpayer to file an appeal after 30 days from the decision of the Tax Appeals Commission. The Court of Appeals accordingly affirmed the decision of the Circuit Court.

The taxpayer filed a motion to extend the time to file a petition for review with the Wisconsin Supreme Court. The Supreme Court construed the motion as a timely petition for review and informed the taxpayer that unless a statement in support of the petition conforming with statutory requirements was filed by April 1, 2002, the petition for review would be summarily dismissed. No statement in support of the petition was filed.

The Wisconsin Supreme Court thus dismissed the petition for review. [!\[\]\(ec9132f1d27c8919987d92907322654d_img.jpg\)](#)

 **Assessments – estimated; Appeals – frivolous.** *Roy M. and Lori A. Gurski vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 14, 2002). The issues in this case are:

- A. Whether the department's estimated assessment against the taxpayers was reasonable and within its statutory authority.
- B. Whether the taxpayers' arguments as to why the Wisconsin income tax statutes do not apply to them are frivolous and groundless, thereby subjecting them to an additional assessment under sec. 73.01(4)(am), Wis. Stats.

The taxpayers resided in Wisconsin during all of 1999, and in that year Roy M. Gurski ("the taxpayer") was employed. The employer issued a Form W-2 for 1999, reporting \$31,090.47 of "Wages, tips, other compensation" and \$1,260.03 of Wisconsin tax withheld.

In February 2000, the taxpayers filed a 1999 Wisconsin income tax form, with an attached federal income tax form. The taxpayers wrote "-0-" on every line of the Wisconsin form, with four exceptions: on lines 32 (Wisconsin tax withheld), 39, 40, and 41, they wrote

\$1,260.03, thus claiming a refund of all income taxes withheld. Above the signatures, the taxpayers wrote "This return is Not being filed VOLUNTARILY. I'm filing it in fear of unlawful Prosecution if I do Not file."

On May 15, 2000, the department issued an assessment to the taxpayers for 1999, comprising income tax and interest. The assessment was based on the taxpayer's wages plus its estimate of \$4,000 of additional income, pursuant to its authority under sec. 71.74(3), Wis. Stats. The additional income was added in light of the taxpayers' 1995 to 1998 returns on which income other than wages of approximately \$1,600 to \$3,000 was reported.

The taxpayers sent a letter to the department on May 19, 2000, which the department deemed a petition for redetermination. In July 2000, the department denied the petition for redetermination, and the taxpayers filed a timely petition for review with the Commission.

In March 2002, the Commission received the taxpayers' reply brief, along with an amended 1999 Wisconsin Form 1X income tax return and their check of \$123.75 for additional taxes (\$101.00) and interest (\$22.75). Attached to the return was an amended 1999 federal Form 1040X income tax return, which included \$4,253 of capital gain distributions and \$720 of rental income.

The Commission transmitted the amended return and check to the department.

The taxpayers made several assertions to explain why the Wisconsin income tax laws do not apply to them or their income. These assertions include the following:

- The wages are not taxable because the Form W-2 in the record is a federal form, not a state form.
- The wages are not taxable because section 61 of the Internal Revenue Code (“IRC”), adopted by Wisconsin for tax year 1999, does not include the word “wages.”
- Because of the omission of the word “wages” in IRC section 61, the taxpayers would be committing perjury if they reported the income.
- The taxpayers also referred to several federal cases, which demonstrated their belief that they owe no income taxes.

The Commission concluded as follows:

A. Notwithstanding the taxpayers’ assertions, the taxpayer’s wages are subject to income tax, and the department’s estimated assessment against the taxpayers was reasonable and within its statutory authority.

B. The taxpayers’ arguments as to why the Wisconsin income tax statutes do not apply to them constitute frivolous, irrelevant, and useless ramblings about the department’s authority and practice relating to Wisconsin and federal income tax statutes. Because the taxpayers offered only frivolous and groundless arguments, they are subject to an additional assessment under sec. 73.01(4)(am), Wis. Stats. The Commission assessed an additional penalty of \$500 against the taxpayers.

The taxpayers have not appealed this decision.

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



Assessments – presumption of correctness; Partnerships – basis.

Gayle R. Dvorak, and Gayle R. and Norene M. Dvorak vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 30, 2002). The issues in this case are:

- A. Whether the taxpayers overcame the presumptive correctness of the department’s actions on their 1982 through 1986 income tax returns regarding the bases of and deductions attributable to four corporations and a partnership, interest deductions taken on their 1983 tax return, and a gain on the sale of their personal residence in 1986.
- B. Whether Gayle R. Dvorak properly added \$62,500 to his basis in a partnership after executing an indemnification agreement to pay any losses out of the partnership up to \$62,500, and then not being required to pay anything under the agreement.
- C. Whether the taxpayer properly deducted his portion of unpaid interest on the refinancing of the partnership, after the principal and unpaid interest was rolled into a refinanced loan.

D. Whether the taxpayers proved that the department incorrectly added \$83,500 to their 1985 income after Gayle R. Dvorak’s loan to another party in that amount was cancelled in 1985, in exchange for Mr. Dvorak’s stock in the corporations at issue.

In February 1989, the department issued an assessment to both taxpayers for tax year 1986, and it issued another assessment to Gayle R. Dvorak (“the taxpayer”) for tax years 1982 through 1985. The taxpayers filed petitions for redetermination with the department in April 1989, relating to both assessments. The taxpayers signed 20 extension agreements between 1989 and 1999, granting the department additional time to act on their appeals. In November 1999, the department granted in part and denied in part both petitions for redetermination, and the taxpayers then filed timely petitions for review with the Commission.

Prior to and during the period under review (1982 through 1986), the taxpayer had business interests in four corporations: DRI, Inc. (“DRI”), DRI Two, Inc. (“DRI 2”), DRI Three, Inc. (“DRI 3”), and DRI Four, Inc. (“DRI 4”), and a partnership, Parkview Heights Partnership (“Parkview Heights”). These corporations and the partnership are the subject of several of the issues in this case.

Most of the disputed issues regarding the corporations relate to whether the taxpayer has substantiated adjustments to his bases in the corporations, specifically additions to his initial investments. The department also adjusted the taxpayers' gain on the sale of their personal residence reported on their 1986 income tax return, adjusted the total itemized deductions claimed on their 1983 income tax return, and added \$83,500 to their 1985 income tax return for the asserted cancellation of a debt.

The Commission concluded as follows:

- A. The taxpayers did not overcome the presumptive correctness of the department's actions on their 1982 through 1986 income tax returns regarding the bases of and deductions attributable to the four DRI corporations and Parkview Heights, interest deductions taken on their 1983 tax return, and a gain on the sale of their personal residence in 1986.

Income tax assessments of the department are presumed to be correct, and the burden of proving them incorrect rests with the taxpayers assessed. Mr.

Dvorak failed to provide the substantiation needed to overcome this presumption.

- B. Gayle R. Dvorak improperly added \$62,500 to his basis in Parkview Heights after executing an indemnification agreement to pay any losses arising out of that partnership up to \$62,500, and then not being required to pay anything under the indemnification agreement.
- C. Gayle R. Dvorak improperly deducted his portion of unpaid interest on the refinancing of Parkview Heights, after the principal and unpaid interest was rolled over into a refinanced loan.
- D. The taxpayers failed to prove that the department incorrectly added \$83,500 to their 1985 income after Gayle R. Dvorak's loan to another party in that amount was cancelled in exchange for Mr. Dvorak's stock in the DRI corporations and in another corporation.

The taxpayers have appealed this decision to the Circuit Court. [!\[\]\(17413706fd4997a1a4bdf85c6864eee1_img.jpg\)](#)



Business expenses. *Margaret J. Dye vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 26, 2002).

The issue in this case is whether the taxpayer has substantiated the expenses that were disallowed by the department.

The taxpayer owns a horseracing business as a sole proprietor, which is operated by her husband, John Cianciolo. All actions of Mr. Cianciolo described below were taken on behalf of the taxpayer in the furtherance of her horseracing business.

In 1996, the taxpayer and Mr. Cianciolo had three vehicles at their disposal, including a 1995 Cadillac Eldorado that was leased pursuant to a 24-month lease beginning in June 1995 ("the car"). The car was used exclusively for the taxpayer's business in 1996. The taxpayer and Mr. Cianciolo used a calendar on which they kept a record of personal and business events. The calendar included the business trips they made with the car.

On her 1996 Wisconsin income tax return, the taxpayer deducted \$6,930 in lease payments on the car. However, she did not add back any inclusion income as required by Treasury Regulations.

Also on her 1996 Wisconsin income tax return, the taxpayer deducted various business expenses on Schedule C, which included trainer fees of \$27,566. In that year she incurred \$26,950.05 in expenses properly deducted as trainer fees.

In June 1996, the taxpayer paid \$9,000 to purchase a 2-year-old thoroughbred gelding. The gelding subsequently developed a condition that doomed its chances of ever racing, and therefore the taxpayer sold the gelding for slaughter in August 1996, for \$200. She claimed an ordinary loss of \$8,800 on her 1996 tax return, associated with the gelding at issue.

In April 1997, the taxpayer purchased a 2-year-old thoroughbred gelding for \$26,500. Later that year, the gelding incurred a catastrophic injury that required that it be destroyed. The taxpayer sold the gelding for slaughter in December 1997, for \$250. The taxpayer claimed an ordinary loss of \$26,250 on her 1997 tax return, associated with this gelding.

In July 1999, the department issued an assessment against the taxpayer for 1996 and 1997, consisting of three adjustments:

- The \$6,930 transportation expense for 1996 was denied.
- The expense for trainer fees was reduced by \$4,050.
- The ordinary losses of \$8,800 in 1996 and \$26,250 in 1997 were disallowed.

The taxpayer filed a petition for redetermination, which the department denied, and the taxpayer then filed a timely petition for review with the Commission.


The Commission concluded that the taxpayer has substantiated:

- The \$6,930 in rental expense in 1996 for lease payments on the car.

- All but \$615.95 of the trainer fees claimed in 1996.
- Both of the losses of \$8,800 in 1996 and \$26,250 in 1997.

In addition, the Commission concluded that the taxpayer's gross income for 1996 is increased by \$378, the amount calculated under Treasury Regulation section 1.280F-7, as an inclusion amount relating to the lease of the car.

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

 **Refunds, claims for – timeliness.** *Daniel and Kathleen Berg vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 13, 2002). The issue in this case is whether the taxpayers are entitled to a refund based on a 1993 Wisconsin income tax return they filed on November 27, 2000.

On or about April 15, 1998, the department received the taxpayers' 1993 Wisconsin income tax return, consisting of a partially completed Form 1 and a partially completed farmland preservation credit claim, Schedule FC. The Form 1 contained the notation "Tentative Return, Amended Return to be Filed Later."

The Form 1 had entries of \$600 on line 25 (farmland preservation credit), \$600 on line 28 (farmland tax relief credit), and \$1,200 on lines 29 (total of the two credits) and 30 (amount to be refunded). The Schedule FC household income area was blank except for the notation "Actual Amounts to be Filed Later (May Qualify for Higher Amount than 10% Minimum)." A 10% Special Minimum Credit of \$600 was claimed on lines 11, 15, and 16, based on \$6,000 in property taxes. The taxpayers failed to include required supporting documents relating to their tax return and farmland preservation credit claim.

The department requested the required documentation and subsequently denied the taxpayers' claim for refund after they failed to provide it. In October 1998, the taxpayers filed a petition for redetermination with the

department, which included a statement that "[p]lans are to file a complete income tax return within 30 days." In June 1999, the department denied the petition for redetermination, since it had not received the complete 1993 income tax return. The taxpayers then filed a timely petition for review with the Commission.

In November 2000, the taxpayers filed a complete 1993 Wisconsin income tax return, claiming a farmland preservation credit of \$4,200 and a total refund of \$4,989. In December 2000, the department granted a refund of \$1,200, based on the amount claimed on the April 15, 1998, claim for refund.

The Commission concluded that the taxpayers are not entitled to a refund of more than the \$1,200 they claimed within the time specified in section 71.75 of the Wisconsin Statutes. The taxpayers filed a skeleton of a claim for refund on the last day permissible, and based on the inadequate information on it, the taxpayers are fortunate to have received **any** refund. The November 2000 claim for refund (not denominated as an amended return) is a new claim for refund and, as such, is untimely.

The taxpayers have not appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. [!\[\]\(eabd9f9ababee93effadc3b380fe65fd_img.jpg\)](#)

CORPORATION FRANCHISE AND INCOME TAXES



Underpayment of estimated taxes.

Online Packaging, Incorporated vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 19, 2002). The issue in this case is whether the department correctly assessed the taxpayer for underpayment interest, or whether the taxpayer's underpayment could be offset against the substantial overpayment of income tax by two shareholders who mistakenly assumed that they, not the taxpayer, would be liable for the tax on the taxpayer's income.

The taxpayer is a corporation, whose president is Roger D. Teske ("Mr. Teske"). Mr. Teske had the mistaken belief that the taxpayer was a Subchapter S corporation, and that its income would flow through and be taxed to his two daughters (who had a majority interest in the corporation), rather than the income being taxed to the taxpayer. The taxpayer paid only \$25 of estimated tax for tax year 1999.

Mr. Teske's two daughters, believing they would have to pay income tax on the taxpayer's income they believed they would receive in 1999, overpaid their combined estimated individual income taxes for that year by about \$24,000. Upon learning that it was **not** a Subchapter S corporation, the taxpayer paid almost \$24,000 of tax to the department on September 15, 2000.

In October 2000, the department sent the taxpayer an assessment for \$2,227.79 for 1999, which included interest for the underpayment of estimated taxes, plus other interest. The taxpayer sent a letter to the department, which was deemed to be a petition for redetermination. The department denied, it, and the taxpayer then filed a timely petition for review with the Commission.

The Commission concluded that because the taxpayer was required to pay about \$24,000 of income tax for 1999 but paid estimated taxes of only \$25, the department correctly assessed the taxpayer for underpayment interest for 1999. The taxpayer cannot avoid or reduce the assessment by offsetting its underpayment against the substantial overpayment by two shareholders who mistakenly believed that they, rather than the taxpayer, would be liable for the tax on the taxpayer's income. The statutes do not authorize such an offset, and there is no statute to excuse underpayment of estimated taxes based on an incorrect assumption, even though it was not intentional or malicious.

The taxpayer has not appealed this decision.

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

SALES AND USE TAXES



Boats, vessels and barges – nonresident purchases.

Gregory Thornton vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 22, 2002). The issue in this case is whether sec. 77.53(17m), Wis. Stats., is constitutional under the equal protection clause of the Wisconsin or federal constitutions or the commerce clause of the federal constitution.

The taxpayer is domiciled in Minnesota. On or about June 8, 1998, the taxpayer purchased a boat through a boat brokerage located in Florida. The boat, located in Michigan, was offered for sale through a Michigan boat broker on behalf of the sellers. The taxpayer received title to the boat on or about August 26, 1998. The taxpayer took physical possession of the boat from the sellers in Michigan on or about June 28, 1998, and began berthing the boat in Superior, Wisconsin on or about

July 4, 1998. The taxpayer did not pay sales tax on the purchase of the boat to Florida, Michigan, or Wisconsin.

On October 5, 1998, the taxpayer registered the boat with the Wisconsin Department of Natural Resources ("DNR"), and paid Wisconsin use tax. The DNR subsequently billed the taxpayer for Douglas County use tax on January 5, 1999, which the taxpayer paid January 15, 1999.

On September 21, 1999, the taxpayer filed a claim for refund of the Wisconsin and Douglas County use tax paid, claiming sec. 77.53(17m), Wis. Stats., violates the equal protection clauses of the Wisconsin and federal constitutions and the commerce clause of the federal constitution. The taxpayer argues that the law discriminates against Minnesota residents who buy boats outside of Minnesota, and that it discriminates against interstate commerce.

Section 77.53(17m), Wis. Stats., exempts from the use tax:

1. A boat purchased in a state contiguous to Wisconsin.
2. By a person domiciled in that state.
3. If the boat is berthed in Wisconsin's boundary waters adjacent to the state of the purchaser's domicile.
4. And if the purchase of the boat was an exempt occasional sale under the laws of the state in which the purchase was made.

The Commission concluded as follows:

- A. The exemption does not violate the equal protection clause of the Wisconsin or federal constitution, because:
 1. It applies equally to all members of the class of Minnesota residents who qualify under the provisions of the exemption.
 2. It provides a class distinction between those persons domiciled in Minnesota whose boat purchases were exempt occasional sales and those whose purchases were not previously subject to a sales or use tax.

3. It does not preclude other Minnesota residents from qualifying for the exemption.
4. Its purpose is to allow an exemption limited to where there was already an exemption in the purchaser's state of domicile.
5. It provides a class distinction, promoting a legitimate government interest, by not allowing the exemption to purchasers who have avoided the tax in their state of domicile by keeping their boats outside of their states' borders.

B. The exemption does not violate the interstate commerce clause of the federal constitution because:

1. It does not provide an advantage to local business.
2. It does not discriminate against foreign enterprises competing with local businesses.
3. It does not discriminate against interstate commerce in favor of intrastate commerce.
4. Further, the taxpayer has not shown where the provision is out of line with requirements of other states.

The taxpayer has not appealed this decision. [!\[\]\(aa53ad6fea213b8b2226d3077e30533a_img.jpg\)](#)



Leases and rentals – real vs. personal property. *All City Communication Company, Inc. and Waukesha Tower Associates vs. State of Wisconsin Department of Revenue* (Circuit Court for Dane County, March 18, 2002). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated August 6, 2001. See *Wisconsin Tax Bulletin* 127 (October 2001), page 24, for a summary of the Commission's decision. The issue in this case is whether Waukesha Tower's broadcast tower and equipment building are tangible personal property, making the lease or rental of the tower and equipment building subject to Wisconsin sales or use tax.

The determination of whether property, otherwise considered personal property, becomes real property is dependent upon the following three factors:

1. Actual physical annexation to the real estate;

2. Application or adaptation to the use or purpose to which the realty is devoted; and,
3. An intention on the part of the person making the annexation to make a permanent accession to the realty.

Annexation to the real estate means the article either becomes a necessary integral part of the property to which it is connected, or is so physically connected to the property that if removed, the property would be left unfit for use. The lease agreement between the land owner and Waukesha Tower provided that "Improvements and personal property" on the land were the property of Waukesha Tower, which could remove them at the end of the ten-year lease. The lease agreement also prohibited Waukesha Tower from doing anything to the land that might impair the usefulness of the land. The tower could be taken down either by toppling it in place or by dismantling it piece by piece. The tower could either be reassembled at another site, sold as scrap

metal, or sold as a used tower. These factors support the Commission's conclusion that the tower and equipment building were not annexed to the real property.

The tower and equipment building were adapted to the use of the realty because the tower was specifically designed for the property and the lease agreement provided the property to Waukesha Tower for the sole purpose of erecting the tower.

It was not Waukesha Tower's intention to make a permanent accession to the realty because the lease agreement was only for ten years, and Waukesha Tower retained the right to remove the tower and equipment building at the expiration of the lease.

The Circuit Court found the Commission's determination that the tower and equipment building were tangible personal property was reasonable when the Commission determined the tower and building were not annexed to the realty and Waukesha Tower did not intend them as permanent accessions, two of the elements required for the determination.

The Circuit Court concluded that the tower and equipment building were tangible personal property subject to Wisconsin sales or use tax.

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



Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations in a tax release.)

The following tax releases are included:

Individual Income Taxes

1. Effect of the Subtraction for Medical and Long-Term Care Insurance on the Itemized Deduction Credit 29

Sales and Use Taxes

2. Wheelchair and Scooter Lifts 32

INDIVIDUAL INCOME TAXES

1 Effect of the Subtraction for Medical and Long-Term Care Insurance on the Itemized Deduction Credit

Statutes: Sections 71.05(6)(b)19, 20, and 26 and 71.07(5)(a)15, Wis. Stats. (1999-00)

Background: Subject to certain limitations, Wisconsin law allows a subtraction from federal adjusted gross income when computing Wisconsin taxable income for the amount paid for medical care insurance and long-term care insurance.

If you are self-employed, you may subtract up to 100% of the amount you paid for medical care insurance during the taxable year (sec. 71.05(6)(b)19, Wis. Stats. (1999-00)). If you are an employee whose employer did not pay any amount toward your medical care insurance, you may subtract up to 50% of the amount you paid for medical care insurance (sec. 71.05(6)(b)20, Wis. Stats. (1999-00)). You may also subtract up to 100% of the amount you paid

for long-term care insurance (sec. 71.05(6)(b)26, Wis. Stats. (1999-00)).

For federal tax purposes, you may include the cost of medical care insurance as a medical expense on Schedule A, *Itemized Deductions*. You may also include a portion of the amount paid for long-term care insurance as a medical expense on Schedule A. The total medical expenses (including medical care insurance and long-term care insurance) are then reduced by 7.5% of your federal adjusted gross income (AGI).

Wisconsin does not allow a deduction for federal itemized deductions. Instead, Wisconsin allows the itemized deduction credit. This credit is equal to 5% of the amount by which certain federal itemized deductions exceed the Wisconsin standard deduction. The federal itemized deduction for medical expenses is one of the deductions used in the computation of the Wisconsin itemized deduction credit.

In order to avoid a double benefit, sec. 71.07(5)(a)15, Wis. Stats. (1999-00), provides that the amounts claimed for the Wisconsin subtraction for medical care insurance and long-term care insurance cannot be used in the computation of the itemized deduction credit.

Facts and Question 1: You paid \$6,000 for medical care insurance during the year. You did not have any additional medical expenses. Your employer does not pay any part of your medical care insurance. You claim a Wisconsin subtraction for medical care insurance of \$3,000. Your federal itemized deduction for medical expenses is as follows:

Medical care insurance	\$6,000
Less 7.5% of federal AGI	<u>4,875</u>
Allowable deduction	\$1,125

What amount may you use for medical expenses when computing the Wisconsin itemized deduction credit?

Answer 1: You cannot use any portion of the \$1,125 federal deduction for medical expenses when computing the itemized deduction credit. The amount claimed for the Wisconsin subtraction for medical care insurance must be subtracted from the federal itemized deduction to determine the amount to use in computing the itemized deduction credit (\$1,125 – \$3,000 = \$0).

Facts and Question 2: You paid \$5,000 for medical care insurance during the year. In addition, you had other deductible medical expenses (for example, dental expenses) of \$4,000. Your employer does not pay any part of your medical care insurance. You claim a Wisconsin subtraction for medical care insurance of \$2,500. Your federal itemized deduction for medical expenses is as follows:

Medical care insurance	\$5,000
Other medical expenses	<u>4,000</u>
Total medical expenses	9,000
Less 7.5% of federal AGI	<u>5,250</u>
Allowable deduction	\$3,750

What amount may you use for medical expenses when computing the Wisconsin itemized deduction credit?

Answer 2: You may use \$1,667 of the medical expense deduction to compute the Wisconsin itemized deduction credit. Because the federal itemized deduction for medical expenses includes both medical care insurance and other medical expenses, you may allocate the deduction for medical expenses among the items included in the deduction. Four steps are needed to figure the amount of medical expenses that can be used when computing the Wisconsin itemized deduction credit.

Step 1 Use the following formula to allocate the deduction.

Amount of medical care insurance			
Total medical expenses before 7.5% of federal AGI limit	X	Medical expense deduction after reduction for 7.5% of federal AGI	= Portion of medical expense deduction due to medical care insurance

Step 2 Subtract the amount determined in Step 1 from the medical expense deduction after reduction for 7.5% of federal AGI. This gives you the portion of the federal itemized deduction for medical expenses that is due to medical expenses other than medical care insurance.

Step 3 Subtract the amount of your Wisconsin subtraction for medical care insurance from the amount determined in Step 1. The remaining amount, if any, can be used for the credit.

Step 4 Add the amounts determined in Steps 2 and 3. This is the amount of the federal itemized deduction for medical expenses that can be used when computing the Wisconsin itemized deduction credit.

Using the four steps above, you figure the portion of the federal medical expense deduction that can be used when

computing the Wisconsin itemized deduction credit as follows:

$$\text{Step 1 } \frac{\$5,000}{\$9,000} \times \$3,750 = \$2,083^*$$

*portion of the federal itemized deduction for medical expenses due to medical care insurance

Step 2 $\$3,750 - \$2,083 = \$1,667$ (portion of the federal itemized deduction for medical expenses due to other than medical care insurance)

Step 3 $\$2,083 - \$2,500 = \$0$ (amount of the federal itemized deduction for medical care insurance that can be used for the itemized deduction credit)

Step 4 $\$1,667 + \$0 = \$1,667$ (amount of the federal itemized deduction for medical expenses that can be used when computing the Wisconsin itemized deduction credit)

Question 3: How do you determine the portion of the federal itemized deduction for long-term care insurance that can be used in the computation of the Wisconsin itemized deduction credit when the subtraction for long-term care insurance was claimed?

Answer 3: The portion of the federal itemized deduction for long-term care insurance that can be used when computing the Wisconsin itemized deduction credit is determined in the same manner as for the medical care insurance deduction. If your medical expenses consist of long-term care insurance as well as other medical expenses, use the four steps outlined in Answer 2 but substitute the long-term care insurance in place of medical care insurance.

Example 1: You paid \$6,000 for long-term care insurance in 2001. Based on your age, you may include \$2,290 of the long-term care insurance as a medical expense on federal Schedule A. Your federal itemized deduction for long-term care insurance is your only medical expense. Your federal itemized deduction for medical expenses is as follows:

Long-term care insurance	\$2,290
Less 7.5% of federal AGI	<u>2,175</u>
Allowable deduction	\$ 115

You claim a Wisconsin subtraction for long-term care insurance of \$6,000. You cannot use any portion of the \$115 federal deduction for medical expenses for the Wisconsin itemized deduction credit. The amount claimed for the Wisconsin subtraction for long-term care insurance must

be subtracted from the federal itemized deduction to determine the amount to use when computing the itemized deduction credit (\$115 – \$6,000 = \$0).

Example 2: You paid \$6,000 for long-term care insurance in 2001. Of this amount, you can include \$2,290 as a medical expense on Schedule A. You also had \$3,000 of other deductible medical expenses. Your federal itemized deduction for medical expenses is as follows:

Long-term care insurance	\$2,290
Other medical expenses	<u>3,000</u>
Total medical expenses	5,290
Less 7.5% of federal AGI	<u>3,150</u>
Allowable deduction	\$2,140

Figure the amount of the federal itemized deduction for medical expenses that can be used when computing the Wisconsin itemized deduction credit as follows:

Step 1 $\frac{\$2,290}{\$5,290} \times \$2,140 = \926^*

*portion of the federal itemized deduction for medical expenses due to long-term care insurance

Step 2 $\$2,140 - \$926 = \$1,214$ (portion of the federal itemized deduction for medical expenses due to other than long-term care insurance)

Step 3 $\$926 - \$6,000 = \$0$ (amount of the federal itemized deduction for long-term care insurance that can be used when computing the Wisconsin itemized deduction credit)

Step 4 $\$1,214 + \$0 = \$1,214$ (amount of federal itemized deduction for medical expenses that can be used when computing the Wisconsin itemized deduction credit)

Question 4: How do you determine the portion of the federal itemized deduction for medical expenses that can be used in the computation of the Wisconsin itemized deduction credit when subtractions were claimed for both medical care insurance and long-term care insurance?

Answer 4: The portion of the federal itemized deduction for medical expenses that can be used for the Wisconsin itemized deduction credit is determined using the same formulas in Question and Answer 2 and 3.

Example: You paid \$5,000 for long-term care insurance in 2001. You claim a subtraction for this amount on your Wisconsin income tax return. You also paid \$8,000 for medical care insurance. Your employer does not pay any part of your medical care insurance. You claimed \$4,000 of this amount as a subtraction for medical care insurance on your Wisconsin income tax return. Your federal itemized deduction for medical expenses is as follows:

Long-term care insurance	\$2,290
Medical care insurance	8,000
Dental expense	<u>2,000</u>
Total medical expenses	12,290
Less 7.5% of adjusted gross income	<u>4,500</u>
Itemized deduction for medical expenses	\$7,790

You may use \$2,338 of the federal medical expense deduction to compute the Wisconsin itemized deduction credit. This amount is determined as follows:

Step 1 $\frac{\$2,290}{\$12,290} \times \$7,790 = \$1,452^*$

*portion of federal itemized deduction for medical expenses due to long-term care insurance


$\frac{\$8,000}{\$12,290} \times \$7,790 = \$5,071^*$

*portion of federal itemized deduction for medical expenses due to medical care insurance

Step 2 $\$7,790 - (\$1,452 + \$5,071) = \$1,267$ (portion of the federal itemized deduction for medical expenses due to other than medical care insurance or long-term care insurance)

Step 3 $\$1,452 - \$5,000 = \$0$ (amount of the federal itemized deduction for long-term care insurance that can be used to compute the itemized deduction credit)

$\$5,071 - \$4,000 = \$1,071$ (amount of the federal itemized deduction for medical care insurance that can be used to compute the itemized deduction credit)

Step 4 $\$1,267 + \$0 + \$1,071 = \$2,338$ (amount of the federal itemized deduction for medical expenses that can be used to compute the itemized deduction credit) 

SALES AND USE TAXES

2 Wheelchair and Scooter Lifts

Statutes: Section 77.54(22)(g), Wis. Stats. (1999-00)

Introduction: This tax release clarifies the tax treatment of wheelchair and scooter lifts, as provided in the tax release titled “Motor Vehicle Adaptive Equipment for Handicapped Persons,” that appeared in *Wisconsin Tax Bulletin* 70 (January 1991), page 25. The wheelchair lift discussed in *Wisconsin Tax Bulletin* 70 is the type that raises a handicapped person in a wheelchair into a motor vehicle and lowers the person in the wheelchair out of the motor vehicle. Because this type of wheelchair lift makes it possible for a handicapped person to enter or leave a motor vehicle, it qualifies for the exemption provided in sec. 77.54(22)(g), Wis. Stats. (1999-00).

Background: Section 77.54(22)(g), Wis. Stats. (1999-00), provides an exemption for the gross receipts from the sale of and the storage, use, or other consumption of:

“Adaptive equipment that makes it possible for handicapped persons to enter, operate or leave a vehicle, as defined in s. 27.01(7)(a)2., if that equipment is purchased by the individual who will use it, a person acting directly on behalf of that individual or a nonprofit organization.”

Facts and Question: Company ABC manufactures lifts for cars, trucks, and other motor vehicles that lift a person’s wheelchair or electric scooter into the person’s motor vehicle for storage. The lift does not raise the handicapped person into or out of the vehicle. For example, the lift is installed within the trunk of a motor vehicle. The electronically powered lift raises and turns the folded wheelchair horizontally at the touch of a button, brings the wheelchair above the trunk, and lowers the wheelchair into the trunk so that the trunk can be closed. With special adaptations, the lift can raise a wheelchair vertically into a mini-van.

Are sales of this lift by Company ABC to handicapped persons, persons acting directly on behalf of handicapped persons, or nonprofit organizations exempt from Wisconsin sales and use tax under sec. 77.54(22)(g), Wis. Stats. (1999-00)?

Answer: No. The exemption under sec. 77.54(22)(g), Wis. Stats. (1999-00), requires that the adaptive equipment be used to aid a person in entering, operating, or leaving a vehicle. Since this particular lift only aids in storing the wheelchair or scooter in the vehicle, and does not aid the handicapped person in entering, operating, or leaving the vehicle, the exemption does not apply. [Ⓜ](#)