



Wisconsin TAX BULLETIN

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New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. This issue of the *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, sales/use, and premier resort area tax provisions. These provisions are contained in 2001 Act 109.

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.

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A. Individual and Fiduciary Income Taxes

- 1. Certain Provisions of Federal Laws Enacted in 2000 and 2001 Apply Simultaneously for Wisconsin Purposes** (2001 Act 109, amend sec. 71.01(6)(i), (j), (k), (L), (m), (n), and (o), repeal sec. 71.01(6)(g) and (h), and create nonstatutory provision, effective at the same time as for federal purposes.)

The following federal laws apply for Wisconsin purposes at the same time as for federal purposes:

- Community Renewal Tax Relief Act of 2000 (Public Law 106-554), enacted December 21, 2000.

However, sec. 162 of the Act, which affects Internal Revenue Code (IRC) section 198(c), relating to the expensing of environmental remediation costs and the extension of the termination date to 2003, does not apply for Wisconsin.

- Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), enacted June 7, 2001.

However, sec. 431 of the Act relating to a deduction for qualified tuition and related expenses), does not apply for Wisconsin.

Other federal laws enacted after December 31, 1999, do not apply for Wisconsin purposes.

(**Note:** Public Law 107-16 made numerous changes to retirement plan and IRA provisions. Those changes now apply for Wisconsin purposes at the same time as they apply for federal purposes.)

- 2. Depreciation and Amortization Provisions Amended** (2001 Act 109, amend sec. 71.01(7r), effective for property placed in service in taxable years beginning on or after January 1, 2001.)

For purposes of computing amortization or depreciation, “Internal Revenue Code” means the federal Internal Revenue Code as amended to December 31, 2000.

Prior law allowed taxpayers the option of computing amortization or depreciation for this

property for Wisconsin purposes under either the federal Internal Revenue Code as amended to December 31, 1999, or the federal Internal Revenue Code in effect for the taxable year for which the return was filed.

As a result of this amendment, the special 30% depreciation deduction allowed by the federal Job Creation and Worker Assistance Act of 2002 (Public Law 107-147) does not apply for Wisconsin.

(**Note:** If depreciation on a previously filed Wisconsin income tax return was computed under the provisions of Public Law 107-147, an amended return must be filed. Depreciation on the amended return must be computed under the Internal Revenue Code prior to its amendment by Public Law 107-147.)

- 3. Deduction for Contributions to College Savings Accounts and College Tuition and Expenses Program Revised** (2001 Act 109, amend sec. 71.05(6)(b)32.(intro.) and a. and 33.(intro.) and a., effective for taxable years beginning on or after January 1, 2002.)

The provision that allows a deduction for an amount paid into a Wisconsin state-sponsored college savings account or college tuition and expenses program is expanded. Grandparents are now eligible to claim the deduction.

This bill also limits deductions for amounts contributed to a Wisconsin state-sponsored program to not more than \$3,000 per beneficiary per year. This \$3,000 limitation applies regardless of whether contributions for a beneficiary are made to both the college savings account and college tuition and expenses components of the Wisconsin state-sponsored program, or to only one of those components.

In the case of a married couple filing a joint return, the \$3,000 limitation applies to them as a couple. Each spouse does not receive a separate \$3,000 limit on a joint return.

- 4. Wisconsin Election Campaign Fund Revised** (2001 Act 109, renumber sec. 71.10(3)(a) to 71.10(3)(am) and amend as renumbered, amend secs. 71.08(1)(intro.) and 71.10(3)(b), and create secs. 71.07(6s) and 71.10(3)(ac) and (4)(gw), effective for taxable years beginning on or after

January 1, 2002, and create sec. 71.10(3)(d), effective July 30, 2002.)

Every individual who is a full-year resident of Wisconsin who files an income tax return and has a tax liability may designate the lesser of \$20 or the individual's tax liability for transfer to the Wisconsin election campaign fund. If married filing a joint return, each individual may make a designation of the lesser of \$20 or one-half of the married couple's tax liability.

"Tax liability" means the net tax as determined on the individual's income tax return.

Each individual making a designation shall indicate whether the amount designated shall be placed in the general account for the use of all eligible candidates for state office, or in the account of an eligible political party whose name has been certified to the Secretary of Revenue. If an individual does not indicate that the amount of his or her designation shall be placed in the account of a particular eligible political party, that amount shall be placed in the general account.

The Secretary of Revenue shall ensure that space for the designations is provided on the face of the individual income tax return in a manner that is convenient to the individual filing the return. A statement shall be placed on the return, next to the designation, indicating that the amount of a designation will increase tax liability, that the amount of a designation may be claimed as a credit, and that by making a designation the individual is also claiming the credit.

The department shall ensure that an individual may make the designation and claim the credit by marking only one box, which shall be on the face of the return. The Secretary of Revenue shall also provide and highlight a place in the tax form instructions for information submitted by the elections board without cost to the board.

Annually on August 15, the Secretary of Revenue shall certify to the elections board, the Department of Administration, and the state treasurer the total amount of designations made on returns processed by the department during the preceding fiscal year and the amount of designations made during that fiscal year for the general account and for the account of each eli-

gible political party. If any individual designates an amount greater than the amount authorized or attempts to place any condition or restriction upon a designation, that individual is deemed not to have made a designation on his or her tax return.

If an individual's income tax return is prepared by a paid tax preparer and if the individual does not make a designation, the tax preparer shall obtain from the individual his or her signature, on a form prepared by the department, acknowledging that he or she chooses not to make a designation. The form shall contain information regarding the purposes of the designation. No penalty may be imposed on a paid tax preparer who fails to obtain the form from any individual.

(**Note:** Shortly after the campaign finance reform provisions were signed into law, two court actions were commenced to determine their constitutionality. Therefore, it is possible that, as a result of a court action, the election campaign fund changes described above may not be implemented on the 2002 Wisconsin individual income tax forms.)

B. Corporation Franchise or Income Taxes

1. Certain Provisions of Federal Laws Enacted in 2000 and 2001 Apply Simultaneously for Wisconsin Purposes (2001 Act 109, amend secs. 71.22(4)(i), (j), (k), (L), (m), (n), and (o), 71.22(4m)(g), (h), (i), (j), (k), (L), and (m), 71.26(2)(b)9, 10, 11, 12, 13; 14, and 15, 71.34(1g)(i), (j), (k), (L), (m), (n), and (o), and 71.42(2)(h), (i), (j), (k), (L), (m), and (n); repeal secs. 71.22(4)(g) and (h), 71.22(4m)(e) and (f), 71.26(2)(b)7 and 8, 71.34(1g)(g) and (h), and 71.42(2)(f) and (g); and create nonstatutory provision, effective at the same time as for federal purposes.)

The following federal laws apply for Wisconsin purposes at the same time as for federal purposes:

- Community Renewal Tax Relief Act of 2000 (Public Law 106-554), enacted December 21, 2000.

However, the following provisions of this Act do not apply for Wisconsin:

- Section 162 of the Act, which affects Internal Revenue Code (IRC) section 198(c), relating to the expensing of environmental remediation costs and the extension of the termination date to 2003.
- Section 165 of the Act, which affects IRC section 170(e), relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date to 2003.
- Economic Growth and Tax Relief Reconciliation Act of 2001 (Public Law 107-16), enacted June 7, 2001.

However, section 431 of the Act, relating to a deduction for qualified tuition and related expenses, does not apply for Wisconsin.

Other federal laws enacted after December 31, 1999, do not apply for Wisconsin purposes.

- 2. Depreciation and Amortization Provisions Amended** (2001 Act 109, amend secs. 71.26(3)(y), 71.365(1 m), and 71.45(2)(a)13, effective for property placed in service in taxable years beginning on or after January 1, 2001.)

For property placed in service in taxable years beginning on or after January 1, 2001, corporations are required to compute amortization or depreciation under the Internal Revenue Code as amended to December 31, 2000.

For property acquired after September 10, 2001, corporations may not claim the special 30% bonus depreciation deduction allowed by the federal Job Creation and Worker Assistance Act of 2002 (Public Law 107-147), enacted March 9, 2002.

Under prior law, a corporation had the option of using the same depreciation as for federal purposes or the depreciation allowable under the Internal Revenue Code as amended to a particular date.

(Note: Any corporation that claimed depreciation under the provisions of Public Law 107-147 on a previously filed Wisconsin corporation franchise or income tax return must file an amended Wisconsin franchise or income tax re-

turn and recompute depreciation under the Internal Revenue Code prior to its amendment by Public Law 107-147.)

C. Sales and Use Taxes

- 1. Conform to Federal Mobile Telecommunications Sourcing Act** (2001 Act 109, renumber sec. 77.52(2)(a)5 to 77.52(2)(a)5.a and amend as renumbered, amend secs. 77.52(3m)(intro.), 77.525, and 77.72(3)(b), and create secs. 77.52(2)(a)5.b, and (3n) and 77.523, effective for customer bills issued after August 1, 2002.)

The Wisconsin sales and use tax treatment of certain mobile telecommunications services is modified to conform to the federal Mobile Telecommunications Sourcing Act.

Federal Mobile Telecommunications Sourcing Act

The federal Mobile Telecommunications Sourcing Act, 4 USC §§ 116 to 126, as amended by P.L. 106-252 (Act), provides rules to determine the taxing jurisdiction (for example, state) that may impose certain taxes (for example, sales or use tax) on mobile telecommunications services (for example, cellular telephone service).

In general, the Act provides that:

- The customer's home service provider is the retailer of any mobile telecommunications services charges billed by or for such provider.
- Charges for mobile telecommunications services are subject to tax, charge, or fee by taxing jurisdictions of the customer's place of primary use, regardless of where the mobile telecommunication services originate, terminate, or pass through. No other taxing jurisdiction may impose taxes, charges, or fees on charges for such mobile telecommunications services.

Exception: The Act does not apply to prepaid telephone calling services.

A "home service provider" is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

A “mobile telecommunications service” is a radio communication service carried on between mobile stations or receivers and land stations, and by mobile stations communicating among themselves, and includes:

- One-way and two-way radio communications services.
- A mobile service which provides a regularly interacting group of base, mobile, portable, and associated control and relay stations (whether licensed on an individual, cooperative, or multiple basis) for private one-way or two-way land mobile radio communications by eligible users over designated areas of operation.
- Any service for which a federal license is required in a personal communications service.

“Place of primary use” means the street address representative of where the customer’s use of the mobile telecommunications service primarily occurs, which must be:

- The residential street address or the primary business street address of the customer; and
- Within the licensed service area of the home service provider.

“Prepaid telephone calling services” means the right to purchase exclusively telecommunications services that must be paid for in advance, that enables the origination of calls using an access number, authorization code, or both, whether manually or electronically dialed, if the remaining amount of units of service that have been prepaid is known by the provider of the prepaid service on a continuous basis.”

The Act is available on the United States Government Printing Office’s web site at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ252.106.

Wisconsin Provisions-Tax on Mobile Telecommunications Services

Effective for customer bills issued after August 1, 2002, sales of mobile telecommunications services subject to the Act are subject to

Wisconsin sales or use tax if the customer’s place of primary use is in Wisconsin, as determined under the Act. All of the provisions of the Act are adopted for Wisconsin sales and use tax purposes. However, if the Act, or the application of the Act, is found unconstitutional, sales of mobile telecommunications services would be subject to Wisconsin sales and use tax as prescribed by the Wisconsin sales and use tax law prior to the August 1, 2002 change.

County and stadium sales or use taxes are imposed on the sale of services subject to the Act if the customer’s place of primary use is in a taxable county and stadium district.

Example 1. Individual A’s residence is in Green Bay, Wisconsin. Individual A contracts with Service Provider B for cellular telephone service that is subject to the Act. While in Illinois, Individual A makes telephone calls to persons in California. Service Provider B bills Individual A for these calls.

Individual A’s place of primary use of the service is her residential street address in Green Bay. Therefore, the charge made by Service Provider B to Individual A for these calls is subject to 5.5% Wisconsin sales tax (5% state tax and 0.5% football stadium tax).

Example 2. Corporation C’s primary business location is in Milwaukee, Wisconsin. Corporation C contracts with Service Provider B for cellular telephone service that is subject to the Act. The cellular telephone service is for Corporation C’s employees, whose place of primary use of the service is at Corporation C’s primary business location in Milwaukee. While in Illinois, an employee of Corporation C makes telephone calls to persons in California. Service Provider B bills Corporation C for these calls.

Corporation C’s place of primary use of the service is its primary business street address in Milwaukee. Therefore, the charge made by Service Provider B to Corporation C for these calls is subject to 5.6% Wisconsin sales or use tax (5% state tax, 0.5% Milwaukee County tax and 0.1% baseball stadium tax).

Note: Under prior law, the telecommunications services for the calls from Illinois to California in Examples 1 and 2 were not subject to Wisconsin

sin sales or use tax, because the services did not originate or terminate in Wisconsin.

Example 3. Individual D's residence is in Chicago, Illinois. Individual D contracts with Service Provider E for cellular telephone service that is subject to the Act. While in Kenosha, Wisconsin, Individual D makes telephone calls to persons in Janesville, Wisconsin. Service Provider E bills Individual D for these calls.

Individual D's place of primary use of the service is his residential street address in Chicago. The charges made by Service Provider E to Individual D for these calls are not subject to Wisconsin sales or use tax.

Note: Under prior law, the service for the calls from Kenosha to Janesville in Example 3 was subject to 5.5% Wisconsin sales or use tax (5% state tax and 0.5% Kenosha County tax).

Generally, the Wisconsin tax treatment for sales of the rights to purchase telecommunications services (for example, prepaid telephone calling cards) is unchanged. (See *Wisconsin Tax Bulletin* 109 (June 1998), page 10, for the general tax treatment of such sales). If, however, a sale of the rights to purchase telecommunications services is subject to the Act (for example, the remaining amount of units of service that have been prepaid is *not* known by the provider on a continuous basis), the sales or use tax is as determined under the Act.

Wisconsin Provisions-Customer Remedy

If a customer purchases a mobile telecommunications service subject to the Act and believes that (1) the amount of the tax assessed, (2) place of primary use, or (3) taxing jurisdiction is erroneous, the customer may request in writing a correction by the service provider. The written request must include all of the following:

- A description of the error.
- The street address for the customer's place of primary use.
- The account name and number of the customer.
- Any other information that the service provider reasonably requires to process the request.

Within 60 days from the date that a service provider receives a request for correction, the service provider must provide one of the following:

- A written explanation of why there is no error.
- A refund or credit of sales or use tax collected erroneously from the customer in the previous 48 months, along with the related interest, consistent with sec. 77.59(4), Wis. Stats.

A customer may take no other action, or commence any action, to correct an alleged error in the amount of the Wisconsin sales or use tax assessed on a service subject to the Act or to correct an alleged error in the assigned place of primary use or taxing jurisdiction, unless the customer has exhausted his or her remedies described above.

2. Clarify Tax Treatment for Telecommunications Services Furnished Through Use of Prepaid Telephone Calling Cards and Authorization Numbers (2001 Act 109, create sec. 77.54(46m), effective July 30, 2002.)

This provision clarifies that telecommunications services are exempt from sales and use tax, if:

- The telecommunications services are obtained by using the rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and using an access number and authorization code (for example, prepaid telephone calling cards or prepaid authorization numbers), and
- The tax imposed under sec. 77.52 or 77.53, Wis. Stats., was previously paid on the sale or purchase of such rights.

Example: Convenience Store A, located in Milwaukee, Wisconsin, sells a prepaid telephone calling card to Individual B for \$21.12 (\$20 plus \$1.12 state, county, and stadium sales taxes). Individual B receives the prepaid telephone calling

card at Convenience Store A's location in Milwaukee. Individual B uses the card to make telephone calls from Milwaukee to Chicago, Illinois. The telephone service for these calls is furnished by Company XYZ.

Convenience Store A correctly charged sales taxes on the sale of the card. Because the proper Wisconsin sales tax was previously paid on the sale of the prepaid telephone calling card used to make the calls, the telephone services sold by Company XYZ for the calls from Milwaukee to Chicago are exempt from sales and use tax.

3. Exemption Certificates Not Required for Certain Sales of Livestock (2001 Act 109, amend secs. 77.52(13) and 77.53(10), effective September 1, 2002.)

No sales and use tax exemption certificate is required to be obtained by a seller as proof of exemption from Wisconsin sales or use tax for sales of cattle, sheep, goats, and pigs that are sold at a livestock market, as defined in sec. 95.68(1)(e), Wis. Stats.

Section 95.68(1)(e), Wis. Stats., defines livestock market as any premises which are open to the public for the purpose of trading in livestock and on which facilities are maintained for their yarding, feeding and watering prior to sale.

D. Premier Resort Area Tax

1. City of Bayfield May Impose Premier Resort Area Tax (2001 Act 109, amend sec. 66.1113(2)(a) and create sec. 66.1113(2)(f), effective July 30, 2002.)

The City of Bayfield may, by ordinance, impose a 0.5% premier resort area tax, even if less than 40% of the equalized assessed value of the taxable property within the City of Bayfield is used by tourism-related retailers. Under prior law, at least 40% of the equalized assessed value of the taxable property within the City of Bayfield must have been used by tourism-related retailers for the City of Bayfield to impose the premier resort area tax.

E. Other

1. Department May Charge IRS for Offsetting Refunds (2001 Act 109, amend sec. 73.03(52), effective July 30, 2002.)

Prior law provided the department with authority to enter into agreements with the Internal Revenue Service (IRS) that provide for offsetting state tax refunds against federal tax obligations. Under this bill, the department may charge the IRS a fee up to \$25 per transaction for such offsets.

2. Minnesota-Wisconsin Reciprocity Requires Interest Payment (2001 Act 109, create sec. 71.10(7)(c), effective for taxable years beginning on or after January 1, 2001.)

Wisconsin must begin paying interest on payments it makes to Minnesota to compensate Minnesota for the net revenue loss it experiences as the result of practicing income tax reciprocity with Wisconsin. The interest is to be calculated according to the Laws of Minnesota 2002 Chapter 377, or at another rate and under another method of calculation that is agreed to by Minnesota and Wisconsin.

3. Penalties Revised (2001 Act 109, renumber sec. 125.075(2) to 125.075(2)(a) and amend as renumbered, amend secs. 71.83(2)(b)1 through 4, 125.085(3)(a)2, 125.105(2)(b), 125.66(3), 125.68(12)(b) and (c), 139.44(1), (1m), (2), and (8)(c), 139.85(1), and 139.95(2) and (3), and 939.50(3)(e), and create secs. 125.075(2)(b) and 939.50(3)(f) through (i), effective for offenses committed on or after February 1, 2003.)

Various felony offenses of Wisconsin tax law are designated as a Class E, F, G, H, or I offense. The penalties prescribed by Chapter 939 of the Wisconsin Statutes for each of the classes are as follows:

- Class E felony, a fine not to exceed \$50,000 or imprisonment not to exceed 15 years, or both.
- Class F felony, a fine not to exceed \$25,000 or imprisonment not to exceed 12 years and 6 months, or both.

- Class G felony, a fine not to exceed \$25,000 or imprisonment not to exceed 10 years or both.
- Class H felony, a fine not to exceed \$10,000 or imprisonment not to exceed 6 years or both.
- Class I felony, a fine not to exceed \$10,000 or imprisonment not to exceed 3 years and 6 months, or both.

The following indicates the felony class that applies to the various felony offense provisions in Wisconsin tax law:

- Any person, other than a corporation or limited liability company, who renders a false or fraudulent income tax return with intent to defeat or evade any assessment is guilty of a Class H felony and may be assessed the cost of prosecution.*
- Any officer of a corporation or manager of a limited liability company required by law to make, render, sign or verify any franchise or income tax return, who makes any false or fraudulent franchise or income tax return, with intent to defeat or evade any assessment is guilty of a Class H felony and may be assessed the cost of prosecution.*
- Any person who removes, deposits or conceals or aids in removing, depositing or concealing any property upon which a levy is authorized with intent to evade or defeat the assessment or collection of any tax is guilty of a Class I felony and may be assessed the cost of prosecution.
- A claimant who files a claim for credit under sec. 71.07, 71.28, or 71.47 or subch. VIII or IX that is false or excessive and filed with fraudulent intent and any person who, with fraudulent intent, assists in the preparation or filing of the false or excessive claim or supplied information upon which the false or excessive claim was prepared is guilty of a Class H felony and may be assessed the cost of prosecution.
- Any person who procures alcohol beverages for or sells, dispenses or gives away alcohol beverages to a person under 18 years of age, and the person knew or should have known that the underage person was under the legal drinking age, is guilty of a Class H felony if the underage person suffers great bodily harm or is guilty of a Class G felony if the underage person dies.
- Any person who, for money or other consideration, makes, alters or duplicates an official identification card, provides an official identification card to an underage person or knowingly provides other documentation to an underage person purporting to show that the underage person has attained the legal drinking age, or possesses an official identification card or other documentation used for proof of age with the intent of providing it to an underage person is guilty of a Class I felony.
- A person who impersonates an inspector, agent or other employee of the Department of Revenue or of the Department of Justice to commit, or abet the commission of, a crime is guilty of a Class H felony.
- Any person manufacturing or rectifying intoxicating liquor without holding appropriate permits, or any person who sells such liquor, is guilty of a Class F felony.
- A person who recovers any alcohol or alcoholic liquid from denatured alcohol by any process or uses, sells, conceals or disposes of, in any manner, any alcohol or alcoholic liquid derived from denatured alcohol is guilty of a Class F felony.
- Any person causing the death of another human being through the selling or otherwise disposing of, for beverage purposes, either denatured alcohol or alcohol or alcoholic liquid redistilled from denatured alcohol is guilty of a Class E felony.
- Any person who falsely or fraudulently makes, alters, or counterfeits any stamp or procures or causes the same to be done, or who knowingly utters, publishes, passes or tenders as true any false, altered or counterfeit stamp, or who affixes the same to any package or container of cigarettes, or who possesses with the intent to sell any cigarettes in containers to which false, altered or

counterfeit stamps have been affixed is guilty of a Class G felony.

- Any person who falsely or fraudulently tampers with a cigarette meter in order to evade the tax is guilty of a Class G felony.
- A person who possesses cigarettes without the required stamps properly affixed is guilty of a Class I felony if the number of cigarettes exceeds 36,000.
- A dealer who possesses a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam that does not bear evidence that the tax on controlled substances has been paid is guilty of a Class H felony.
- Any person who falsely or fraudulently makes, alters or counterfeits any stamp or procures or causes the same to be done or who knowingly utters, publishes, passes or tenders as true any false, altered or counterfeit stamp or who affixes a counterfeit stamp to a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam or who possesses a schedule I controlled substance, a schedule II controlled substance or ketamine or flunitrazepam to which a false, altered or counterfeit stamp is affixed is guilty of a Class F felony.

*This penalty also applies for purposes of the recycling surcharge and the dry cleaning fee.

In addition to classifying the above felony penalties, Act 109 provides that:

- A distributor who does not collect and remit the excise tax on tobacco products not exempt from the tobacco products tax, with the required reports, may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.
- Any person who makes or signs any false or fraudulent report or who attempts to evade the cigarette or tobacco products tax, or who aids in or abets the evasion or attempted evasion of that tax may be fined not more than \$10,000 or imprisoned for not more than 9 months or both.

4. Department Authorized to Participate In Multistate Tax Commission Audit Program (2001 Act 109, create sec. 73.03(28d), effective July 30, 2002.)

The department is authorized enter into a contract to participate in the multistate tax commission audit program. A portion of the amount collected through the contract is to be allocated to pay the fees necessary to participate in the program. The remainder of the amount collected through the contract will be allocated to the state's general fund.