

# Wisconsin TAX BULLETIN

[www.dor.state.wi.us](http://www.dor.state.wi.us)

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October 2002

## Department Will Offer “Wisconsin Free File” Electronic Filing

Beginning in January, the department will offer “Wisconsin Free File,” a new electronic form and filing service, for 2002 Wisconsin income tax returns and homestead credit claims. The new service will offer online instructions and fill-in forms on which taxpayers can enter information and submit their state tax return electronically.

Wisconsin Free File is for filing Wisconsin income tax returns and homestead credit claims only. Free File users will enter some federal information necessary to support the Wisconsin tax return, but must file their federal return separately. At this time, Wisconsin Free File will be available to most filers who do not file federal schedules C, C-EZ, D, E, F, and 4797.

In most cases Wisconsin Free File will be a paperless process with no signature document required. However, when instructed to submit supporting documentation, filers will be required to submit the new Wisconsin Form W-RA, *Required Attachments for Electronic Filing*. All those filing homestead credit claims will be required to submit supporting documentation, as will others in certain filing situations when instructed.

Based on the experience of other states with similar programs, Wisconsin Free File will be used primarily by taxpayers who have not used a paid preparer or electronically filed in the past. Free File, like paper instructions and forms, does not compete with paid preparers and other tax professionals, since it offers no tax preparation assistance or advice. Indeed, the department values and looks forward to continuing the good working relationship it has with paid preparers, other tax professionals, and vendors of full-featured tax preparation software.

Taxpayers have been asking for an electronic fill-in form and filing service like Wisconsin Free File for several years. The Department of Revenue is pleased that it will be able to deliver that service in time for next year’s filing and processing season. [↗](#)

## Tax Return Volunteers Needed

Would you like to become a volunteer for Volunteer Income Tax Assistance (“VITA”), or for the Tax Counseling for the Elderly (“TCE”) program of the American Association of Retired Persons (“AARP”)? VITA and TCE/AARP volunteers help persons with low to moderate income prepare federal and state income tax returns and Wisconsin homestead credit claims. Volunteers can choose to work during the day, at night, or on weekends.

Last year VITA and TCE/AARP volunteers, operating 416 Wisconsin sites, helped prepare over 45,000 federal and Wisconsin returns for low and moderate-income persons.

Both the Internal Revenue Service and Wisconsin Department of Revenue provide training to VITA volunteers and TCE/AARP instructors. As a volunteer, you will be trained to prepare federal Forms 1040-EZ, 1040A, and 1040 (1040 training is limited to Schedules A, Itemized Deductions; B, Interest and Dividend Income; and D, Capital Gains and Losses), and Wisconsin Forms WI-Z, 1A, and 1, and Schedule H, Homestead Credit. TCE/AARP volunteers will also be trained to help persons prepare federal and Wisconsin estimated tax vouchers. *(continued on page 3)*

### 2002 Tax Filing

#### Season at a Glance

#### Number of returns

2,881,349 - down 1.1%

#### Number of refunds

2.3 million - no change

#### Electronic filing

##### Fed/State E-file

Preparer 690,586 - up 27.1%

Taxpayer 160,955 - up 81.5%

TeleFile 91,116 - down 22.7%

Total\* 948,657 - up 25.9%

\* 33% of all returns filed [↗](#)

**In This Issue****Articles –**

Wisconsin Free File .....	1	Corporation Estimated Tax .....	8	Tax Publications Available.....	14
Tax Volunteers Needed .....	1	Magnetic Media Filing .....	8	2.3 Million Refunds .....	16
2002 Tax Filing .....	1	Tax Form Order Blanks .....	8	Election Campaign Fund .....	16
Form Changes for 2002 .....	2	Fewer 1NPR Booklets Mailed .....	9	Endangered Resources.....	16
Some Practitioners Must File		Fewer Corporation Booklets		Red Flags in Audits of Banks .....	16
Electronically .....	3	Mailed .....	9	Wanted: Your Comments .....	17
Preparers Help Electronic Filing .....	3	Streamlined Sales Tax States		Question and Answer .....	17
Vehicle Dealers' Use Tax .....	4	Near Agreement .....	9	Homestead Fraud Ring Cracked .....	18
Green County Adopts Tax .....	4	Help to Local Governments.....	10	Administrative Rules in Process .....	19
Substitute Tax Forms .....	5	Integrated Tax Update .....	11	<b>Report on Litigation .....</b>	<b>21</b>
Package WI-X Available .....	5	IRS Mileage Rates Apply .....	12	<b>Tax Releases.....</b>	<b>28</b>
Filing Homestead Claims		Delinquent Taxes Paid .....	12	<b>Attachments –</b>	
Electronically .....	5	Index of Reference Material .....	12	Proof Copies of Forms .....	31
Tips to Speed Processing.....	7	Information or Inquiries? .....	13	September Tax Report .....	49
		Speakers Bureau .....	13	Guidelines/Substitute Forms .....	53
		Bulletin Index Available.....	13	Order Blank .....	55

**Form Changes for 2002**

Listed below are brief descriptions of the major changes to the Wisconsin individual income tax forms (Forms 1, 1A, WI-Z, and 1NPR), the homestead credit claim (Schedule H), and the farmland preservation credit claim (Schedule FC) for 2002.

Preliminary copies of the 2002 Forms 1, 1A, WI-Z, and 1NPR, and Schedules H and FC, are reproduced on pages 31 to 48 of this Bulletin. Draft copies of these and other Wisconsin tax forms are also available on the department's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us).

- Zeros are preprinted in the cents column on Forms 1, 1A, WI-Z, and 1NPR and Schedules H and FC. The use of whole dollar amounts will reduce processing time and costs.

**Wisconsin Tax Bulletin**


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- Boxes for entering each individual letter and number have been removed from the entry areas on Forms 1, 1A, and WI-Z.
- The percentage rate for computing farmland tax relief credit on Forms 1 and 1 NPR is changed from 13% to 30%. The maximum allowable credit is \$3,000.
- The method used to compute tax on Form 1NPR has been revised. This change simplifies the computation by eliminating the tax computation worksheet and allowing use of a tax table. In addition, only one proration is required instead of three.
- The amount that may be designated to the state election campaign fund on Forms 1, 1A, WI-Z, and 1NPR is increased to \$20. Taxpayers must enter a code number to indicate whether the funds should go to a general account or to the political party of their choice. (Note: The constitutionality of the 2001 Wisconsin Act 109 provisions that these changes reflect is being challenged. A court decision received prior to the time printing of the 2002 forms begins in early November could necessitate changes to the election campaign fund area.)
- Schedule H is expanded to three pages, to make it easier to read and to allow for more efficient processing. 

**Tax Return Volunteers Needed** *(Continued from page 1)*

**Enrolled agents** participating in these programs may earn up to half of their required **CPE credits**. Other income tax practitioners may also earn CPE credits.

These practitioners should check with their professional associations. **Note:** If you are a CPA, you may be eligible for CPE credits if you conduct classes for volunteers.

With the tax season fast approaching, VITA and TCE/AARP programs are in need of volunteers. If you would you like to volunteer, please call or e-mail either:

John Lulay 1-414-297-1766 [John.F.Lulay@IRS.gov](mailto:John.F.Lulay@IRS.gov)

or

Rick Dilley 1-608-266-2606 [Rdilley@dor.state.wi.us](mailto:Rdilley@dor.state.wi.us)



## Some Practitioners Must File Returns Electronically

The amendment of administrative rule section Tax 2.08 has been implemented, to require certain tax practitioners to file individual income tax returns electronically. The requirement goes into effect with the upcoming tax season. The first phase of the mandate, beginning January 1, 2003, applies to practitioners who in 2002 prepared 200 or more 2001 Wisconsin individual income tax returns (Form 1, 1A, and WI-Z) and homestead credit claims (Schedule H). The second phase begins January 1, 2004, and applies to practitioners who file 100 or more 2002 Wisconsin individual income tax returns and homestead credit claims in 2003. The threshold will remain at 100 for future years.

The Department of Revenue sent a letter in September, notifying practitioners of this requirement. While the department is committed to advancing electronic filing, the new rule adopts a measured approach to implementation. In addition, it allows for a waiver in the

case of undue hardship, and in specific cases when the individual taxpayer does not want to file electronically.

For more information about the rule, go to [www.dor.state.wi.us/eserv/rule.html](http://www.dor.state.wi.us/eserv/rule.html) or contact the department at the address below.

For more information about registering to submit individual income tax returns electronically through the fed/state e-file program, go to [www.dor.state.wi.us/eserv/e-ero.html](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 8949  
Madison WI 53708-8949

Phone: (608) 264-6886

Fax: (608) 267-1030

E-mail: [efiling@dor.state.wi.us](mailto:efiling@dor.state.wi.us)

## Preparers Help Bolster Electronic Filing

In the 2002 tax season, more than 948,000 income tax returns were electronically filed with the Wisconsin Department of Revenue (“DOR”), through one of the three accepted e-file methods. This represents a 25.9% increase from the 753,000 e-filed returns in the previous season. The success of the Wisconsin e-file program is due in large part to the participation and cooperation of tax practitioners who are approved Electronic Return Originators (“EROs”).

### The BENEFITS of e-file for an ERO’s clients are:

- Return less likely to be adjusted, because the data on e-filed returns are more accurate; the software performs mathematical calculations.
- Direct deposit is available only for e-filed Wisconsin returns.
- Refunds will be issued within one week for returns that need no additional review.
- Taxpayers receive acknowledgements of their returns being filed, from both DOR and the IRS.
- Balance due returns can be filed early in the season, but can be paid on April 15th.
- Electronic filing reduces processing costs for DOR, which benefits all taxpayers.
- Wisconsin allows electronic filing through October 15th for returns with extensions.

**How do tax practitioners become EROs with DOR?**

- 1) Complete an Electronic Return Originator application (Federal Form 8633), and submit it to the IRS.
- 2) Send DOR a copy of the federal application, (Form 8633), and a copy of the IRS acceptance letter with your EFIN (Electronic Filing Identification Number) on it. Participants who are not sole proprietors must also provide a list of the full names, addresses, and social security numbers of all partners or officers.
- 3) IRS-approved EROs will automatically be accepted into the Wisconsin e-file program, but applicants

will be reviewed for delinquent tax liabilities and non-filing status.

These documents can be faxed to (608) 267-1030 or mailed to

Wisconsin Department of Revenue  
Electronic Filing Office  
Mail Stop 5-77  
PO Box 8949  
Madison WI 53708-8949

For more information on electronic filing, visit the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us), send an e-mail message to the Electronic Filing Office at [efiling@dor.state.wi.us](mailto:efiling@dor.state.wi.us), or call (608) 264-9959. [↗](#)



### **Motor Vehicle Dealers' Measure of Use Tax Increased to \$116**

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

**Effective January 1, 2003, the amount subject to use tax is increased from \$114 to \$116 per plate per month.** (Note: The use tax per plate per month is not \$116. Rather, \$116 is multiplied by the use tax rate (5%,

5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.)

The reason for the increase to \$116 per plate is that sec. 77.53(1m)(a), Wis. Stats. (1999-00), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30. The percentage change for the period July 2001 to June 2002 was 1.67% ( $\$114 \times 1.0167 = \$116$  rounded to the nearest whole dollar). [↗](#)

**Green County Adopts County Tax**

Effective January 1, 2003, the county sales and use tax will be in effect in Green County. This brings to 57 the number of counties that have adopted the 1/2% county tax.

Retailers were notified about Green County's adoption of the county tax in the September 2002 *Sales and Use Tax Report* (number 3/02). The Report was sent in late September and early October to all persons registered

for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 49 to 52 of this Bulletin.

For additional information about the county tax, see Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII, on pages 38 to 44. Publication 201 is available from any Department of Revenue office. See the article titled "Tax Publications Available" on page 14 of this Bulletin for information about how to obtain copies of Publication 201 by mail, e-mail, fax, or the Internet. [↗](#)



## Guidelines for Reproduced and Substitute Tax Forms

Tax returns may generally be filed on forms that have been reproduced or on substitute forms that have been approved by the department. However, certain guidelines must be followed to ensure that the reproduced or substitute

forms are compatible with the department's processing system.

A copy of the "Guidelines for Reproduced and Substitute Tax Forms" appears on pages 53 and 54 of this Bulletin. The guidelines are also on the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Click on "Forms" and then see "Tax Return Guidelines." [↗](#)

## 2002 Package WI-X Available in January

Wisconsin's Package WI-X will be available by January 31, 2003. Package WI-X will contain actual size copies of most 2002 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, estate tax, motor vehicle fuel tax, sales and use tax, and withholding tax forms.

The cost of the 2002 Package WI-X is \$7.00, plus sales tax. It may be ordered on the tax form order blank (Form P-744). This order blank was mailed in

September. See the article titled "Tax Form Order Blanks Mailed" on page 8 of this Bulletin, for more information.

If you want to purchase copies of the 2002 Package WI-X and did not receive an order blank, you may mail a request, indicating the number of copies you require, along with your remittance for the amount due. Send it to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, PO Box 8951, Madison WI 53708-8951. [↗](#)

## Do's and Don'ts for Filing Homestead Credit Claims Electronically

This year was the first year for filing homestead credit claims electronically ("e-filing"), and 26,000 claimants took advantage of the opportunity. In 2003, claimants will be able to e-file a homestead credit claim through a paid preparer or vendor software, like this year, or they will be able to e-file through the new "Wisconsin Free File" fill-in-the-form web site application.

For more information about Wisconsin Free File, see the article titled "Department Will Offer 'Wisconsin Free File' Electronic Filing" on page 1 of this Bulletin. (Note: A 2002 homestead credit claim may be e-filed only if a 2002 Wisconsin income tax return has not been filed. It may be e-filed **with** the tax return, or by itself if no tax return is being filed.)

To help avoid some of the delays experienced this year, listed below are some tips to follow for a smoother filing season.

### Property tax bill information

- Transmit the property tax bill information electronically, with the e-filed claim. (Hint: Provide all of the required information from the property tax bill.)

- Enter the required information exactly as it is shown on the tax bill. (Hint: Don't reduce the property taxes for ownership percentage or personal use of home, on the Property Tax Bill Information sheet.)
- Indicate the type of owner – be sure only one type is indicated, and it is correct.
- Only enter ownership percentage and net property taxes when the owner type is "Self and/or spouse AND OTHERS." (Hint: When "Self and/or spouse" is indicated, don't enter 100% for ownership percentage or fill in an amount of property taxes.)
- Enter the net property tax (before the lottery and gaming credit and without special assessments/charges) in the correct area. (Hint: Don't enter the net property tax after the lottery and gaming credit in this area.)
- Enter the lottery and gaming credit as shown on the tax bill, in the correct area. (Hint: When the tax bill does not include a lottery and gaming credit, use Homestead Credit Notes #16 or #17 to explain which situation applies.)
- Use the "Adjoining Property Tax Bill Information" section (there are data fields for up to five additional tax bills) when there is more than one tax bill.
- Use only the tax bill for the home to complete the "Tax Bill Information for Your Home" section.



(Hint: Don't add multiple tax bills and put totals in that section.)

- Fill in the address of the property exactly as shown on the tax bill. (Hints: Enter N, S, E, or W as shown on the tax bill, and don't enter a rural route address when the tax bill shows a street address; for example, use W4459 Center Road rather than RR 2.)
- Don't enter dates of occupancy if you resided in the home for the entire year.
- Enter dates of occupancy when a home was purchased or sold during the year.
- When a home was sold during the year, enter the closing statement and sale of home information in the correct data fields.
- Don't enter property tax bill information when property taxes are claimed but there is no tax bill (for example, line 10b of the rent certificate has an amount that is entered on line 13 of Schedule H).

#### Rent certificate information

- Transmit the rent certificate information electronically, with the e-filed claim. (Hint: Provide all of the information from the original rent certificate.)
- Enter the required information exactly as shown on the rent certificate.
- Don't complete an electronic rent certificate without an original rent certificate that was signed by a landlord.
- If the landlord will not sign a rent certificate, indicate this and complete all of the required claimant's and landlord's information. Mail copies of each cancelled check or money order receipt to verify the rent paid, with Form W-RA, *Required Attachments for Electronic Filing*.
- Obtain a new rent certificate signed by the landlord if it has been altered (whiteouts, erasures, etc.). (Hint: If a new rent certificate is not obtained, indicate that the rent certificate is altered.)
- Indicate the property owner type; be sure it is correctly entered. (Hint: Check only one owner type.)
- Enter the dates of occupancy (line 4 of the rent certificate) correctly. (Hint: Enter the month and day, not the month and year.)

- Enter the answer for line 9b the way the original rent certificate is answered. (Hint: Don't enter "No" if the rent certificate indicates "Yes.")
- Enter the answer for line 9c if the box is checked on the original rent certificate.
- Since line 11b of the electronic rent certificate has 2-byte data fields for months and 2-byte fields for days in each of the four columns, enter only months if only whole months are shown on the original rent certificate, not 365 days, etc. (Hint: Only use the "days" data fields when the rent certificate shows a fraction of a month or a number of days on line 11b; for example, enter 10 1/2 months as "10" months and "15" days.)
- Don't enter a percentage on line 13c if none is shown on the original rent certificate.
- Complete the "Allowable Rent for Shared Living Expenses" when the original rent certificate has that information.
- If software automatically computes and enters the rent for lines 11c, 11d, and 13a, verify that the amounts are the same as shown on the original rent certificate. (Hint: If they are not the same, you must override the amounts so they match the amounts on the original rent certificate.)

**Household income information** (Note: In these tips, Schedule H line references are to the 2002 Schedule H. See pages 43 to 45 of this Bulletin for a proof copy of the 2002 Schedule H.)

- Include deferred compensation labeled with an "S" from box 12 on a wage statement, on line 9e of Schedule H.
- Include military benefits for basic quarters and subsistence allowances labeled with a "Q" from box 12 on a wage statement, on line 9h of Schedule H.
- Enter the letters and amounts that appear in box 12 on wage statements.
- Include depreciation from Form 8829, on line 11i of Schedule H.
- Include the gain from the sale of a home that is excluded under I.R.C. Section 121, on line 11c of Schedule H.
- Claim standard mileage expense as a "car and truck expense," not as an "other expense" on Schedule C or F. (Hint: Use Homestead Credit Note #4 to indicate the miles used in computing the standard mileage rate for car and truck expenses.)

- Include the claimant's and spouse's distributive share of partnership/S corporation/ LLC depreciation, depletion, etc. on line 11g of Schedule H. (Hint: Don't include it on line 11h or 11i.)
  - Include a note explaining that the claimant and/or spouse did not receive social security income, IF either is age 65 or over and none is included. (Hint: Use Homestead Credit Note #8.)
  - Include child support, maintenance payments, and other support money, on line 9i of Schedule H.
  - If "other" subtractions are listed on line 11 of Form 1 and are not labeled, include a note to indicate the source of the subtraction.
  - Use the Homestead Credit Notes when needed. (Hint: "Needed" includes situations per the instructions, relating to low income, less than 12 months of property taxes/rent, IRA/pension/annuity rollovers, married, divorced, or separated during year, lottery credit not claimed or allowed separately from tax bill, standard mileage rate vs. actual expenses, etc.)
- Form W-RA information** (Note: There will be no Form 8453W for 2002 claims, but Form W-RA, *Required Attachments for Internet Filing*, will have to be printed and mailed with the required homestead credit documentation.)
- Put Form W-RA as the front document, with attachments stapled behind. (Hint: Attachments should include wage statements [Form W-2s] and Form 1099-Rs, original rent certificate(s), copy of property tax bill(s) and/or closing statement, and any other document or note needed per the homestead credit instructions.)
  - Don't staple two or more taxpayers' Form W-RAs and attachments together.
  - Don't mail Form W-RA before receiving the Wisconsin acknowledgment. (Hint: Be sure you mail it to the correct address.)
  - Send Form W-RA and ALL of the required attachments to:
    - Using U.S. Postal Service – Wisconsin Department of Revenue, PO Box 34, Madison WI 53786-0001
    - Using another service – Wisconsin Department of Revenue, Mail Opening Mail Drop 1-151, 2135 Rimrock Road, Madison WI 53713
  - Don't mail a copy of the electronically transmitted income tax return or homestead credit claim. This may cause errors or delays. [Ⓜ](#)



### Tips to Speed Processing of Corporation Tax Returns

Processing corporation tax returns takes longer when the returns are incomplete or assembled improperly. Avoid errors and delays in processing your tax return by following these tips:

1. **File your return using the correct year's form.** If you do not, it may be sent back to you. The year of the return should correspond to the first date of the tax period covered. For example, if you file a return for the period covering 6/1/01 through 5/31/02, you would file a 2001 Corporation franchise or income tax return because the first date in the period covered is in 2001.
2. **If the address or name of your corporation has changed** from the information on the label from the tax booklet, enter your new name/address and check the appropriate box indicating there is a change. If you do not have a label to compare to and you have had a name or address change in the last two years, check the box to ensure that the new information is correctly entered.
3. Check the appropriate box on the return if you are filing a **first or final return** for the corporation. This information is important in determining past and future filing requirements.
4. Check the appropriate box on the return if you are filing an **amended return** or write "Amended" on the top of the return.
5. Enter the correct **Federal Employer Identification Number ("FEIN")**. The FEIN should be nine digits long. Some printers/software only print eight digits, so check your return before you mail it in.
6. Fill in the **gross receipts and total company assets** lines on the tax return.
7. **DO NOT staple checks to the return** or put checks inside or on the back of the return. They may be overlooked, and you could receive a bill. Paperclip all checks to the front page of the return.

8. **Only use one staple** or clip, in the upper left corner of the return. Staples placed in other areas of the return must be removed to key the information from the return.
9. **Attach the federal return and ALL schedules** that apply.

10. **Assemble the return in the correct order:**

- Wisconsin tax return
- Federal tax return
- Any attachments
- Any extensions (place as the BACK page) [🔗](#)

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## Making Corporation Estimated Tax Payments

If a corporation's franchise or income tax due (including the recycling surcharge) is \$500 or more, it generally must make quarterly estimated tax payments. The quarterly payments may be made either with a Wisconsin Form 4-ES or by Electronic Funds Transfer ("EFT").

Corporations that made an estimated tax payment with a Form 4-ES in the current year will automatically receive estimated tax vouchers (Form 4-ES) before the next year's tax is due. Taxpayers that receive the Form 4-ES in the mail but have no estimated tax payment obligation

for the next year **should not** complete and return the form. (Some taxpayers think that because the department sends them the pre-printed vouchers they are obligated to complete and return them, even though they are not making estimated payments.)

Estimated tax payments can be made by EFT. Taxpayers that make estimated tax payments by EFT do not need to complete the Form 4-ES. For more information about EFT payments, call (608) 264-9918; write to Wisconsin Department of Revenue, PO Box 8912, Madison WI 53708-8912; or visit the department's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us). This site also provides information about forms and filing requirements. [🔗](#)

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## Magnetic Media Filing Required for Some Forms

Employers and payers may be required to file wage statements and information returns on magnetic media with the Wisconsin Department of Revenue. Wisconsin magnetic media filing is required if all of the following apply:

- Comparable wage statements or information returns are required to be filed on magnetic media with the Internal Revenue Service or Social Security Administration.
- The income on the form is required to be reported to Wisconsin.

- The number of any one type of form required to be filed with Wisconsin is 250 or more.
- The Combined Federal/State Filing Program is not being used.
- No waiver has been granted by the department.

Wisconsin Publication 509, *Filing Wage Statements and Information Returns on Magnetic Media*, provides more information about magnetic media filing. For information about how to obtain this publication, see the article titled "Tax Publications Available" on page 14 of this Bulletin. [🔗](#)

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## Tax Form Order Blanks Mailed

During September, the department mailed order blanks (Form P-744) to 9,000 tax preparers. Use these original order blanks (not copies) to request bulk orders of 2002 Wisconsin tax forms that require payment. Forms that do not require payment are not listed on the order blank.

Some of the forms you order will be accompanied by additional information. For example, your order will include instructions for the forms you request; Schedules 2K-1 and WD for Form 2 will be included with fiduciary Form 2 orders; and Schedules 3K-1 will be included with partnership Form 3 orders.

If you have not received an order blank, you may request one by: contacting any department office;



writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, PO Box 8951, Madison WI 53708-8951; or calling (608) 266-1961.

Place your order as early as possible after receiving the order blank. Orders are expected to be filled in late December and early January.

As an alternative to ordering forms, most forms in Package WI-X may be reproduced. Package WI-X will be mailed separately in January. In addition, 2002 Wisconsin income tax forms will be available at some libraries. [☞](#)

### **Fewer Form 1NPR Booklets Will Be Mailed**

For the 2002 tax year, the department will discontinue the annual mailing of the Wisconsin Form 1NPR income tax instruction booklets to taxpayers who filed a 2001 Form 1NPR, filed as a part-year resident, and had a non-Wisconsin address. Research has shown that only a small percentage of taxpayers meeting these criteria use the booklets that the department mails to them, and eliminating the printing and mailing of these booklets will save both resources and taxpayer dollars.

Taxpayers who need a Form 1NPR booklet may obtain one by any of the following methods:

- Download it from the department's web site at [www.dor.state.wi.us/html/taxforms.html](http://www.dor.state.wi.us/html/taxforms.html).
- Use the department's Fax-A-Form Retrieval System, accessed by calling (608) 261-6229 from a fax telephone.
- Copy it from Wisconsin Package WI-X, which may be purchased or is available in many public libraries.
- Request that it be mailed, by using the department's online request form at [www.dor.state.wi.us/html/formsreq.html](http://www.dor.state.wi.us/html/formsreq.html) or by calling Customer Service at (608) 266-2772. [☞](#)

### **Fewer Corporation Tax Booklets Will Be Mailed**

Beginning in December 2002, the department will no longer mail corporation franchise or income tax booklets, Form 4, 5, or 5S, to corporations that used a paid tax return preparer in the prior year. Over three-fourths of all corporations use a paid tax return preparer, and most of these returns are prepared using substitute forms or software. Eliminating the mailing of most 2002 corporation franchise or income tax booklets will save resources and taxpayer dollars.

Corporation tax forms and instructions are available from a variety of sources:

- The department's web site at [www.dor.state.wi.us/html/taxforms.html](http://www.dor.state.wi.us/html/taxforms.html).
- The department's Fax-A-Form Retrieval System, accessed by calling (608) 261-6229 from your fax telephone.
- Wisconsin Package WI-X, which may be purchased or is available in many public libraries.
- You may request that forms be mailed to you by using the department's online request form at [www.dor.state.wi.us/html/formsreq.html](http://www.dor.state.wi.us/html/formsreq.html) or by calling (608) 266-1961. [☞](#)

### **Streamlined Sales Tax Implementing States Near Finalization of Agreement**

Thirty-five states are expected to approve the Streamlined Sales Tax Agreement at the Implementing States meeting in Chicago on November 12, 2002.

The Implementing States have been meeting for the last nine months to review and approve the provisions of the model legislation as developed by the Streamlined Sales

Tax Project. The States have also decided how they will govern themselves in an Interstate Agreement.

Governance provisions include the following:

- The States will have an Interstate Agreement once 10 states comprising at least 20 percent of the total population of all states imposing a state sales tax have been found to be in substantial compliance with the requirements of the Agreement.

- A state will be found in compliance with the Agreement if the chief executive of the state's tax agency can certify that the effect of the state's laws, rules or regulations, and policies is substantially compliant with each of the requirements of the Agreement. Also, each state must enact definitions into laws or administrative rules or regulations in substantially the same language as provided in the Agreement.
- The governing board of other compliant states will determine if a state is in compliance with the Agreement. A three-fourths vote of the entire governing board is required for approval. Also, there will be public input into any state approval.
- A state has to annually re-certify that it is in compliance with the Agreement. If a state cannot re-certify its compliance with the Agreement, the state has to indicate what steps it will take to return to compliance. The governing board can sanction a state for being out of compliance. Sanctions can include expulsion from the Agreement or other penalties as determined by the governing board.
- Each member state may appoint up to four representatives to the governing board and members shall be from the executive or legislative branches of the state government. Each member state shall have one vote on the governing board.
- The governing board is responsible for administration and operation of the Agreement, including interpreting the Agreement, issue resolution, coordinating joint audits, issuing requests for proposals in regard to technology, coordinating contacts with member states, and maintaining records and the web site of the governing board.
- Meetings of the governing board shall be open except in limited circumstances.
- There will be a state and local government advisory council that will act much as the Streamlined Sales Tax Project has done.
- There will be a business and taxpayer advisory council.
- Only member states may request amendments to the Agreement. Amendments must be approved by a three-fourths vote of the governing board.
- Interpretations of the Agreement shall require a three-fourths vote of the governing board.
- Any member state or any person may petition the governing board to invoke the issue resolution process. The governing board shall make the final decision in any dispute.

Most of the Implementing States of the Streamlined Sales Tax Project are expected to pursue the model legislation in 2003. The Implementing States 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. The District of Columbia is also considered an Implementing State. [!\[\]\(99f58673407353e96a019fbca558fd72\_img.jpg\)](#)

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## DOR Offers Help to Local Governments

Do you know a local government official looking for ways to help the county, city, village, or town stretch a tight budget? The Department of Revenue ("DOR") has a program just for such a person.

The program is called the Tax Refund Interception Program, or "TRIP" for short. Here's how it works: Counties and municipalities submit their unpaid parking citations, fines, fees, restitutions, and forfeitures to DOR, via a secure Internet connection. When a debtor files an income tax return and is eligible for a refund, DOR deducts the amount of the debt from the refund and sends that money to the county or municipality.


Over 60 units of local government can testify that TRIP pays. The program collected almost \$2.4 million for local governments during the last fiscal year alone. Now that's tax relief that the local governments and their taxpayers can really appreciate!

It's easy to get started with TRIP, and even easier to maintain. Once the local government entity registers for the program and receives a logon ID and password that allows access to the DOR web site, the entity certifies a list of debtors by name and social security number. DOR makes a deduction for the debt and sends the taxpayer a letter explaining where their refund went and whom they may contact if they have any questions.

Distributions to counties and municipalities are made weekly.

There are some restrictions to the program. Each debt certified must total \$20 or more. Delinquent property taxes are not eligible for collection through this program. The county or municipality must notify the debtor, in writing, within 5 days of certifying the debt to DOR. This notification must include the debtor's right to appeal, which will vary according to the nature of the debt and the certifying agency.

DOR can intercept refunds for counties and municipalities only after all delinquent state taxes and debts to other state agencies have been satisfied. DOR charges 2 percent of the amount collected, to cover administrative expenses.

For more information, contact Fred Bahr at 608-266-8517; e-mail [trip@dor.state.wi.us](mailto:trip@dor.state.wi.us); write to Wisconsin Department of Revenue, Tax Refund Interception Program, PO Box 8901, Madison WI 53708-8901; or visit the TRIP web site at <http://prd2p.it.state.wi.us/dorapp/tripapp.jsp>. 

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## Integrated Tax System Update

The Department of Revenue is implementing an integrated tax system ("ITS"), to perform tax collection and administration with fewer resources while providing a higher level of customer service at the same time.

ITS is scheduled to come online late this year. The first release of the system will be used to register new business tax customers, maintain existing customer accounts, process sales and use tax returns, and perform accounting and correspondence functions. Future releases of the system will add individual income, corporation, partnership, withholding, motor fuel, cigarette, liquor, beer, utility, property, manufacturing property, and other tax types, to form a truly integrated system.

Because ITS interfaces with a large number of software programs and existing systems, the department has been thoroughly testing and debugging it since February and will continue to test it until it is satisfied that ITS meets the expected performance level. The department's goal is to provide customers with a transition that is as seamless as possible from the old system to the new system.

### Changes

Sales and use tax registrants will begin seeing the following changes in December 2002 and January 2003:

- The look and content of bills, notices, and letters will change.
- New tax account numbers will be issued, replacing current seller's permit and use tax certificate numbers.

- Security deposits may be required more frequently for existing and new accounts that owe or have owed delinquent taxes.

### Benefits

Some customer benefits that ITS will offer with the first and subsequent releases include:

- More ways to file returns and submit payments.
- Aid in preventing identity theft through the use of new tax account numbers, rather than federal employer identification numbers or social security numbers. The tax account number will eventually be used across all tax types administered by the Department of Revenue.
- Mailing sales and use tax refunds at the same time as the notice of refund. Currently, the refund check is mailed out weeks after the notice is mailed.
- More informative, easier to read correspondence from the department to assist you in understanding why you were contacted, reducing your need to call for clarification.
- More efficient customer service, since all tax information will be located in one place.
- In the future, customer access to accounts online via a secure connection.

### More Information

In the June 2002 *Sales and Use Tax Report*, it was incorrectly reported that the department would do a special mailing in the fall of 2002, regarding ITS. Instead, notices of ITS changes will be mailed with sales and use tax returns for quarters and years ending

December 31, 2002, and for months ending January 31, 2003.

More information is available by reading the Frequently Asked Questions (FAQs) for Integrated Tax on the department's web site at

[www.dor.state.wi.us/faqs/its.html](http://www.dor.state.wi.us/faqs/its.html). 




### Reminder: IRS Mileage Rates for 2002 Apply for Wisconsin

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

For 2002 the business standard mileage rate is 36.5¢ per mile for all business miles driven, without regard to whether the automobile was previously considered fully

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


For 2002 the mileage rate allowed for calculating automobile expenses for charitable deduction purposes is 14¢ per mile. The rate for medical expense and moving expense deductions is 13¢ per mile. 

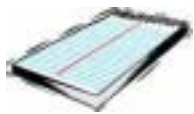
### Delinquent Taxes Can Be Paid By Automatic Withdrawal, Credit Card

The Wisconsin Department of Revenue ("DOR") now accepts automatic withdrawals from a savings or checking account as a method to make monthly installment payments on delinquent tax accounts. Automatic withdrawals are convenient and reliable. You can have your payment withdrawn from your account once a month, on either the 5th, 15th, or 25th of the month.

In order to qualify for automatic withdrawal, you must have a DOR approved payment agreement and sign a DOR Electronic Funds Transfer Authorization.

Another option is to pay by credit card. This is in cooperation with Official Payments Corporation ("OPC"). Payments using American Express, Discover, MasterCard, and VISA credit cards are accepted. OPC charges a convenience fee. You will need the 28-digit payment key from your delinquent notice.

To apply for automatic withdrawal, pay by credit card, or request additional information, contact any DOR office or visit the E-Services page on the DOR Internet site, [www.dor.state.wi.us](http://www.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 55 of this Bulletin. The Index is also on the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Just click on "Publications." 

## 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:	
By mail .....	266-1961
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




## Take Advantage of the Speakers Bureau

Are you planning a meeting, workshop, conference, or training program? The Department of Revenue’s Speakers Bureau provides speakers, free of charge, who can provide information to business, community, and educational organizations.

Department representatives are available to speak on a variety of topics that can be targeted to your group’s particular areas of interest, including:


- New sales/use, income, and corporate tax laws.
- How sales tax affects contractors, manufacturers, nonprofit organizations, or businesses in general.
- Homestead credit.
- Audit and appeal procedures.
- Common errors discovered in audits.
- Recordkeeping requirements.
- Tax delinquencies and petitions for compromise.
- Manufacturing property assessment.
- Electronic filing of individual income tax returns.

To arrange for a speaker, you may write to Wisconsin Department of Revenue, Speakers Bureau, Mail Stop 5-77, PO Box 8949, Madison WI 53708-8949; fax your request to (608) 266-9829; call (608) 266-1911; or fill out the online request form at the department’s web site, [www.dor.state.wi.us](http://www.dor.state.wi.us); click on “Training.” 



## 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). 



## 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](mailto: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 web site at [www.dor.state.wi.us](http://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

- |  |   |
|--|---|
| <p>102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/01)</p> <p>103* Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/02)</p> <p>104* Wisconsin Taxation of Military Personnel (10/02)</p> <p>106 Wisconsin Tax Information for Retirees (1/02)</p> <p>109* Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2002 (11/02)</p> <p>112 Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (1/99)</p> | <p>113* Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/02)</p> <p>116 Income Tax Payments Are Due Throughout the Year (12/95)</p> <p>119 Limited Liability Companies (LLCs) (12/00)</p> <p>120* Net Operating Losses for Individuals, Estates, and Trusts (11/02)</p> <p>121 Reciprocity (12/01)</p> <p>122* Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2002 (11/02)</p> <p>123 Business Tax Credits for 2001 (12/01)</p> <p>125* Credit for Tax Paid to Another State (11/02)</p> <p>126* How Your Retirement Benefits Are Taxed (11/02)</p> <p>600 Wisconsin Taxation of Lottery Winnings (1/02)</p> <p>601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/02)</p> |
|--|---|

### Sales and Use Taxes

- |   |  |
|---|--|
| <p>200 Electrical Contractors – How Do Wisconsin Sales and Use Taxes Affect Your Business? (3/98)</p> <p>201 Wisconsin Sales and Use Tax Information (11/01)</p> <p>202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)</p> <p>203 Sales and Use Tax Information for Manufacturers (7/00)</p> <p>205 Use Tax Information for Individuals (8/01)</p> <p>206 Sales Tax Exemption for Nonprofit Organizations (6/00)</p> <p>207 Sales and Use Tax Information for Contractors (10/00)</p> <p>210 Sales and Use Tax Treatment of Landscaping (4/01)</p> <p>211 Cemetery Monument Dealers – How Do Wisconsin Sales and Use Taxes Affect You? (6/00)</p> <p>212 Businesses: Do You Owe Use Tax on Imported Goods? (8/01)</p> <p>213 Travelers: Don't Forget About Use Tax (8/01)</p> <p>214 Businesses: Do You Owe Use Tax? (8/01)</p> |  |
|---|--|

- 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) [↗](#)



## Nearly 2.3 Million Refunds Issued

More than 2,262,000 income tax refunds were issued to taxpayers during the fiscal year ending June 30, 2002 (primarily 2001 returns), for an average refund of \$528. The average refund for 2000 returns was \$503. Nearly 342,000 refunds were directly deposited in taxpayers' accounts.

Here are some more comparisons:

	<u>2001 Returns</u>	<u>2000 Returns</u>
Number of individual income tax returns	2,881,349	2,913,814
Itemized deduction credit		
% of taxpayers claiming	27%	26%
Average credit	\$599	\$576
Homestead credit		
# of claimants	211,963	202,354
Average credit	\$487	\$508
Age 65 or older	44%	45%
Renters*	57%	57%
Homeowners*	49%	49%
*some claimants were both		
Farmland preservation credit		
# of claimants	21,387	20,143
Average credit	\$797	\$810
Earned income credit		
# of claimants	198,018	195,133
Average credit	\$318	\$319
Sales/use tax payments		
Amount collected	\$1,474,158	\$1,601,856
# of payers	25,611	26,202



## State Election Campaign Fund Checkoffs Increase 2.7% for 2002

Wisconsin income tax returns include checkboxes for taxpayers and spouses to designate \$1 to the State Election Campaign Fund.

During July 2001 through June 2002 (primarily 2001 tax returns), taxpayers designated \$348,153 to the election campaign fund on their Wisconsin tax returns. This compares to \$339,060 for the prior year. [↗](#)



## Endangered Resources Contributions Decrease Slightly in 2002

The 2001 Wisconsin income tax returns included a line for taxpayers to designate a contribution to the Wisconsin Endangered Resources Fund. These contributions help protect and care for Wisconsin's endangered species, nongame wildlife, and rare plant and animal habitats.

Donations to the Endangered Resources Fund can be made on both paper filed tax returns and electronically filed returns.

During July 2001 through June 2002 (primarily 2001 returns), 47,524 taxpayers contributed \$709,941 to the Endangered Resources Fund. This compares with 2000 income tax returns, where 47,688 taxpayers contributed \$712,505. The contributions represent a decrease of less than 1/2% from the previous year. [↗](#)

## DOR "Red Flags" in Audits of Banks

**Note:** Wisconsin Bankers Association ("WBA") representatives met this spring with representatives of the Wisconsin Department of Revenue ("Department") to discuss issues of mutual interest. One of these issues was audits of banks and their investment subsidiaries that are located in another state. At that time, WBA asked the Department to write an article outlining some of the concerns the Department has with regard to activities of banks and their investment subsidiaries. Diane L. Hardt, Administrator, Income, Sales & Excise Tax Division, Wisconsin Department of Revenue, provided the following information to WBA. In printing this article in the June 2002 issue of the WBA

*Compliance Journal*, WBA simply intended to provide its members with information on the Department's position on this issue. WBA did not take any position with regard to the Department's views outlined in this article on certain activities of banks and their investment subsidiaries. WBA encourages banks with questions regarding their own situation to discuss them with their professional tax or legal advisors.

The Department has the authority to reallocate income between a corporation and its subsidiary under section 71.30(2), Wis. Stats., if there is a distortion of income or avoidance of Wisconsin income/franchise taxes. The Department discussed with Association representatives some of the "red flags" that may result in a Department

determination that a bank investment subsidiary arrangement is improper. Obviously, all banks are different, and not all of these items need apply for the Department to reallocate income between a parent and its subsidiary. However, if multiple items on the list are applicable, there is a significant possibility that the Department will make an adjustment. This list is not all-inclusive, but sets out a few of the “red flags” as identified by the Department.

#### Red Flags:

- The investment subsidiary is domiciled in a state without an income/franchise tax, or a state that does not tax the particular form of income being transferred to the subsidiary.
- The parent manipulates the subsidiary’s income and/or assets to significantly reduce or eliminate the Wisconsin taxable income of the parent.

- The parent transfers a significant portion of its loan portfolio to the subsidiary, whether directly or via participation, mortgage-backed securities or other vehicles.
- Servicing of loans transferred to the subsidiary is retained in Wisconsin by the parent. (Servicing of loans transferred to unrelated third parties would not raise this red flag.)
- Large amounts of capital are transferred from the subsidiary to the parent by dividend, return of capital, loan or other means.

Underlying all of these items is the motivating principle for the creation and/or operation of the subsidiary. If the creation and/or operation of the subsidiary is undertaken primarily to reduce Wisconsin income/franchise taxes, the Department will make an adjustment under section 71.30(2), Wis. Stats. [🔗](#)



### **Wanted: Your Comments About the *Wisconsin Tax Bulletin***

The *Wisconsin Tax Bulletin* (“WTB”) is published to provide tax information to **YOU**, the readers. To make the WTB more useful, the department is seeking suggestions for items that may be of interest to you, and ways to make the WTB more valuable to you.

How could the department improve on the information it publishes? What topics do you want covered or ex-

panded? Do you have particular likes or dislikes about the WTB? Do you have ideas, comments, or suggestions you’d like to share?

Please take a few moments to give us your comments or ideas, and be a part of improving *your* WTB. Send your comments or ideas to Mark Wipperfurth, Wisconsin Department of Revenue, Mail Stop 6-40, PO Box 8933, Madison WI 53708-8933. If you prefer, you may fax your comments to him at (608) 261-6240, or you may e-mail or call him at [mwipperf@dor.state.wi.us](mailto:mwipperf@dor.state.wi.us) or (608) 266-8253. We’d like to hear from you! [🔗](#)

## **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.*

### **(Individual Income Tax)**

**Q** Did Wisconsin adopt the provisions of the federal Economic Growth and Tax Reduction Reconciliation Act (“EGTRRA”), which include increased contributions limits for IRAs and education IRAs, and numerous changes to pension plan provisions?

**A** Yes, Wisconsin did adopt the federal EGTRRA provisions, retroactive to January 1, 2002, except for the deduction for higher education expenses. That provision was not adopted because Wisconsin law already provides a deduction for tuition expenses.

**Q** Did Wisconsin adopt the new federal 30% bonus depreciation deductions?

**A** No. For Wisconsin tax purposes, taxpayers must compute depreciation on property placed in service in taxable years beginning on or after January 1, 2001, under the Internal Revenue Code as amended to December 31, 2000. Any taxpayer who claimed the new federal depreciation must file an amended Wisconsin return and recompute depreciation under old federal law.

**(Sales and Use Tax)**

**Q** What is the due date for my Electronic Funds Transfer (“EFT”) payment when the tax return due date falls on a weekend or holiday?

**A** You must always initiate your payment at least one business day before the due date. When the regular due date falls on a weekend or legal holiday, the payment is due the next business day immediately following the weekend or holiday. The time by which you must initiate your payment to make it timely depends on whether you are using the ACH Debit or the ACH Credit transfer option.

If you are using ACH Debit, you must initiate your payment by calling no later than 4:00 p.m. Central Time, at least one business day before the revised due date. For example, if the regular tax due date falls on Monday, which is also Memorial Day, you must initiate your payment by 4:00 p.m. Central Time on Friday at the latest, so it can be credited to your account on Tuesday, when it is due.

If you are using ACH Credit, you need to contact your financial institution to determine how to initiate a timely payment when the tax due falls on a weekend or holiday. [☞](#)

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**Homestead Credit Fraud Ring Cracked**

Criminal complaints were issued in September 2002, by the Milwaukee County District Attorney’s Office, against four participants in a fraudulent Wisconsin homestead credit refund scheme dubbed the “780 Club” by the Wisconsin Department of Revenue. The defendants appeared in Milwaukee County – Intake Court.

According to the criminal complaint, the “780 Club” participants are responsible for filing approximately 500 false Wisconsin homestead credit claims for a fee ranging from \$25 to \$280. The false claims were filed in 297 different names. Some of the false claims were filed in the names of children, while others were filed in the names of individuals who never lived in Wisconsin. In both cases, the claimant did not qualify for a Wisconsin homestead credit refund. The preparers used false income information, false amounts of rent paid, and false landlord information in an attempt to obtain a Wisconsin homestead credit refund for the claimant.

The Department of Revenue’s Fraud Unit began an investigation in August 1998. The department received 383 false Wisconsin homestead credit claims that year from individuals each claiming a refund of \$780. The false homestead credit claims totaled \$298,740. Before the scheme was uncovered, the department paid \$110,886 in false homestead claims. No false claims were paid after the investigation began.

In 1999, between January 1 and February 15, 76 false homestead credit claims were filed by the “780 Club,” each requesting a refund of \$836. The false claims filed in 1999 totaled \$63,536 in refunds. None of these claims were paid.

The individuals charged in this scheme are:

Theresa Perkins McCoy, 46, of Milwaukee. If convicted, she faces up to 7 years and 6 months in prison and could be fined up to \$10,000.

Tracy D. Perkins, 32, of Milwaukee. If convicted, she faces up to 9 months imprisonment and could be fined up to \$10,000.

Phyllis Davis, 35, of West Allis. If convicted, she faces up to 18 months imprisonment and could be fined up to \$20,000.

Yvette Peterson, 31, of Milwaukee. If convicted, she faces up to 9 months imprisonment and fines of up to \$10,000.

Charges are pending against additional “780 Club” participants. All individuals involved in this scheme who received a false Wisconsin homestead credit refund will be assessed a 100% civil fraud penalty in addition to an assessment for the amount of the false refund.

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Also in September, John V. Asher, 50, a former Brookfield bankruptcy attorney, was sentenced to 18 months in jail, for theft of state withholding taxes, theft of bankruptcy filing fees, and failure to file a state income tax return. Milwaukee County Circuit Court Judge Mary Kuhnmuensch also ordered Asher to be placed on probation for 10 years, perform 100 hours of community service, and make restitution of \$27,293 to the Wisconsin Department of Revenue and \$2,275 to his former bankruptcy clients for the filing fees that he stole.

Asher operated the Christian Law Center in Brookfield until he closed his office in 1999 and later filed bankruptcy himself.



Asher was originally charged in March 2001, with theft of bankruptcy filing fees. In that complaint it was alleged that he co-mingled the bankruptcy filing fees with his general account fees and then stole the filing fees by spending the money on extravagant items. This included such things as the lease of a Mercedes Benz, a \$434,000 home mortgage, and an airplane lease. According to the complaint, Asher had hundreds of thousands of dollars flowing through at least 14 bank accounts, but by late 1998 or early 1999 the accounts were drained and closed out, and he then filed for bankruptcy.

A subsequent tax investigation by the Wisconsin Department of Revenue determined that Asher had failed to remit \$27,293 in state withholding taxes collected from employees of his former law firm,

between July 1997 and December 1998. He also failed to file an income tax return for the 1998 tax year. This led to additional criminal charges being filed against him in May 2001 for the tax violations.

Asher failed to make a January 2002 court appearance for a jury trial in the bankruptcy filing fee case. In May 2002, he surrendered in Los Angeles, California, and was transferred back to Milwaukee County where he was incarcerated. He pled guilty in July 2002, to theft of bankruptcy filing fees, along with felony theft of the state tax money and failure to file an income tax return.

Additional criminal charges against Asher are still outstanding in Waukesha County for 12 counts of theft, alleging that he took thousands of dollars from people to file bankruptcies for them that he never filed. [\[Link\]](#)

## 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 October 1, 2002, and at each step where action occurred during the period from July 2, 2002, through October 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 55 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

### Scope Statement Published

- 11.001 Forward and definitions – A (published September 15, 2002)
- 11.13 Direct pay – A (published September 15, 2002)
- 11.14 Exemption certificates – A (published September 15, 2002)
- 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)
- 11.84 Aircraft – A (published September 15, 2002)
- 11.87 Meals, food, food products and beverages – A (published May 31, 2002)

### Rules Sent to Revisor for Publication of Notice

- 11.66 Telecommunications and CATV services – A (published August 15, 2002)

### Public Hearing Held

- 11.66 Telecommunications and CATV services – A (August 26, 2002)

### Rules Sent to Legislative Committees

- 2.03 Corporation returns – A
- 2.12 Amended returns – A
- 3.91 Petition for redetermination – A
- 6.40 Waste treatment facilities (industrial/utility) – A
- 11.11 Industrial or governmental waste treatment facilities – A
- 11.66 Telecommunications and CATV services – A

12.40 Waste treatment facilities (industrial) – A

**Rules Adopted but Not Yet Effective** (and anticipated effective date)

1.14\* Petition for redetermination – A (November 1, 2002)  
\* formerly 3.91

2.03 Corporation returns – A (November 1, 2002)

2.12 Amended returns – A (November 1, 2002)

6.40 Waste treatment facilities (industrial/utility) – A (December 1, 2002)

11.11 Industrial or governmental waste treatment facilities – A (December 1, 2002)

12.40 Waste treatment facilities (industrial) – A (December 1, 2002)

**Rules Adopted and in Effect** (and effective date)

2.08 Returns of persons other than corporations – A (August 1, 2002)

11.01 Sales and use tax return forms – A (August 1, 2002). [!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd\_img.jpg\)](#)



## Report on Litigation

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

The following decisions are included:

### Individual Income Taxes

Alimony	
<i>Joseph Bronson and Jessica F. Studey Bronson</i> .....	21
Appeals - premature	
Appeals - failure to state a claim	
Appeals - frivolous	
Protective order - interrogatories	
Protective order - department assertions	
<i>Gary James Simon</i> .....	22
Assessments - correctness	
Appeals - frivolous	
<i>Susan B. Boon</i> .....	22
Assessments - correctness	
Appeals - frivolous	
<i>Mark Knickel</i> .....	23
Family support deduction	
<i>David E. Birren</i> .....	23
Retirement funds exempt	
<i>John Q. and Ruth M. Kamps and Edward G. Wilkinson and Jean F. Wilkinson</i> .....	24
Tax statutes - applicability to taxpayers	
Appeals - frivolous	
<i>Brian K. Stewart, a/k/a Brian Stewart, and Brian K. and Cindy Stewart</i> .....	24
<b>Sales and Use Taxes</b>	
Aircraft - taxable use	
<i>G &amp; G Trucking, Inc.</i> .....	25
Officer liability	
<i>John P. Dolan</i> .....	26
<b>Drug Taxes</b>	
Drug tax, appeals - jurisdiction	
<i>Forest J. Morkin</i> .....	26
Drug tax, appeals - jurisdiction	
<i>Austin J. Schmitz</i> .....	27

### INDIVIDUAL INCOME TAXES

**Alimony.** *Joseph Bronson and Jessica F. Studey Bronson vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 7, 2002). The issue in this case is whether Joseph Bronson (“Mr. Bronson”) is entitled to a deduction as “alimony” for his share of the profit on Jessica F. Studey Bronson’s (“Ms. Bronson’s”) sale of the residence that was awarded to her in their divorce settlement. If so, the amount deducted by Mr. Bronson would be taxable to Ms. Bronson.

The taxpayers were divorced on March 27, 1995, and on May 25, 1995, the Dodge County Circuit Court rendered a decision with respect to child support, property division, and maintenance. Ms. Bronson was awarded the marital residence, and the Circuit Court did not award any maintenance but held the issue open for four years.


In early 1997, Ms. Bronson sold the residence. On both his 1996 and 1997 Wisconsin income tax returns, Mr. Bronson claimed \$8,533 as a deduction for alimony paid to Ms. Bronson. Those amounts were calculated based on his belief that Ms. Bronson sold the residence for \$68,275, netting a gross profit of \$34,275 over the \$34,000 paid for the residence in 1990. He believed he was entitled to an alimony deduction for his one-half share of the gain that Ms. Bronson apparently realized (\$17,137.50), and he claimed approximately one-half of “his profit” in each of the years 1996 and 1997, so he could enjoy the deduction over a longer period. Ms. Bronson did not include any alimony payments as income.

The department issued assessments in the alternative against each taxpayer, denying Mr. Bronson the claimed alimony deduction and adding to Ms. Bronson’s income the amounts claimed by Mr. Bronson as alimony in 1996 and 1997. Both taxpayers filed timely petitions for redetermination, which the department denied. Each taxpayer then filed a petition for review with the Commission.

The Commission concluded that there is no basis in state law or the Internal Revenue Code to justify Mr. Bronson’s claimed alimony deduction for “his” share of Ms. Bronson’s profit on the sale of the residence that was awarded to her. The Commission affirmed the de-

partment's action on Mr. Bronson's petition for redetermination and reversed its action on Ms. Bronson's petition for redetermination.

Neither the department nor either of the taxpayers has appealed this decision. [🔗](#)

 **Appeals - premature; Appeals - failure to state a claim; Appeals - frivolous; Protective order - interrogatories; Protective order - department assertions.** *Gary James Simon Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission* (Circuit Court for Dane County, June 13, 2002). This is an action on the taxpayer's request for review of the Ruling and Order of the Wisconsin Tax Appeals Commission dated October 17, 2001. See *Wisconsin Tax Bulletin* 128 (January 2002), page 25, for a summary of the Commission's decision.

In challenging the Commission's decision, the taxpayer raised a number of issues, and the Circuit Court's review springs from his refusal to comply with the state law which imposes an obligation to pay income tax to the state. The taxpayer asserts that the department has made a number of errors, and he offered extensive argument, including the argument that the laws of Wisconsin requiring the payment of income tax to the state cannot lawfully be applied to him. The taxpayer also contends that the Commission improperly granted the department's motion for a protective order.


The Circuit Court concluded that the taxpayer has shown no basis whatever to limit or modify the Ruling of the Commission, and it affirmed each of the five orders in the Commission's Ruling. They are as follows:

- A. The petition for review relating to the September 11, 2000, letter is dismissed because it is premature. The statutes require that before appealing to the Commission, a person must contest an assessment

by filing a petition for redetermination with the department, and there was no such petition.

- B. The two petitions for review relating to the two assessments covering the tax years 1993 through 1999 fail to state a claim upon which relief can be granted and are therefore dismissed. Rather than filing correct and complete Wisconsin income tax returns, the taxpayer responded to the department's assessments and its denial of his claims for refund with a series of statements that do not address the department's actions.
- C. The taxpayer's motion for an order protecting him from the department's assertions that he owes Wisconsin income tax is denied.
- D. The department's motion for a protective order from the taxpayer's interrogatories is granted, and the department is not required to answer them. The interrogatories constitute an annoyance and oppression, and they represent an undue burden and expense to the department without any material benefit to the taxpayer.
- E. The taxpayer is assessed an additional \$500, pursuant to sec. 73.01(4)(am), Wis. Stats. The taxpayer's documents contain only frivolous, irrelevant, groundless, and useless ramblings about the department's authority and practice about the Wisconsin income tax statutes.

The taxpayer has not appealed this decision. [🔗](#)

 **Assessments - correctness; Appeals - frivolous.** *Susan B. Boon vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 3, 2002). The issue in this case is whether the department properly issued an assessment against the taxpayer.

On October 15, 1998, the taxpayer filed a 1997 Wisconsin income tax return with the department, requesting a refund of \$3,410.16 and showing no income. A Form W-2 was attached, which stated that \$60,763.38

was paid to her, and \$3,410.16 of Wisconsin income tax was withheld. The refund was not issued to the taxpayer.

In January 1999, the department issued an assessment to the taxpayer for \$921.73, consisting of income tax, interest, and a penalty. The taxpayer timely filed a letter which the department deemed a petition for redetermination. The letter stated that she disagreed with the auditor who, in her opinion, did not follow the law, did not answer her questions, and did not comply with tax regulations. The department denied the petition for re-

determination, and the taxpayer filed a timely petition for review with the Commission, stating that she was appealing but not specifying reasons. She subsequently filed an affidavit and exhibits to present her view of the pertinent facts in the appeal.

The department filed a motion for judgment on the pleadings or for summary judgment. One of the grounds was that the taxpayer has failed to state a claim under which relief can be granted, in failing to allege in her petition for review any justiciable error by the department's issuing an assessment to her.

The Commission concluded that the department properly issued an assessment under sec. 71.74(1), Wis.

Stats., since the taxpayer did not file a complete and proper Wisconsin income tax return for 1997. In addition, the Commission assessed the taxpayer an additional \$500, as it appears that her position in this proceeding was instituted and maintained primarily for delay, and that her position is frivolous and groundless.

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. [🔗](#)



### **Assessments – correctness; Appeals – frivolous.**

*Mark Knickel vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 1, 2002). The issue in this case is whether the department properly issued assessments against the taxpayer because he failed to file Wisconsin income tax returns for 1994 through 1999, and whether the taxpayer's position in these proceedings is frivolous and groundless.

The taxpayer has failed to file Wisconsin income tax returns for 1994 through 1999 with the department, and he has refused to do so. In March 2001, the department issued two default assessments to the taxpayer under sec. 71.74(3), Wis. Stats., one covering the years 1994 and 1995, and the other covering 1996 through 1999. The taxpayer filed timely petitions for redetermination, which the department denied, and he then filed timely petitions for review with the Commission.

The department filed a motion for judgment on the pleadings, or for summary judgment on the ground that there are no genuine issues as to material facts.

The Commission concluded that there are no genuine issues as to material facts and granted the department's motion for summary judgment. The department properly issued assessments to the taxpayer under sec. 71.74(3), Wis. Stats., since he did not file Wisconsin income tax returns for 1994 through 1999, as required under sec. 71.03(2), Wis. Stats. In addition, the Commission assessed the taxpayer an additional \$500, as it appears that he instituted and maintained these proceedings primarily for delay, and that his position in these proceedings is frivolous and groundless.

The taxpayer has not appealed this decision. [🔗](#)



### **Family support deduction.**

*David E. Birren vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 1, 2002). The issue in this case is whether the taxpayer is entitled to a family support deduction on his 1996 and 1997 income tax returns if his then-wife's share of marital income, including family support, was less than one-half of the total marital property income.

The taxpayer, domiciled in and a resident of Wisconsin in 1996, 1997, and 1998, filed Wisconsin income tax returns for those years and claimed head of household as his filing status. On his 1996 and 1997 income tax re-

turns, he deducted family support payments that he made to Susan Birren.

The department audited the taxpayer's Wisconsin income tax returns for 1996 through 1998 and adjusted those returns in a Notice of Amount Due dated March 27, 2000. One of the adjustments, the only one at issue in this case, was to disallow the family support payments the taxpayer paid and deducted on his 1996 and 1997 income tax returns. The basis for the adjustment was that the amount of marital income, including the family support payments, received by Susan Birren, the taxpayer's estranged wife, was less than one-half of the total marital income for those years (the taxpayer




and Susan Birren were granted a divorce effective March 1, 1998).

The taxpayer filed a timely petition for redetermination, and both the taxpayer and the department conceded portions of the assessment. With respect to the remaining issue, the taxpayer filed a petition for review with the Commission.

The Commission concluded that the family support payments the taxpayer made to his spouse during 1996 and 1997 are not deductible by him, because the payments, when added to his spouse's marital income, did not exceed one-half of the marital income.

The taxpayer has not appealed this decision. [🔗](#)


 **Retirement funds exempt.** *John Q. and Ruth M. Kamps, and Edward G. Wilkinson and Jean F. Wilkinson vs. Wisconsin Department of Revenue* (Circuit Court for Waukesha County, July 23, 2002). In a consolidation of two decisions by the Wisconsin Tax Appeals Commission ("Commission"), the taxpayers appeal to the Circuit Court to set aside and/or reverse the Commission's denial of an income tax exemption for their Wisconsin Retirement System annuity payments. See *Wisconsin Tax Bulletin* 128 (January 2002), page 27, for a summary of the Commission's October 31, 2001, decision relating to the Kamps'. See *Wisconsin Tax Bulletin* 129 (April 2002), page 22, for a summary of the Commission's January 2, 2002, decision relating to the Wilkinsons.

The taxpayers argue that the Commission's ruling 1) is based on past decisions that erroneously interpret the statutes; 2) is contrary to the Department of Revenue's

stated policy and prior practice; 3) is in violation of the equal protection clauses United States Constitution and the uniform taxation clause of the Wisconsin Constitution; and 4) renders sec. 71.05(1)(a), Wis. Stats., unconstitutional under the Wisconsin Constitution's prohibition against the impairment of contracts. The taxpayers also argue that the Commission is equitably estopped from denying the tax exemption.

The Circuit Court concluded that the taxpayers have failed to provide a valid basis on which to reverse the Commission. It therefore affirmed the Commission's ruling and order and ordered that the taxpayers' appeal be denied.

Edward G. Wilkinson and Jean F. Wilkinson have appealed this decision to the Court of Appeals. John Q. and Ruth M. Kamps have not appealed the decision. [🔗](#)

 **Tax statutes - applicability to taxpayers; Appeals - frivolous.** *Brian K. Stewart, a/k/a Brian Keith Stewart, and Brian K. and Cindy Stewart vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The primary issues in this case are whether Wisconsin's income tax statutes apply to the taxpayers, and whether the taxpayers' petition for review is frivolous and groundless.

Brian K. Stewart ("the taxpayer") timely filed a 2000 Wisconsin income tax return that included a Form W-2, reflecting "wages, tips, other comp." of \$43,711.58 and Wisconsin income tax withheld of \$2,667.29. On most lines of the tax return, he wrote "0.00," but on line 38 he wrote the withholding amount of "2,667.00," and he requested a refund of the amount on line 47.

The department issued an assessment for income tax and interest, the taxpayer filed a petition for redetermination,

and the department denied it. The taxpayer then filed a timely appeal to the Commission.

In March 2001, the taxpayers filed amended 1997, 1998, and 1999 Wisconsin income tax returns. Each of the amended forms reported no income and requested refunds of \$2,108 for 1997, \$2,044 for 1998, and \$2,051 for 1999. Form W-2s for both taxpayers were attached to the 1997, 1998, and 1999 amended returns, showing combined income of \$45,604.99, \$49,090.95, and \$50,879.60, respectively, and Wisconsin income tax withheld of \$2,455.69, \$2,767.03, and \$2,899.80, respectively.

The department denied the taxpayers' claims for refund, the taxpayer filed a petition for redetermination, and the department denied it. The taxpayers then filed a timely appeal to the Commission.

While not clear, the taxpayers' primary assertion appears to be that Wisconsin's income tax statutes are written in such a manner that they do not apply to them. They appear to assert that if the federal law upon which Wisconsin income tax statutes are based is not set forth in full in the Wisconsin law, it is not a valid Wisconsin law.

In their appeal, the taxpayers moved for summary judgment and requested that the Commission award them \$100 for "redress," because the department has failed to state a claim on which relief can be granted by not explaining why they must pay income tax.

The department also moved for a summary judgment and requested \$1,000 for costs, on the grounds that this matter "is a frivolous appeal and there is no genuine issue as to material fact." The affidavit requesting the costs does not specify what the components of the amount are.

The Commission concluded that the taxpayers are not entitled to a summary judgment and denied the motion, stating that their contentions are "nonsense" and "absurd." It also denied the motion for monetary "redress,"

on the basis that it has no authority under the statutes to award it, and on the basis that the record makes it clear that the taxpayers are owed no redress.


The Commission granted the department's motion for summary judgment and affirmed its action on the taxpayers' petitions for redetermination. The Commission denied the department's motion for costs of \$1,000 but assessed the taxpayers an additional \$500 on the basis that the filing of their petitions for review is frivolous and groundless. The motion for costs was denied because the department's request did not specify what the requested costs are for, nor the precise amount for each.

Neither the taxpayers 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. [🔗](#)

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## SALES AND USE TAXES

 **Aircraft - taxable use.** *G & G Trucking, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, July 9, 2002). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated October 3, 2001. See *Wisconsin Tax Bulletin* 129 (April 2002), page 23, for a summary of the Commission's decision. The issue in this case is whether the taxpayer made taxable use of aircraft purchased for the purpose of lease or rental.

The taxpayer is a Wisconsin corporation engaged in the business of interstate trucking. During the period under review, the taxpayer owned aircraft and paid for maintenance, hangar fees, registration, and insurance for the aircraft.

Because the taxpayer lacked facilities to store the aircraft and had no employees to fly them, the taxpayer entered into oral lease agreements to lease the aircraft to aircraft charter companies.

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


When the taxpayer chartered aircraft, it would reserve an aircraft, but it did not pay an initial charter fee. If one of the aircraft owned by the taxpayer was not available, it would either not go on the flight or arrange alternate transportation by "trading hours" with the owner of another aircraft leased to the charter company. The taxpayer had a special hourly rate, equal to the hourly rate the owner of the other aircraft paid to the taxpayer. The taxpayer traded hours approximately 28 times during the period under review. The charter company did not separately bill its charges to the taxpayer but offset them against the rental fee it paid for the lease of the aircraft. The taxpayer also paid for fuel and other amounts typically charged to third party charter customers, such as the pilot fee. The taxpayer chartered its own aircraft 10-20% of the total charter time each year.

Giving due weight to the Commission's decision, the Circuit Court concluded that the taxpayer made use of the aircraft as that term is defined in sec. 77.51(22)(a), Wis. Stats. (1999-00), because the taxpayer owned the aircraft and enjoyed them by chartering them for business purposes on more preferential terms than any other charter customer. The taxpayer exercised its right or power over the aircraft by using its ownership of the aircraft under these preferential terms to its economic advantage. The taxpayer's use of the aircraft was more

than "solely for lease or rental" as described in sec. Tax 11.29(2)(a), Wis. Adm. Code (June 1991 Register), because the taxpayer purchased the aircraft for the purpose of reducing its cost when it chartered the aircraft

for its own business transportation 10 - 20% of the total charter time.

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

 **Officer liability.** *John P. Dolan vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of Aficionados, LLC ("the company"), under sec. 77.60(9), Wis. Stats., for the periods of December 1997 and April 1998.

The taxpayer became the on-premises store manager of the company's store in March 1997, and in the summer of 1997 was given authority to prepare the company's sales tax returns and write checks on the company's checking account to pay the sales tax.

Shortly after Christmas 1997, the company's owner directed the taxpayer not to make any payments on any of the company's obligations without the owner's authorization. The sales tax due on the company's December 1997 sales tax return, filed by the taxpayer in late January 1998, was only paid after the owner authorized the taxpayer to pay it. The owner advised the taxpayer that a notice had been received from the Department of Revenue regarding an unpaid balance for the December 1997 sales tax, but that the taxpayer should not be concerned about the notice as the owner would resolve the matter.

In early May 1998, the taxpayer received direction from the owner, that he was not to make any purchases or any kind of payments without discussing them first.


The Commission concluded the taxpayer is not personally liable under sec. 77.60(9), Wis. Stats., for unpaid sales tax of the company for the periods of December 1997 and April 1998. The Commission awarded summary judgment to the taxpayer as there was no genuine issue as to any material fact, and the taxpayer is entitled to summary judgment as a matter of law.

The taxpayer was not an officer or owner of the company and had no **authority** to pay the company's sales taxes during the periods of December 1997 and April 1998. Although the taxpayer signed all sales and use tax returns for the company and knew what taxes were owed to the department, he had no authority to pay the taxes due until the owner authorized him to do so.

The department 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. [✍](#)

## DRUG TAXES

 **Drug tax, appeals - jurisdiction** *Forest J. Morkin vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The issue in this case is whether the Commission has subject matter jurisdiction over the taxpayer's petition for review appealing the department's denial of his claim for refund.

In February 1995, the department issued a controlled substance tax assessment to the taxpayer, pursuant to sec. 139.87 et seq., Wis. Stats. (1995-96). The taxpayer did not contest or appeal the assessment. The department has seized a portion of the assessment from the taxpayer and claims that the remainder is still owed.

In *State v. Hall*, 207 Wis. 2d 54, 557 N.W. 2d 778 (1997), secs. 139.87 to 139.96, Wis. Stats., were declared unconstitutional. In a letter that the department received on September 11, 2000, the taxpayer requested a refund of the taxes it had seized. The department denied the request because it was not filed within the statutory two-year time limit, per sec. 71.75(5), Wis. Stats. The taxpayer filed a petition for review with the Commission.

The Commission concluded that it lacks subject matter jurisdiction over the taxpayer's petition for review, because he filed his claim for refund more than two years after the date of assessment and failed to file a timely petition for redetermination with the department after its denial of his claim for refund.

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

**Drug tax, appeals - jurisdiction** *Austin J.*

*Schmitz vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 10, 2002). The issue in this case is whether the Commission has subject matter jurisdiction over the taxpayer's petition for review appealing the department's denial of his claim for refund.

In September 1993, the department issued a controlled substance tax assessment to the taxpayer, pursuant to secs. 139.87 to 139.96, Wis. Stats. (1995-96). The taxpayer did not contest or appeal the assessment. The department has seized a portion of the assessment from the taxpayer and claims that the remainder is still owed.

In *State v. Hall*, 207 Wis. 2d 54, 557 N.W. 2d 778 (1997), secs. 139.87 to 139.96, Wis. Stats., were de-

clared unconstitutional. In a September 2000 letter, the taxpayer requested a refund of the taxes seized by the department. The department denied the request, on the basis that the claim was not filed within the statutory two-year time limit pursuant to sec. 71.75(5), Wis. Stats. The taxpayer then filed a petition for review with the Commission.

The Commission concluded that it lacks subject matter jurisdiction over the taxpayer's petition for review, because he filed his claim for refund more than two years after the date of assessment. Furthermore, he failed to file a timely petition for redetermination with the department after its denial of his claim for refund.

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



## 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:

### Sales and Use Taxes

1. Campgrounds' Purchases of Camping Cabins, Trailers, Campers, Tents, and Related Equipment...28
2. Manufacturing - Small Tools Purchased by Employees of Manufacturers .....30

## SALES AND USE TAXES

### 1 Campgrounds' Purchases of Camping Cabins, Trailers, Campers, Tents, and Related Equipment

**Statutes:** Sections 77.51(5) and 77.52(2)(a)1 and 2 and (2m)(a), Wis. Stats. (1999-00)

**Wis. Adm. Code:** Section Tax 11.65(1)(a) (June 1991 Register)

**Background:** Section 77.52(2)(a)1, Wis. Stats. (1999-00), provides, in part, that sales tax applies to the following types of services:

“The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public ... . In this subdivision, ‘transient’ means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In this subdivision, ‘hotel’ or ‘motel’ means a building or group of buildings in which the public may obtain

accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public ...”

Section 77.52(2)(a)2, Wis. Stats. (1999-00), provides, in part, that sales tax applies to the following types of services:

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

Section Tax 11.65(1)(a), Wis. Adm. Code (June 1991 Register), provides, in part:

“The sale of admissions to amusement, athletic, entertainment or recreational events or places and the furnishing for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational facilities are taxable. This includes admissions to ... campgrounds ...”

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

“With respect to the services subject to tax under sub. (2), no part of the charge for the service may be deemed a sale or rental of tangible personal property if the property transferred by the service provider is incidental to the selling, performing or furnishing of the service, except as provided in par. (b).”

Section 77.51(5), Wis. Stats. (1999-00), provides:

“For purposes of subs. (13)(e) and (f) and (14)(L) and s. 77.52(2m) ‘incidental’ means depending upon



or appertaining to something else as primary; something necessary, appertaining to, or depending upon another which is termed the principal; something incidental to the main purpose of the service. Tangible personal property transferred by a service provider is incidental to the service if the purchaser's main purpose or objective is to obtain the service rather than the property, even though the property may be necessary or essential to providing the service."

**Facts:** A campground provides access to amusement, entertainment, and recreational facilities. All persons wishing to camp at the campground must pay a fee for a campsite.

At the campsite, a person may use his or her trailer, pop-up camper, or tent for shelter. If a person wishing to camp does not have a trailer, pop-up camper, or tent, the campground will offer the person either: (1) a site already equipped with a camping cabin or trailer, or (2) a pop-up camper or tent that the person may rent and place at a campsite.

- If the person chooses to stay in a camping cabin or trailer already at a site, the person must pay a fee for the camping cabin or trailer, in addition to the fee paid for the site.

Neither the camping cabins nor the trailers are permanently affixed to the land. A camping cabin is equipped with beds, electric lights, air conditioning, a heater, a refrigerator, and a microwave oven. Outside of the cabin there is a bench, picnic table, charcoal grill, fire ring, and water spigot. Campers staying in camping cabins generally bring linens, towels, cookware, etc. A trailer is equipped with a stereo system, a TV/VCR, a kitchen with a microwave oven, and other equipment needed to cook and serve a meal. Linens and towels are available for an additional charge to campers staying in a trailer.

- If the person chooses to rent a pop-up camper or tent from the campground, the person must pay a rental fee for the pop-up camper or tent, separate from the fee paid for the campsite. The person camping chooses a campsite where he or she erects the pop-up camper or tent.

No use is made of the camping cabins, trailers, pop-up campers, tents, and related equipment by the campgrounds, other than that described in the facts.


**Question:** Are the campground's purchases of the camping cabins, trailers, pop-up campers, and tents, and the associated items furnished, such as air conditioners, televisions, and microwave ovens, exempt from sales and use tax, because they are for resale?

**Answer and Analysis:** *Purchases of camping cabins and trailers.* The campground's purchases of the camping cabins and trailers **are not** exempt from sales and use tax, because they are not for resale. These items are used by the campground in furnishing lodging to campers. The campground is also liable for tax on its purchases of materials used to construct camping cabins.

The campground is furnishing two things to campers who stay in camping cabins or trailers: (1) access to a recreational facility (subject to tax under sec. 77.52(2)(a)2, Wis. Stats. (1999-00)), and (2) lodging services (subject to tax under sec. 77.52(2)(a)1, Wis. Stats. (1999-00)).

The camping cabins and trailers are incidental to the furnishing of the lodging because the primary objective of the campers is to obtain the lodging. Because the camping cabins and trailers are furnished to campers incidentally with lodging furnished by the campground, the campground is the consumer of the cabins and trailers and is liable for the payment of tax on its purchases of these items.

*Other items furnished to campers with the rental of the cabins and trailers (for example, air conditioners, televisions, microwave ovens, picnic tables, and charcoal grills).* The campground may not purchase these items exempt from sales tax, because they are not for resale. The campground is the consumer of these items, since they are transferred to the campers incidentally with the lodging furnished by the campground.

*Pop-up campers and tents.* The campground's purchases of these items **are** exempt from sales and use tax because they are for resale. These items are provided to persons in a transaction separate from providing admissions to campsites. They are not transferred to campers incidentally with the furnishing of lodging or admission to amusement, entertainment, athletic, or recreational facilities. 

## 2 Manufacturing - Small Tools Purchased by Employees of Manufacturers

**Statutes:** Sections 77.51(14), 77.52(1), 77.54(6)(a), and 77.57, Wis. Stats. (1999-00)

**Wis. Adm. Code:** Section Tax 11.40(1) and (3)(a) (April 1994 Register)

**Background:** Section 77.52(1), Wis. Stats. (1999-00), imposes the Wisconsin sales or use tax on the sale of tangible personal property by retailers in Wisconsin.

Section 77.51(14), Wis. Stats. (1999-00), provides that a “retail sale” includes the transfer of ownership, title, possession, or enjoyment of tangible personal property for use or consumption, but not for resale.

Section 77.54(6)(a), Wis. Stats. (1999-00), provides an exemption from the tax for “Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property and safety attachments for those machines and equipment.”

Section 77.57, Wis. Stats. (1999-00), provides that if a purchaser gives an exemption certificate to a seller for property to be used in an exempt manner, and later uses the property in a manner other than the exempt purpose, the purchaser owes the sales tax on either the original sales price of the property, or the fair market value of the property if the taxable use first occurs more than 6 months after the initial purchase of the property, whichever is less.

Section 11.40(3)(a), Wis. Adm. Code (April 1994 Register), provides that small tools such as hand tools, drills, saws, etc., used exclusively and directly in the manufacturing process, qualify as “processing equipment.”

Some manufacturers require an employee to provide his or her own small tools for use in manufacturing for the employer. The employee may or may not be reimbursed by the employer for the cost of the tools.

**Question:** Is an employee of a manufacturer allowed to purchase exempt from Wisconsin sales or use tax small tools used exclusively and directly in a manufacturing process?

**Answer:** Yes. The exemption in sec. 77.54(6)(a), Wis. Stats. (1999-00), does not require the processing equipment to be purchased by the manufacturer, but rather used by the manufacturer. Because the employee is working on behalf of the manufacturer when using the tools, the manufacturer is using the tools in manufac-

turing in the same manner as if the manufacturer had purchased the tools and given the tools to the employee to use.

In the event the tools are not used exclusively and directly in manufacturing (for example, the employee also uses the tools for repairs or personal purposes), or if the tools are later converted to a use other than exclusively and directly in manufacturing, the exemption under sec. 77.54(6)(a), Wis. Stats. (1999-00), no longer applies.

**Example 1:** Employees of Manufacturer A are required to have their own small tools on the manufacturing line. The employees purchase the tools from a third party when they begin employment with Manufacturer A. The tools are used by the employees on the assembly line, exclusively and directly in the manufacturing process. The employees’ purchases of the tools are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00).

**Example 2:** Manufacturer B purchases hand tools it sells to employees for use exclusively and directly in manufacturing for Manufacturer B. Manufacturer B may purchase the hand tools sold to employees without Wisconsin sales or use tax because they are for resale. The sales of the tools by Manufacturer B to employees for use exclusively and directly in manufacturing are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00).

**Example 3:** Assume the same facts as in Example 1, except the employees use the same tools on a regular basis to (1) repair machines on the manufacturing line, and (2) install and repair items at their homes. Such use is approximately 15% of total use. The tools purchased by the employees are used other than exclusively and directly in a manufacturing process and, therefore, do not qualify for the exemption from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00).

**Example 4:** Assume the same facts as in Example 1. In addition, more than six months after purchasing the tools, an employee transfers to a new position in the plant that is not manufacturing. The employee keeps the hand tools and uses them at home for installations and repairs around the home. The employee’s initial purchase of the tools used exclusively and directly in manufacturing is exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1999-00). The employee owes sales tax on either the original sales price of the hand tools or the fair market value, whichever is less, at the time the tools are first used after the transfer to the non-manufacturing position. [!\[\]\(83bbbd261710c59db0214aa27b2edc0d\_img.jpg\)](#)