

Wisconsin TAX BULLETIN

www.dor.state.wi.us

Number 133

January 2003

Campaign Fund Check-off Will Contribute \$1, Not \$20

On December 11, 2002, the U.S. District Court for the Western District of Wisconsin overturned the state campaign finance law revisions contained in 2001 Wisconsin Act 109, which had been signed into law July 26, 2002. That court ruling invalidated:


- The \$20 check-off to the state election campaign fund printed on the first page of the 2002 Wisconsin individual income tax forms.
- The ability to designate the political party to which the contribution was to be made.
- The requirement that tax practitioners ask taxpayers who do not want to participate in the campaign fund check-off to sign a form so indicating.

The federal court decision restores previous law (sec. 71.10(3), Wis. Stats.), which allows personal income filers to check off \$1 each without increasing their tax liability. This has been the practice since 1977.

The ruling occurred after two million state income tax forms had already been printed and, in most cases, labeled for delivery.

The Department of Revenue has reprogrammed its scanners and computers to recognize any mark entered in the state election campaign fund check-off boxes as a \$1 designation, just as in past years. Also as in past years, there is no increase in tax liability to participants.

Practitioners are asked to instruct their tax-filing clients that although the 2002 forms and instructions indicate that any designation to the state election campaign fund is for \$20, and that such designation may be directed toward any of five political parties, in actuality any designation made will be for \$1 to the state election campaign fund's general account.

For further information about how to handle the state election campaign fund check-off boxes, please contact the department at (608) 264-9959, or by e-mail at efiling@dor.state.wi.us. 

Take Taxes, for Instance It's an Electronic World Out There


When taxpayers filed their Wisconsin personal income taxes in 2002, nearly 950,000 chose to file electronically – either through a professional tax preparer, via TeleFile, or on-line from their personal computer through the www.wisconsin.gov web site. That's one of every three taxpayers! The greatest percentage growth is in direct, on-line filing from home computers.

On-line filing has these advantages:

- Taxpayers can e-file both state and federal income taxes at the same time from one location.
- The computer software does the math and walks taxpayers through the process.

(continued on page 6)

Did You Know the Department of Revenue...

- ◆ provides free taxpayer assistance all around Wisconsin (see article on page 8), and via the Internet (www.dor.state.wi.us, then click on "FAQS" – frequently asked questions)
- ◆ has free publications on a wide variety of tax subjects (see article on page 18)
- ◆ has indexes to make your research easier (see articles on pages 15 and 22)
- ◆ provides old and new tax forms via the Internet (www.dor.state.wi.us) and via Fax-A-Form (phone 608-261-6229 from a fax telephone) (see article on page 6)
- ◆ offers recorded refund information 24 hours a day, seven days a week (phone 608-266-8100, Madison, or 414-227-4907, Milwaukee)
- ◆ provides an Internet site for inquiring about your refund (www.dor.state.wi.us) 

In This Issue**Articles –**

Campaign Fund Check-off.....	1
It's an Electronic World.....	1
Did You Know . . .	1
Department Reaches out via E-mail.....	2
TeleFile Expanding.....	3
Postcards Replace Booklets.....	4
Fewer Corporation Booklets.....	4
Electronic Filing Option:	4
Express Mail Suggestion.....	5
Sales Tax on Income Returns	5
How to Obtain Forms	6
Attaching Federal Return	7
Taxpayer Assistance	8
File 3K-1s on Magnetic/Electronic Media.....	9
File Error-Free Returns	9
IRS Mileage Rates for 2003	10

Due Dates for Information Returns.....	10
1099-Gs, 1099-INTs Mailed	11
Withholding Tax Update	11
Processing Tax Refunds	11
Processing Corporation Returns	12
Corporation Estimated Tax.....	13
Corporation Returns - Receipt.....	13
How to Obtain Copies.....	13
Corporation Extensions	14
ITS Springs to Life.....	15
Business Tax Registration Form	15
Bulletin Index Included	15
Federal Bonus Depreciation	16
Use Sales Internet Process.....	17
Tax Publications Available.....	18
Information or Inquiries?.....	20
Wisconsin/Minnesota Sales Tax Seminars	20
MTC Audit Program.....	20
Bayfield Premier Resort Tax.....	21

Focus on Publications: Antiques, Crafts, Artwork.....	22
Speakers Bureau.....	22
Index of Reference Material.....	22
Credit Card Payment Options.....	23
Delinquent Tax Compromises	23
Negligence Penalties Imposed	24
Dry Cleaners Fees.....	24
Tax Fraud Conviction	25
Administrative Rules in Process	26
Rules Summarized	27
Report on Litigation	34
Private Letter Rulings	39
Attachments –	
Withholding Tax Update	41
December Tax Report	43
Publication 230	45
Bulletin Index.....	48
Order Blank	81

State Revenue Department Reaches out to Taxpayers via E-mail

The Department of Revenue mailed its 2002 personal income tax forms and instructions to some taxpayers electronically in December, via e-mail. Since the department is encouraging taxpayers to file electronically, it only makes sense to deliver the forms the same way.

Just over 17,000 taxpayers throughout Wisconsin received e-mails, asking if they wanted to take part in this pilot project. Those who do not are able to opt out, with the click of a mouse. Follow-up e-mails will deliver web site links that will make it easier to:

- Be among the first to use the department's free on-line filing service, Wisconsin Free File,
- File through approved, third-party proprietary tax preparation on-line services,
- Find the location of professional tax advice offered by in-office tax preparers or, if they still prefer paper,
- Download a form and print it so it can be mailed.

Wisconsin Free File is an on-line, fill-in-the-blank personal income tax return that can be filed with the Department of Revenue at the click of a computer mouse, at no charge. It is the first completely free electronic tax filing option available for most Wisconsin taxpayers who file Form 1A, WI-Z, and simple Form 1

returns and homestead credit claims. In the future, additional schedules and form types will be available. For additional information, refer to the related article on page 4 of this Bulletin.

The department's e-mail campaign could be expanded to more taxpayers next year. E-mail is cheaper than the postage and handling required by paper booklets. Processing is also cheaper – electronically filed tax returns save additional processing costs of \$1.15 per return, compared to paper.

Last year, 950,000 – roughly one-third – of Wisconsin's 2.9 million personal income tax returns were filed electronically. [🔗](#)

Wisconsin Tax Bulletin

Published quarterly by:

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

Subscriptions available from:

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

Annual cost \$7.00

Wisconsin TeleFile is Expanding for 2002 Tax Returns

The Wisconsin TeleFile program allows eligible taxpayers to file their Wisconsin income tax returns using a touch-tone telephone without the need for a computer or Internet access. The Department of Revenue selects taxpayers who meet certain criteria based on the information on their last year's tax return and sends them a TeleFile booklet with a Personal Identification Number ("PIN").

New this year, taxpayers who do not receive a booklet but are eligible and want to use TeleFile can contact the department to request a TeleFile booklet and a PIN. Tax preparers may also use TeleFile to submit Wisconsin returns for their qualified clients.

New TeleFile features for 2002 tax returns:

- Taxpayers who didn't get a booklet with a PIN but otherwise qualify to use TeleFile can get a PIN by contacting the department by e-mail at efiling@dor.state.wi.us, or by phone at (608) 264-6886 in Madison or (414) 227-4959 in Milwaukee.
- Taxpayers with address changes may use TeleFile. If the mailing label on the TeleFile booklet is not correct, the taxpayer can contact the department before using TeleFile, to update the address. The contact may be made by e-mail at telefile@dor.state.wi.us, or by phone at (608) 266-2772 in Madison or (414) 227-4959 in Milwaukee.
- Married couples filing jointly with no dependents may use TeleFile.
- TeleFile will now accept a total of eight W-2 forms (wage statements).
- Payments are made with Form TPV, *TeleFile Payment Voucher*.
- TeleFile is now paperless. Taxpayers will submit an electronic signature through the application and not have to mail W-2 forms or signature documents.

Requirements to TeleFile:


To qualify for TeleFile, a taxpayer must meet **all** of the requirements listed below:

- Filing status is single or married filing jointly with no dependents.
- Total W-2 forms is not more than 8.
- Income is only from:
 - Wages, salaries, tips,
 - Taxable scholarships or fellowship grants,
 - Taxable interest income, and/or
 - Unemployment compensation.
- All wages, salaries, tips, and taxable scholarships or fellowship grants are included in box 1 of the W-2 form.
- Taxpayer (and spouse if married) is under age 65 on December 31, 2002.
- Taxpayer (and spouse if married) is a full-year Wisconsin resident for 2002.
- No Wisconsin credits other than credit for Wisconsin income tax withheld, renter's and homeowner's school property tax credit, married couple credit, and the working families tax credit.

How to use TeleFile:

Simply fill in the Wisconsin TeleFile worksheet provided with the TeleFile booklet. Call the TeleFile system and enter the social security number, the four-digit PIN and, if applicable, the spouse's social security number. Enter the information from the worksheet as prompted by the system. At the end of the call, confirm that you wish to file using TeleFile. Tax preparers may do the same for their qualified clients.

The completed TeleFile worksheet, along with the confirmation number provided by the TeleFile system is the taxpayer's proof of filing.

For more information about Wisconsin TeleFile, visit the department's web site at www.dor.state.wi.us. 

Postcards Replace Booklets

In order to inform taxpayers who filed paper income tax returns last year but qualified for free electronic filing (“e-filing”), a select group of taxpayers who formerly received tax booklets received a postcard instead this year, notifying them that they may be eligible for free e-filing.

Last year’s pilot project was successful, with 33% of postcard recipients choosing to file electronically for the first time. Therefore, the Department of Revenue has expanded the program this year, by informing approximately 400,000 taxpayers about the IRS Free

File Alliance, Wisconsin Free File, and expanded TeleFile, so that they may file electronically for **FREE**.

The IRS Free File Alliance applies to both state and federal individual income tax returns. Wisconsin Free File and TeleFile are available to file qualified Wisconsin income tax returns.

More information about free e-filing of income tax returns is available on the State of Wisconsin’s web site, www.wisconsin.gov. Click on “State Tax Information,” “Individual,” and “Electronic Filing,” and then select the appropriate link for the application in which you are interested. [↗](#)

Fewer Corporation Tax Booklets Mailed

In December 2002, the department discontinued mailing 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.
- 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 from the department 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 or by calling (608) 266-1961. [↗](#)

New Electronic Filing Option: It’s Free and On-Line



The Wisconsin Department of Revenue is committed to serving taxpayers in the most efficient manner possible. Through the use of technology, the department has streamlined the methods used to file individual income tax returns. For 2002 personal income tax returns, the Department of Revenue is rolling out a new way to file. It’s called Wisconsin Free File.

Wisconsin Free File, an expansion of last year’s successful NetFile program, is an on-line, fill-in-the-blank personal income tax return that can be filed with the Department of Revenue at the click of a computer mouse. No charge! It is the first no-charge electronic tax filing option available for taxpayers of every income category. It works for anyone filing Form WI-Z, Form 1A, Form 1 with federal 1040 (but Free File does not

file your federal return with the Internal Revenue Service), and a homestead credit claim (Schedule H).

Wisconsin Free File combines the convenience and quick results of electronic filing with the familiarity of the traditional paper tax form. (The line numbers are the same.) Choose direct deposit and Wisconsin Free File will return refunds (on returns that do not require adjustment) within five working days – just like the third-party tax preparation software, but without the purchase price. Wisconsin Free File is even cheaper than paper, because you don’t need postage stamps.

Wisconsin Free File is available on-line by accessing the Wisconsin state government portal at www.Wisconsin.gov using the “State Tax Information” link, or at www.dor.state.wi.us. Click on “Individual,” then select the Free File link to access the application. The application can be used by taxpayers as well as tax professionals. It works with a standard modem and web browsers Netscape 3.0 or Internet Explorer 3.0 or higher.

Unlike the more full-featured commercial tax-preparation software packages, however, Wisconsin Free-File does not offer tax advice or the high level of automation.

It is not available for first-time filers or for those claiming certain credits (such as development zone, historic rehabilitation, technology zone, and taxes paid

to other states). Nor is it available for federal schedules C, D, E, or F, or Wisconsin Schedules FC, MS, MT, RS, T, WD, or Form I-804. It cannot accept Schedule H with more than 4 rent certificates, more than 4 separate rental amounts on lines 11a and 11b of the rent certificate, or tax bills for adjoining property where the owner name and type are different than what is on the home tax bill OR where taxes are greater than \$1450. [↗](#)

Express Mail Suggestion

During the tax season, the Department of Revenue receives up to 8,000 certified pieces of mail each business day. These require an employee to sign each and every “green card,” a task that can take all day. In addition, the certified sticker and adhesive strips remaining after the green card is removed necessitate frequent cleaning of the department’s mail opening equipment. The fee for mailing by Certified Mail is \$2.30, plus \$1.75 for the return card, as well as the first class postage amount – at a minimum it costs \$4.42.

For those tax practitioners who normally send their clients’ tax returns via Certified Mail throughout the tax season, the department suggests an alternative – Priority Mail. Advantages include the following:

- Priority Mail is less expensive. It offers a flat rate up to **one pound** for \$3.85, and delivery confirmation is \$.45.

- Unlike Certified Mail, senders can track confirmation of delivery on the United States Postal Service (“USPS”) web site.
- By utilizing the web site, www.usps.gov, senders can prepare a pre-printed Priority Mail address label and receive Delivery Confirmation for *free*.
- Senders may register with USPS and prepay the postage, saving time at the Post Office.
- Department personnel can make more efficient use of their time rather than continually having to sign for Certified Mail and clean the equipment.

The Priority Mail flat rate envelope, EP 14F, is available free from local Post Offices, or on-line. [↗](#)

Sales/Use Tax Can Be Reported on Income Tax Returns

If a person purchases tangible personal property or taxable services from an out-of-state seller on which no sales tax was charged, and the property or service is stored, used, or consumed in Wisconsin, the person is subject to Wisconsin sales or use tax on the purchase. Wisconsin individual income tax Forms 1, 1A, WI-Z, and 1NPR include a line titled *Sales and use tax due on out-of-state purchases*. Individuals should use these lines to report sales or use tax due on out-of-state purchases of the following items:

- Sporting goods, toys, clothing, and any other taxable items purchased via the Internet.

- Computer equipment, supplies, prewritten software, clothing, and any other taxable items purchased from a mail order company.
- Records, tapes, books, etc., advertised on television and purchased via a toll-free telephone call.
- Jewelry, works of art, furniture, etc., purchased while traveling outside the United States.

The department conducts various audit projects designed to identify individuals who may not be properly reporting sales or use tax due on out-of-state purchases of tangible personal property or taxable services. Failure to report use tax is one of the main reasons a penalty may be imposed if a person is audited. [↗](#)


It's an Electronic World

(Continued from page 1)

- Taxpayers get immediate confirmation that their return has been received.
- Taxpayers can get their refunds in five business days, no matter when they file (if they choose direct deposit and the return needs no additional review), even if they file right on the April 15 deadline. (Paper returns filed on the deadline typically require up to 12 weeks.)
- E-filers can choose to electronically deposit their refunds.
- Electronically filed returns are more accurate (a 1% error rate compared to 10% for paper forms).
- The IRS Free File Alliance allows low-income taxpayers to e-file for free! In the past, that meant earning \$25,000 or less annually, but the new alliance may allow for other income levels and situations to file for free, as well. Check it out at www.irs.gov. (Also see the article on page 4 of this Bulletin, regarding e-filing Wisconsin returns for free through Wisconsin Free File.)

E-filing has increased 27% in just the last year, and the Department of Revenue continues to expand and offer additional electronic filing options:

- Applicants for homestead credit can now file Schedule H electronically when they file their income tax returns using the fed/state e-file program, as well as using the Wisconsin Free File program (see the related article regarding Wisconsin Free File, on page 4 of this Bulletin).
- Taxpayers eligible for TeleFile can contact the department and use TeleFile, even if they were not invited; and taxpayers with address changes and married couples filing jointly with no dependents can use TeleFile for 2002. See the related TeleFile article on page 3 of this Bulletin.
- Low-income taxpayers (under \$28,000 income) can file on-line free-of-charge.
- Taxpayers can pay by credit card.

In these and other ways, the Wisconsin Department of Revenue is committed to its strategic goal of **Making Taxpaying Less Taxing** – in every sense of the word, from lowering the overall tax burden to making the tax filing experience easier and less stressful. 

How to Obtain Wisconsin Tax Forms

Tax preparers and others requiring more than 6 of any one Wisconsin tax form or more than 29 total Wisconsin forms must use a forms order blank, Form P-744. The original of the completed order blank must be sent to the department. You can obtain a Form P-744 by writing, calling, or faxing your request to the department at the address or phone number listed below under “To Receive Forms in the Mail.”

You can obtain up to 6 of any one Wisconsin tax form or a total of 29 Wisconsin forms by visiting any Department of Revenue office or by contacting the department by mail, by phone, or by fax. These limits are imposed in order to maintain a supply of forms for others. You can also receive forms via your fax machine or the Internet.

Some libraries and post offices have forms during the filing season. Most libraries have a copy of Wisconsin Package WI-X, from which most Wisconsin tax forms can be photocopied.



To Pick Up Forms at a Department of Revenue Office

If you want to pick up forms at a department office, you may visit any of the department's local offices. The office locations and hours of service are listed in the article titled “Department Offers Taxpayer Assistance” on page 8 of this Bulletin (assistance is also available at these offices).



To Receive Forms in the Mail

You can request that forms be mailed to you (indicate which forms you want, the year, and how many) by:

- Writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, P.O. Box 8951, Madison, WI 53708-8951;
- Calling the department in Madison at (608) 266-1961;
- Faxing your request to the department at (608) 261-6913; or
- E-mailing your request to forms@dor.state.wi.us.



To Receive Forms Via Your Fax Machine

You can receive forms via your fax machine by using the department's Fax-A-Form system. Individual income tax, homestead credit, farmland preservation credit, corporation franchise and income tax, estate tax, fiduciary income tax, and partnership forms and instructions for 1996 through 2002 are available via Fax-A-Form. For sales/use, withholding, and alcohol beverage taxes, only 2002 forms and instructions are available. In addition, 1996 through 2002 amended individual income tax forms and instructions are available, as well as publications published by the department (see the article titled "Tax Publications Available" on page 18 of this Bulletin).

To use Fax-A-Form, call (608) 261-6229 from the handset of your fax machine or the touch-tone telephone of your fax modem (don't press "start" yet). If your fax machine does not have a handset, use the keypad if tones are transmitted, or connect a touch-tone telephone if tones aren't transmitted. Follow the voice prompts and enter the retrieval codes for the items you want, using

the keypad. Press "start," "send," or "copy" (fax modem users click on "manual receive"). You must leave the handset of your telephone or fax machine off the hook the entire time the forms are being faxed to you.

Fax-A-Form is available 24 hours a day, 7 days a week. The department does not charge a fee for this service (though you will have to pay your normal telephone charges and fax machine operating costs). If you have questions, you may write to: Wisconsin Department of Revenue, Fax-A-Form Coordinator, Mail Stop 1-151, P.O. Box 8951, Madison, WI 53708-8951, or call (608) 267-2025.



To Receive Forms Via the Internet

Most forms and instructions are available on the Internet. If you have Internet access, you can download and print the forms 24 hours a day, throughout the year.

To download forms, access the department's web site, www.dor.state.wi.us, and click on "Forms."



Attaching Copy of Federal Return

Individuals who file their Wisconsin income tax return on Form 1 or 1NPR are required to attach a copy of their federal income tax return to their Wisconsin return. Generally this will be a copy of federal Form 1040, 1040A, or 1040EZ. However, some Wisconsin filers are not required to file a federal return with the Internal Revenue Service ("IRS"), or they may use TeleFile to report to the IRS.

Federal TeleFile Filers

Some taxpayers who file their Wisconsin return on Form 1 or 1NPR file their federal return by phone, using the federal TeleFile system. These taxpayers, who are not required to submit a paper tax return to the IRS, may attach a copy of their federal TeleFile Tax Record to their Wisconsin Form 1 or 1NPR in lieu of federal Form 1040, 1040A, or 1040EZ.

Taxpayers Not Required to File With the IRS

Some taxpayers who are required to file a Wisconsin income tax return are not required to file a federal income tax return with the IRS. For example, a person filing as head of household who is age 65 or over, with gross income of at least \$10,830 but less than \$11,050 for 2002, must file a 2002 Wisconsin return but is not required to file a 2002 federal return.

In this situation, since the person would not have a copy of a federal return to attach to the Wisconsin return, a statement listing the sources and amounts of income must be attached to the Wisconsin Form 1 or 1NPR in lieu of a federal return.

Note: Because the Wisconsin tax forms refer to various lines on the federal return, a person may find it helpful to complete a federal income tax form to use as a reference when completing the Wisconsin return. This federal form, even though it will not be filed for federal tax purposes, may be attached to the Wisconsin return instead of the required statement of income.



Department Offers Taxpayer Assistance

Department personnel will be available through April 15, 2003, to provide taxpayer telephone and walk-in assistance. Assistance is provided Monday through Friday in many of the larger offices, and Mondays only in other offices (except as noted in the chart below).

Offices Providing Daily Assistance (Monday through Friday)

Location	Address	Telephone No.	Hours
Appleton	265 W. Northland Ave.	(920) 832-2727	7:45-4:30
Eau Claire	718 W. Clairemont Ave.	(715) 836-2811	7:45-4:30
Madison	2135 Rimrock Rd.	(608) 266-2772	7:45-4:30
Milwaukee	819 N. Sixth St., Rm. 408	(414) 227-4000	7:45-4:30
Waukesha	141 N.W. Barstow St.	(262) 521-5310	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Location	Address	Telephone No.	Hours
Baraboo	1000 Log Lodge Ct.	(608) 356-8973	7:45-1:00
Beaver Dam	220 Seippel Blvd.	(920) 356-6090	7:45-1:00
Elkhorn	715 W. Walworth St.	(262) 723-4098	7:45-1:00
Fond du Lac	845 S. Main, Ste. 150	(920) 929-3985	7:45-4:30
Grafton	1930 Wisconsin Ave.	(262) 375-7948	7:45-1:00
Green Bay	200 N. Jefferson St., Rm. 526	(920) 448-5179	7:45-4:30 *
Hayward	100 Ranch Rd.	(715) 634-8478	7:45-1:00
Hudson	2100 O'Neil Rd., Ste. 200	(715) 381-5060	7:45-4:30
Janesville	101 E. Milwaukee, Rm. 525	(608) 758-6190	7:45-4:30 †
Kenosha	4003 80th St., Ste. 102	(262) 697-5860	7:45-4:30 ††
La Crosse	620 Main St., Rm. 213	(608) 785-9720	7:45-4:30
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-1:00
Marinette	Courthouse, 1926 Hall Ave.	(715) 732-7565	9:00-1:00
Oshkosh	515 S. Washburn, Ste. 105	(920) 424-2100	7:45-4:30
Racine	616 Lake Ave.	(262) 638-7500	7:45-4:30 **
Rhinelanders	203 Schiek Plaza	(715) 365-2666	7:45-4:30
Rice Lake	11 E. Eau Claire St., Ste. 4	(715) 234-7889	7:45-1:00
Sheboygan	807 Center Ave.	(920) 459-3101	7:45-4:30
Superior	1225 Tower Ave., Ste. 315	(715) 392-7985	7:45-4:30
Tomah	203 E. Clifton St.	(608) 372-3256	7:45-1:00
Wausau	710 Third St.	(715) 842-8665	7:45-1:00
Wisconsin Rapids	830 Airport Ave.	(715) 421-0500	7:45-4:30

* Open Monday, Tuesday, Wednesday, and Thursday

** Open Monday, Tuesday, and Wednesday

† Open Monday and Tuesday

†† Open Monday and Wednesday



File Schedule 3K-1s on Magnetic/Electronic Media

Partnerships with 100 or more partners may file their Wisconsin Schedule 3K-1s, *Partner's Share of Income, Deductions, etc.*, on magnetic/electronic media. The types of magnetic/electronic media allowed include magnetic tape, cartridge, CD, and diskette.

If your Schedule 3K-1s are prepared by software, ask your software company if they can provide these documents on magnetic/electronic media rather than on paper. Filing on magnetic/electronic media will save both preparers and the department valuable resources, such as paper, shipping costs, and processing time. It's

another way the department is streamlining your process of filing tax returns.

To get information and specifications for filing your Form 3K-1s magnetically/electronically, contact:

Diana Kiesling
Wisconsin Department of Revenue
Mail Stop 3-14
P.O. Box 8908
Madison, WI 53708-8908

Phone: (608) 267-3285

E-mail: diana.kiesling@dor.state.wi.us.



File Error-Free Tax Returns and Credit Claims

Are your or your clients' tax returns and credit claims filed without errors, and do they include all the schedules and information necessary for the department to accurately process them? Many errors are discovered each year, either in processing or in subsequent audits by the department.

In the 2002 processing season (2001 returns and claims), the department sent back thousands of tax returns and credit claims. Processing was delayed on thousands of other forms, to obtain additional information from taxpayers or claimants. Nearly half a million tax returns and credit claims were adjusted during the processing of those forms.

Preparing error-free tax returns and credit claims will help avoid annoying processing delays and may result in fewer tax dollars being assessed in subsequent office audits or field audits.

Listed below are tips for avoiding some common errors made in preparing individual and corporation tax returns, homestead and farmland preservation credit claims, partnership returns, fiduciary income tax returns, and estate tax returns. Some of the tips apply to more than one of these categories.

- Read and follow instructions.
- Fill in social security number or employer identification number.
- Check and recheck math.
- Sign the return or claim.

- Attach required documents:
 - copies of federal return and schedules.
 - (individual returns) wage and tax statements.
 - (1NPR) residence questionnaire, other state's tax return copy.
 - (corporation returns) manufacturer's sales tax, research, development zone, farmland tax relief schedules.
 - (homestead) copy of separately filed tax return, complete rent certificate, property tax bill, ownership verification if applicable.
 - (farmland preservation) property tax bills, farmland preservation agreement or zoning certificate if appropriate, ownership verification if applicable.
 - (partnerships) Schedule 3K-1.
 - (fiduciaries) as listed on page 2 of Form 2.
 - (estate tax returns) copies of federal Form 706 and schedules, list of assets, will, trust instruments, approved federal extension if appropriate.
- Individual returns:
 - Fill in correct amounts and all information for standard deduction, exemption deduction, school property tax/rent credit, married couple credit, and itemized deduction credit.
 - Correctly calculate earned income credit, farmland tax relief, underpayment interest, retirement plan deductions, and federal/Wisconsin income differences.

- Include all taxable income, such as S corporation and partnership income, IRA distributions, interest and dividends, income earned in another state, gambling winnings.
- Homestead credit:
 - Prorate rent for joint occupancy, if appropriate – see bottom of rent certificate.
 - Correctly prorate property taxes for part business use, more than one acre, co-owned property.
 - Reduce property taxes/rent for months Wisconsin Works (W2) received.
 - Follow special instructions if separated from spouse or married, divorced, or widowed during the year.
 - Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation (including standard mileage depreciation), IRA/deferred compensation deductions, Wisconsin Works (W2) and county relief payments.
- Farmland preservation credit:
 - Prorate property taxes for co-owned property.
- Do not claim special assessments or property taxes for land not in a farmland preservation agreement or zoning certificate.
- Claim the correct percentage of credit.
- Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation, capital loss carryover, deferred compensation.
- Fiduciaries:
 - On page one, check one “type of trust” box if applicable, answer questions, fill in fiscal year dates if applicable, request closing certificate if needed.
 - Report all income, expenses, and credits as distributable income on final Form 2.
 - Follow special procedures if ESBT (electing small business trust).
- Estate tax returns:
 - File only if required.
 - File and pay tax timely – use 401T for payment, not 1-ES or 4-ES.
 - Request closing certificate for both fiduciary and estate returns at same time, if possible. [☞](#)



IRS Mileage Rates for 2003 Apply for Wisconsin

The optional standard mileage rates provided by the Internal Revenue Service (“IRS”) for 2003, for computing automobile expenses for business, charitable, medical, and moving expense purposes, also apply for Wisconsin.

For 2003 the IRS has **decreased** the business standard mileage rate from 36.5¢ per mile to 36¢ per mile for all business miles driven. The 36¢ per mile rate is allowed without regard to whether the automobile was previously considered fully depreciated.

If the standard mileage rate of 36¢ per mile is used, depreciation is considered to be allowed at 16¢ per mile for 2003, compared to 15¢ per mile for 2002. However, no portion is considered to be depreciation after the adjusted basis of the automobile reaches zero.

For 2003 the allowable standard mileage rate for charitable deduction purposes remains at 14¢ per mile. The rate for medical expense and moving expense deductions has decreased from 13¢ per mile to 12¢ per mile. [☞](#)



Don't Forget Due Dates for Information Returns

Various information returns must be filed with the Wisconsin Department of Revenue by January 31. Others are due February 28 or March 15.

Information returns due January 31, 2003, include Form W-2 to report wages, tips, and other compensation, and Form W-2G to report gambling winnings.

Information returns due February 28, 2003, include Wisconsin Form 9b (or federal Form 1099-R or 1099-MISC) to report retirement plan distributions and

other nonwage compensation, and for payers other than corporations to report rents or royalties.

Information returns due March 17, 2003 (March 15 and 16 are weekend dates), by **corporations** include Form 9b or federal Form 1099-MISC to report rents or royalties, and Form 8 to report capital stock transfers.

Regardless of the due date for filing the information returns with the department, copies of the information returns (except Form 8) must be given to the recipients

of the payments by January 31, 2003. Copies of Form 8 are not required to be given to individuals who transfer capital stock.

Additional information is available in Wisconsin Publication 117, *Guide to Wisconsin Information Returns*. See the article titled “Tax Publications Available” on page 18 of this Bulletin for information about how to obtain a copy of the publication. [↗](#)

Federal Form 1099-Gs, 1099-INTs Mailed to Taxpayers

The Department of Revenue mailed nearly 800,000 federal Form 1099-Gs and Form 1099-INTs in January 2003. Federal law provides that the department must furnish 2002 Form 1099-Gs to persons who received a Wisconsin income tax refund in 2002 and claimed state income tax payments as an itemized deduction on the federal tax return for the year to which the refund applies. Form 1099-INTs must be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue in 2002.

Regardless of whether a taxpayer receives a Form 1099-INT, all interest received from the department in 2002 must be reported as income on the

taxpayer’s 2002 federal and Wisconsin tax returns. In addition, all or a portion of a state income tax refund from Form 1099-G may be includable in federal taxable income. However, **the refund should not be included** in Wisconsin taxable income.

Form 1099-G explains how the refund reported to the Internal Revenue Service (“IRS”) was determined. The first line shows the amount of the refund. Subsequent lines show adjustments for: amounts applied to next year’s estimated taxes; endangered resources donations; late filing penalties and interest; homestead, farmland preservation, farmland tax relief, and earned income credits; retirement plan penalties; and other adjustments. The last line shows the refund reported to the IRS. [↗](#)

Withholding Tax Update Sent to Employers

The annual Withholding Tax Update was sent in December 2002, along with Forms WT-7, *Employer’s Annual Reconciliation of Wisconsin Income Tax*

Withheld from Wages, to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update appears on pages 41 and 42 of this Bulletin. [↗](#)



Tips to Speed Processing of Income Tax Refunds

If you have a refund coming on your 2002 Wisconsin individual income tax return, you want your return processed quickly. You can help by following the tips listed below.



File Electronically

There are many good reasons to file your Wisconsin return electronically (“e-file”). It’s fast, safe,

documented, easy, and accurate. For more information, see the article titled “It’s an Electronic World Out There” on page 1 of this Bulletin. Also see the article relating to Wisconsin Free File, on page 4.



File Early

The time it takes to issue a refund varies greatly, depending on when the return is received. Refunds for returns that are not adjusted are issued in an average of three weeks for returns received in January and February, four weeks for returns received in March, and eight weeks for returns received in April and after.

**Use Your Label**

Apply the department-printed name and address label to the tax return you file. Here are some more tips about your label:

- Use the label even if you are filing a computerized return or a return completed by a preparer.
- Fill in your social security number (and your spouse's, if applicable) on the tax return, since it is not on the label.
- Draw a line through incorrect information and make corrections on the label.
- Use the Wisconsin label, not the federal IRS label.
- Be sure the label is yours, not another taxpayer's.

**File an Accurate and Complete Return**

Avoid errors and delays in processing your tax return by following these tips:

- Make entries legible and on the correct lines.

- Attach the correct withholding statements.
- Claim only Wisconsin tax withheld, not federal tax, social security, or tax withheld for another state.
- Attach **all** necessary supporting schedules.
- Attach a **complete** copy of your federal return and schedules if you file on Form 1 or 1NPR.
- Attach a completed rent certificate or a copy of your 2002 property tax bill if you are claiming homestead credit.
- Assemble your return in the proper order (see page 27 of the Form 1 instruction booklet or page 31 of the Form 1NPR booklet).

**More Tips**

For more tips, see the article titled "File Error-Free Tax Returns and Credit Claims," on page 9 of this Bulletin. [↗](#)

**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 November 1, 2001 through October 31, 2002, 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 return** or a **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.
- Federal tax return.
 - Any attachments.
 - Any extensions (place as the BACK page). [☞](#)
10. **Assemble the return in the correct order:**
- Wisconsin tax return.

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 using a Wisconsin Form 4-ES, *Wisconsin Corporation Estimated Tax Voucher*, or through Electronic Funds Transfer ("EFT").

Corporations that made an estimated tax payment with a Form 4-ES in the prior year will automatically receive estimated tax vouchers (Form 4-ES) before the current year's tax is due. However, corporations that have no tax liability for the current 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 also be made by EFT. Taxpayers that make estimated tax payments by EFT do not need to complete the Form 4-ES. When making estimated payments by EFT, be sure to enter the fiscal year end, NOT the end of the quarter that the payment is for. (Many taxpayers make this mistake, and their payments are then inadvertently applied to the wrong tax year.)

For more information about EFT payments, call (608) 264-9918. For more information about corporation estimated payments, call (608) 266-0800. You may also visit the department's web site, www.dor.state.wi.us, for more information about forms, filing requirements, and making payments by EFT. [☞](#)



Corporation Tax Returns - Receipt Please

Many taxpayers or tax professionals include a letter and a self-addressed stamped envelope with their or their client's corporation franchise or income tax return, requesting that the letter be date stamped and returned as proof of receipt. Because of budgetary constraints, the Department of Revenue will no longer be able to return acknowledgements of tax returns.

Although there are no additional postage costs for the department to return this type of acknowledgement, there are staff costs for the time it takes to stamp, seal, and route the envelope for mailing. Due to budget cuts, all processes not directly related to processing a tax return have been evaluated. By eliminating processes such as this, the department can best serve its customers by focusing on processing returns faster and putting refunds back in the hands of taxpayers sooner. [☞](#)

How to Obtain Copies of Your Tax Returns

What Is Available

Upon request, the Department of Revenue will provide taxpayers with copies of their previously filed tax returns (or information regarding them). Copies of returns or information are generally mailed within 10 business days after the department receives the request.

When a copy of a state return is requested, a copy of the federal return will be provided if it is a part of the

Wisconsin return. Wage statement copies are not always available with Forms 1A and WI-Z.

Tax returns are generally available for copying within four months after the returns are filed.

Who May Request Copies

Taxpayers, partners in a partnership, or corporation officers may request copies of their own tax returns. Other persons may also request copies, if they provide a power of attorney form or other written authorization, signed by the taxpayer, partner, or corporation officer,

and specifying the type of tax return and periods requested.

Requests for copies of a deceased taxpayer's tax returns must include a certified domiciliary letter and be signed by the personal representative of the estate. If there is no estate, a certified copy of the death certificate and a statement of the reason for the request are required.

Fees

The fee is \$5.00 for each year or period requested. There is an additional fee of \$1.00 per return for a certified copy. **Payment must be sent with the request.** Checks or money orders should be made payable to "Wisconsin Department of Revenue."

How to Request

All requests for copies of returns or information must be made in writing (the written request may be faxed) or in person. If faxing a request, payment must be received before the department can mail the requested information. Requests by telephone will not be accepted.

Requests must include the following:

1. Name on the requested tax return.
2. Social security number (including spouse's social security number, if applicable) or other identification number of the taxpayer.
3. Type of return and year(s) or period(s) of the tax return being requested.
4. Name and address to which the copies are to be mailed.
5. Signature of the taxpayer, partner, corporation officer, or authorized representative.
6. Payment of appropriate fees for requested information.

Another option for requesting copies is to go to the department's web site, www.dor.state.wi.us, and click on "Forms" and then "Miscellaneous." Complete the fill-in form, Form P-521, *Request for Copy of Tax returns(s)*. Mail the completed form, along with the payment, to the address listed on the form.

Where to Direct Requests

Written Requests: Mail your request to

Wisconsin Department of Revenue
Electronic Records and Document Management
Mail Stop 2-232B
P.O. Box 8903
Madison, WI 53708-8903

In-Person Requests: Visit the Customer Service counter at the Department of Revenue, 2135 Rimrock Road, Madison, Wisconsin. Office hours are 7:45 a.m. to 4:30 p.m. Proper identification (for example, a driver's license) is required.

Questions

If you have questions, you may call the Department of Revenue in Madison, at (608) 266-2890.

The chart below lists returns and information that are available, and the number of prior years for which they are available.

Returns/Information Available	# of Years
Corporation tax returns	6
Gift tax reports	5
Homestead credit claims	5
Individual income tax returns	4
Insurance tax returns	6
Partnership tax returns	4
Sales/use tax returns	10
Trust fiduciary returns	4
Microfilmed withholding tax deposit reports	10

Corporation Extensions - IC-830 or Not?

Do you know when to file for a Wisconsin extension for your corporation tax return? Thousands of taxpayers don't. Every year the Department of Revenue receives thousands of Form IC-830s (Application for Extension of Time to File) unnecessarily.

The Form IC-830 should only be filed if the corporation **does not** obtain a federal extension. If the corporation obtains a federal extension (federal Form 7004) and attaches it to the Wisconsin return, the Department of Revenue automatically grants the taxpayer an additional 30-day extension on top of the federal extension of six months. That's right – corporations have an automatic

seven-month extension with the Department of Revenue by obtaining the federal extension and attaching a copy to their Wisconsin return.

Does the approval of the Wisconsin Application for Extension of Time to File extend that seven months to an eight-month extension? No. If a taxpayer obtains both the federal and Wisconsin extensions, the taxpayer still only has a total of a seven months for an extension with Wisconsin.

What if a corporation does not obtain the federal extension but wants an extension for the Wisconsin

return? The taxpayer should file the Form IC-830 to receive a 30-day extension from Wisconsin.

By filing the Form IC-830 only when necessary, taxpayers save time and effort, and the Department of Revenue can better spend its time processing corporation tax returns.

Questions pertaining to corporation extensions of time to file may be directed to the department's Corporation Review and Adjustment Unit at (608) 266-0800. [☞](#)

ITS Springs to Life

The Department of Revenue has launched "Release 1" of its new Integrated Tax System ("ITS"). ITS Release 1 includes:

- Business tax registration and financial handling of new registrant and renewal fees for sales/use, local exposition, withholding, and excise taxes, including alcohol and cigarette/tobacco.
- Returns processing of sales, consumer's use, and UT-5 forms.
- Taxpayer accounting and revenue accounting of the above, and county and stadium tax distributions.

- Revenue accounting for all tax systems within the department.

The department is now working on "Release 2" of ITS, which will include individual income taxes. One of the early steps in this phase of the project is Wisconsin Free File. The Wisconsin Department of Revenue now offers taxpayers a free, fill-in-the-blank personal income tax form, available on its external Internet site, that can be filed on-line. Wisconsin Free File became available in January, for filing tax year 2002 individual income tax returns. See the related article on page 4 of this Bulletin.

The complete phase-in of the income tax portion of ITS is expected to be completed in 2005. [☞](#)

New Business Tax Registration Form Created

Due to the implementation of the Integrated Tax System ("ITS" – see the related article above), the Department of Revenue has created a new application form for Business Tax Registration.

The new application form is titled "Application for Business Tax Registration" (BTR-101, N.9-02). It consists of four pages, canary colored, much like the old form. However, unlike the old form, all four pages are used to collect business information.

There are instructions to be used in completing the application. They are printed in an 8-page newsprint booklet titled "Application for Registration Instructions" (BTR-114, N.9-02).

The old Application for Permit/Certificate (Form A-101) will be discontinued, and registrants

should begin using the new application. While the department will continue to receive old applications and can register a business using that form, use of the new form will make the task of registration easier and faster.

The new application and instructions have been placed on the Internet and are available by Fax-A-Form (call 608-261-6229 from a fax telephone). [☞](#)



Wisconsin Tax Bulletin Annual Index Included

This issue of the Wisconsin Tax Bulletin includes (on pages 48 to 80) the annual index of articles, tax releases, court case summaries, private letter rulings, and other materials that have appeared in past Bulletins. The index includes information for issues 1 to 132 (through October 2002). [☞](#)

Federal Bonus Depreciation Provisions Do Not apply for Wisconsin

Note: The information on federal bonus depreciation that was posted on the department's web site July 26, 2002, was updated on November 25, 2002. This article provides the same information as the November 25 posting. It explains that the Department of Revenue will waive interest charges on amounts due with an amended 2001 return that result from the required recomputation of depreciation, if the amended return is filed on or before the unextended due date for the taxpayer's 2002 Wisconsin franchise or income tax return. Interest charges will apply to all amounts due with an amended return filed after that date.

Businesses that acquired property after September 10, 2001, may be required to file amended Wisconsin franchise or income tax returns to recompute their Wisconsin depreciation deductions.

On July 30, 2002, 2001 Wisconsin Act 109 became law. This Act, in part, prohibits the use of the new federal 30% "bonus" depreciation and makes other changes to the depreciation deductions allowable for Wisconsin franchise and income tax purposes.

- For property placed in service in taxable years beginning on or after January 1, 2001, taxpayers are required to compute amortization or depreciation under the Internal Revenue Code as amended to December 31, 2000.
- For property acquired after September 10, 2001, taxpayers may not claim the special 30% bonus depreciation deduction allowed by the federal Job Creation and Worker Assistance Act of 2002 (Public Law 107-147), enacted March 9, 2002.

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

Any taxpayer that claimed the 30% bonus depreciation under the provisions of Public Law 107-147 must recompute depreciation under the Internal Revenue Code prior to its amendment by Public Law 107-147. The taxpayer must file a Wisconsin amended return to report the difference between the federal and Wisconsin depreciation as indicated below.

Amounts due with an amended 2001 return that result from the required recomputation of depreciation will not

be subject to interest charges, including underpayment of estimated tax interest, if the amended return is filed on or before the unextended due date for the taxpayer's 2002 Wisconsin franchise or income tax return. Interest charges will apply to all amounts due with an amended return filed after that date.

Corporations Filing Form 4 or 5 - Use Form 4 or 5, as appropriate, and check the "amended return" box on the front of the return. Print "Bonus Depreciation" at the top of page 1. Add back the difference in depreciation on Schedule V, line 6, and complete the rest of the form. Attach to the amended return a schedule showing the depreciation computations.

Insurance Companies Filing Form 4I - Use Form 4I and check the "amended return" box on the front of the return. Print "Bonus Depreciation" at the top of page 1. Add back the difference in depreciation on Schedule A, line 2f, and complete the rest of the form. Attach to the amended return a schedule showing the depreciation computations.

Tax-Option (S) Corporations - Use Form 5S and check the "amended return" box on the front of the return. Add back the difference in depreciation on Schedule 5K in the Adjustment column (column c) for line 1, 2, or 3, as appropriate. Attach to the amended return a schedule showing the depreciation computations. In addition, complete an amended Schedule 5K-1 for each of the shareholders, showing the depreciation difference as an addition on the appropriate line in the Adjustment column. Each shareholder must file an amended Wisconsin return to report his, her, or its share of the depreciation adjustment.

Exempt Organizations - Use Form 4T and check the "amended return" box on the front of the return. Print "Bonus Depreciation" at the top of page 1. If the organization is taxable as a corporation, add the disallowed depreciation to the amount previously reported on page 1, line 1. Enter the revised amount on line 1 of the amended Form 4T and complete the rest of the form. If the organization is taxable as a trust, add back the difference in depreciation on Schedule V, line 9, and complete the rest of the form. Attach to the amended return a schedule showing the depreciation computations.

Partnerships Including Limited Liability Companies Treated as Partnerships - Use Form 3 and check the "amended return" box on the front of the return. Add back the difference in depreciation on Schedule 3K in the Adjustment column (column c) for line 1, 2, or 3, as

appropriate. Attach to the amended return a schedule showing the depreciation computations. In addition, complete an amended Schedule 3K-1 for each of the partners or members, showing the depreciation difference as an addition on the appropriate line in the Adjustment column. Each partner or member must file an amended Wisconsin return to report his, her, or its share of the depreciation adjustment.

Individuals Filing Form 1 - Use Form 1X to amend your return. Print “Bonus Depreciation” at the top (center) of page 1. Before completing line 1 of Form 1X, you must recompute your federal adjusted gross income and itemized deductions. It may be helpful to use Wisconsin Schedule I to do this. Then complete a revised Form 1 through line 13 and enter the amount from line 13 on Form 1X, line 1. Attach to the amended return a schedule showing the depreciation computations.

Individuals Filing Form INPR - Use Form 1NPR and print “Amended Return - Bonus Depreciation” at the top of your corrected return. Before completing the amended return, you must recompute your federal

adjusted gross income and itemized deductions to reflect the depreciation difference. It may be helpful to use Wisconsin Schedule I to do this. Use the amounts from Schedule I when filling in lines 1 through 29 and Schedule 2 of your amended Form 1NPR. Attach to the amended return a schedule showing the depreciation computations.

Fiduciaries Filing Form 2 - Use Form 2 and print “Amended Return - Bonus Depreciation” at the top of your corrected return. Before completing the amended return, you must recompute the trust’s or estate’s taxable income to reflect the depreciation difference. It may be helpful to use Wisconsin Schedule I to do this. Use the amounts from Schedule I to complete Schedule B of your amended Form 2. Attach to the amended return a schedule showing the depreciation computations. In addition, complete an amended Schedule 2K-1 for each of the beneficiaries showing the depreciation difference as an addition on the appropriate line in the adjustment column. Each beneficiary must file an amended Wisconsin return to report his or her share of the depreciation adjustment. [☞](#)

Use Sales Internet Process to File

If you’re a tax practitioner and would like to file your clients’ sales and use tax returns electronically, the department invites you to do so using its Sales Internet Process (“SIP”).

SIP is a secure Internet process that provides the convenience of filing sales and use tax returns (Form ST-12) from your computer desktop. This technology is more efficient and flexible than filing a paper Form ST-12 and will save you time and money in the long run.

SIP offers many advantages over filing paper Form ST-12s. Using SIP eliminates the worry about whether the department receives your clients’ Form ST-12s on time. For example, it eliminates any concerns about the postal service delivering your clients’ returns by the due date. Another advantage is that SIP will do many of the computations for you. However, you will need to make a few manual pre-calculations in order to arrive at the data to enter into SIP. Perhaps the biggest advantage SIP offers is the flexibility to file your clients’ sales and use tax returns

before the due date, and yet they can make their payments later (on the due date). SIP also gives you a receipt that confirms the filing date for each of the returns you file.

In order to use SIP, you must apply for a logon ID and password by completing a SIP application (Form S-002). Further, each client for which you will be using SIP must also fill out a Form S-002, giving you permission to access the client’s account via SIP, to file the sales and use tax returns. Clients must also obtain their own separate logon IDs and passwords to access their individual account information on SIP.

For more information about SIP and to obtain a SIP application, please visit the department’s web site at www.dor.state.wi.us/eserv/sip.html. You can also review (and download, if you wish) a publication about SIP, Wisconsin Publication 227 titled “*E-File Sales Tax returns with S.I.P.*,” at www.dor.state.wi.us; click on “Publications” and then “Tax Publications.”

If you have more questions about SIP after visiting the web site, contact the department’s Inquiry and Technical Assistance unit at (608) 261-6261. [☞](#)

Tax Publications Available

Listed below are 69 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, P.O. Box 8951, Madison, WI 53708-8951; call (608) 266-1961; or fax a request to (608) 261-6913.

By E-Mail

You may e-mail your request to forms@dor.state.wi.us.

Via Your Fax Machine

Use the department's Fax-A-Form system by calling (608) 261-6229 from a fax telephone and entering the retrieval code "10" plus the publication number.

Via the Internet

Access the department's web site at www.dor.state.wi.us, and click on "Publications" and then "Tax Publications."

Note: The numbers of some publications may be followed by an asterisk. These are publications that are new or have been revised since the last issue of the *Wisconsin Tax Bulletin*.

Income and Franchise Taxes

- 102* Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/02)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/02)
- 104 Wisconsin Taxation of Military Personnel (10/02)
- 106* Wisconsin Tax Information for Retirees (11/02)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2002 (11/02)
- 112* Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (11/02)

- 113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/02)
- 116* Income Tax Payments Are Due Throughout the Year (11/02)
- 119* Limited Liability Companies (LLCs) (12/02)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/02)
- 121 Reciprocity (12/01)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2002 (11/02)
- 123* Business Tax Credits for 2002 (12/02)
- 125 Credit for Tax Paid to Another State (11/02)
- 126 How Your Retirement Benefits Are Taxed (11/02)
- 600 Wisconsin Taxation of Lottery Winnings (1/02)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/02)

Sales and Use Taxes

- 200* Electrical Contractors – How Do Wisconsin Sales and Use Taxes Affect Your Business? (11/02)
- 201* Wisconsin Sales and Use Tax Information (11/02)
- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)
- 203 Sales and Use Tax Information for Manufacturers (7/00)
- 205 Use Tax Information for Individuals (8/01)
- 206 Sales Tax Exemption for Nonprofit Organizations (6/00)
- 207 Sales and Use Tax Information for Contractors (10/00)
- 210 Sales and Use Tax Treatment of Landscaping (4/01)
- 211 Cemetery Monument Dealers – How Do Wisconsin Sales and Use Taxes Affect You? (6/00)
- 212 Businesses: Do You Owe Use Tax on Imported Goods? (8/01)
- 213 Travelers: Don't Forget About Use Tax (8/01)
- 214 Businesses: Do You Owe Use Tax? (8/01)

- 216 Filing Claims for Refund of Sales or Use Tax (11/00)
- 217 Auctioneers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)
- 219 Hotels, Motels, and Other Lodging Providers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (2/01)
- 220 Grocers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/01)
- 221 Farm Suppliers and Farmers – How Do Wisconsin Sales and Use Taxes Affect Sales to Farmers? (3/02)
- 222 Motor Vehicle Fuel Users: Do You Owe Use Tax? (3/00)
- 223* Bakeries – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/03)
- 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? (12/02)
- 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)
- 230* Sales and Use Tax Information for Sellers of Antiques, Crafts, and Artwork (12/02)

Other Taxes and Credits

- 127* Wisconsin Homestead Credit Situations and Solutions (11/02)
- 128 Wisconsin Farmland Preservation Credit Situations and Solutions (12/01)
- 400* Wisconsin’s Recycling Surcharge (12/02)
- 403 Premier Resort Area Tax (2/98)
- 410 Local Exposition Taxes (5/01)
- 503* Wisconsin Farmland Preservation Credit (11/02)
- 508 Wisconsin Tax Requirements Relating to Nonresident Entertainers (5/01)

W-166* Wisconsin Employer’s Withholding Tax Guide (11/02)

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 (9/00)
- 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 (11/02)
- 117* Guide to Wisconsin Information Returns (11/02)
- 124 Petition for Compromise of Delinquent Taxes (5/00)
- 130* Fax A Form (12/02)
- 140 A Tax Practitioner’s Guide to Electronic Filing (6/00)
- 401* Extensions of Time to File (11/02)
- 405 Wisconsin Taxation of Native Americans (12/01)
- 500* Tax Guide for Wisconsin Political Organizations and Candidates (11/02)
- 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) [↗](#)

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




**Wisconsin/Minnesota
Sales Tax Seminars**

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

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

March 4, 2003 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

March 11, 2003 – Hudson, Wisconsin
Hudson House
1616 Crestview Drive

March 18, 2003 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Street 

Wisconsin Joins MTC Audit Program

Section 73.03(28d), Wis. Stats., was created in 2001 Wisconsin Act 109, authorizing the department to enter into a contract to participate in the Multistate Tax Commission (“MTC”) audit program. During October 2002, the department officially executed a contract with the MTC and joined their audit program.

The MTC audit staff consists of 15 auditors, three supervisors, and an audit director. They have offices in Chicago, New York, and Houston, but they will travel to do audits as necessary. Audits conducted are of corporation income/franchise and sales/use taxes. The companies audited are typically of the type associated with the Fortune 500.

Currently 22 states, including Wisconsin, participate in the MTC audit program. A state may participate for income/franchise tax purposes only, sales/use tax purposes only, or both. Wisconsin is participating for both tax types.

Taxpayers are normally selected for audit by the member states. However, a taxpayer is also allowed to request the MTC to do an audit. If a taxpayer does make such a request, the member states will decide if the audit is done.

Before the MTC starts an audit, each state has the option of participating or not participating in that audit. There is no requirement for a state to automatically be a part of every audit MTC does, just because the state is a member of the MTC audit program.

For income/franchise tax purposes, the MTC audit scope includes every corporation in the consolidated group as indicated on the federal affiliation schedule. Therefore, if the parent and multiple subsidiaries file Wisconsin returns, the audit could become a number of separate audits for Wisconsin purposes. However, the department has the right to participate or not participate in the audit of each affiliate. In some cases the department will participate in the MTC audit of only selected affiliates and audit the excluded affiliates with department audit staff. For affiliates that do not file Wisconsin returns, the MTC auditor will typically perform a nexus investigation.

For sales/use tax audits, the MTC audit scope will be limited to the named entity only. The audit will not extend to the affiliated companies unless specifically indicated or the audit is expanded to specifically include other affiliates.

When the MTC completes an audit, it is sent to the department for processing and assessment. The taxpayer will have the same appeal rights as in one of the regular department audits.

Fees for the department's participation in the MTC audit program will be phased in over a three-year period. The department will pay 35% of the full fee in the fiscal year ending June 30, 2003, 75% in the fiscal year ending June 30, 2004, and 100% each year thereafter. However, the MTC audit fees will be paid out of the collections generated by the MTC audits. Any collections in excess of the audit fees will go into the general fund.

It is anticipated that the MTC audit program will be used primarily to expand the department's audit coverage of taxpayers located outside of Wisconsin. It is not anticipated that the MTC audit staff will perform audits for the department, of taxpayers located in Wisconsin. However, the decision to participate in an MTC audit will be made on a case by case basis. [☞](#)

City of Bayfield Adopts Premier Resort Area Tax

Beginning January 1, 2003, the 0.5% premier resort area tax is in effect in the City of Bayfield.

Every retailer making retail sales or rentals of tangible personal property or taxable services that are subject to the 5% Wisconsin state sales tax is also subject to the 0.5% premier resort area tax on such sales or rentals if all three of the following conditions are met:

1. The retailer is "engaged in business" in a premier resort area.
2. The sale or rental has a "situs" in the premier resort area.
3. The retailer is classified in the Standard Industrial Classification Manual, 1987 Edition, published by

the U.S. Office of Management and Budget, under certain industry numbers.

Retailers were notified about the City of Bayfield's adoption of the premier resort area tax in the December 2002 *Sales and Use Tax Report* (number 4/02). The Report was sent in late December and early January to all persons registered for Wisconsin sales and use tax purposes. A copy of the Report appears on pages 43 and 44 of this Bulletin.

For more information about the premier resort area tax, refer to Wisconsin Publication 403, *Premier Resort Area Tax*, which is available from any Department of Revenue office. See the article titled "Tax Publications Available" on page 18 of this Bulletin for information about how to obtain copies of Publication 403 by mail, e-mail, fax, or the Internet. [☞](#)



Focus on Publications: Antiques, Crafts, Artwork

How do Wisconsin sales and use taxes apply to persons who sell antiques, crafts, or artwork at fairs, shows, or malls? When is a seller's permit required, and who must collect sales taxes and remit them to the Department of Revenue?

Answers to these and other questions are provided in a new Wisconsin publication, Publication 230, *Sales and*

Use Tax Information for Sellers of Antiques, Crafts, and Artwork. The publication also provides information about how to get additional help and how to apply for a seller's permit.

A copy of Publication 230 appears on pages 45 to 47 of this Bulletin. Copies of this as well as any of the other department publications can be obtained at any Department of Revenue office, or by mail, e-mail, fax, or the Internet. See the article titled "Tax Publications Available" on page 18 of this Bulletin for details. [↗](#)



Take Advantage of the Speakers Bureau

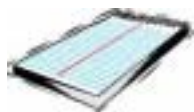
Are you planning a meeting, workshop, conference, or training program? The Department of Revenue's Speakers Bureau provides speakers, free of charge, who can provide information to business, community, and educational organizations.

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, P.O. 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; click on "Training." [↗](#)



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

Credit Card Payment Options Expanded

The Department of Revenue credit card payment program continues to grow. All types of income payments can be made by credit card, and Visa has joined the ranks of participating companies.

The credit card payment option is available to both electronic and paper filers. Taxpayers can make their bill payments by telephone or by the Internet. Additional credit card information is available at the department's web site, www.dor.state.wi.us.

Credit cards are accepted for:


- Individual Income Tax Balances Due on Return
- Individual Income Tax Extension Payments
- Individual Income Tax Estimated Payments
- Delinquent Tax Payments
- Individual Income Tax Notices of Adjustment

Participating credit card companies are:

- American Express
- Discover/Novus
- MasterCard
- Visa

Official Payments Corporation charges the taxpayer a convenience fee of 2.5% of the payment amount, with a minimum fee of \$1.00 on tax payments less than \$40.00. The Department of Revenue does not charge this fee. The fee appears as a separate charge on the taxpayer's credit card statement. You can find more information about Official Payments Corporation on their web site at www.officialpayments.com or by calling 1-877-754-4420. Materials designed exclusively for tax professionals and their clients are available on the Official Payments Corporation web site.

Benefits of offering credit card payments are:

- *Gives customers a more flexible payment option.* Customers have the flexibility to pay the taxes over several months, they receive a 30-day grace period, and they have the option to pay off the entire balance due at any point.
- *Gives customers a more convenient payment option.* For example, a customer waits until April 15 to complete the tax return and then decides to use the system to save time. Faced with long lines at the post office, it is more convenient to pay by credit card.
- *Gives customers credit card rewards.* Customers using a credit card with a bonus rewards program may be able to earn rewards, points, cash back, or frequent flyer miles for paying the taxes. The taxpayer may defer the payment for 30 days and still gain from the reward program. 

Delinquent Tax Compromises

When a taxpayer does not have the ability to pay a delinquent tax liability in full, either immediately or over a period of time, a compromise of delinquent tax may be considered. A taxpayer must complete a Form A-212, *Petition for Compromise of Delinquent Taxes*, to request a compromise.

When reviewing a taxpayer's petition for compromise, the department considers many factors. Among them are:

- age of the petitioners;
- current and future earning potential;
- equity in real estate or other assets; and
- any other factor that would affect a taxpayer's ability to fully satisfy the obligation.

Compromise amounts must be paid in a lump sum or, if the department agrees, through installments. Accepting installment payments to satisfy a compromise of delinquent tax is at the department's discretion; no installment arrangements will be accepted if the department believes the acceptance would jeopardize the state's revenues.

Installment payments are a way for some taxpayers to take advantage of a delinquent tax compromise who would otherwise be unable to do so. However, acceptance of a compromise based on installment payments also carries a condition that no new tax obligations may be incurred during the life of the agreement. Not making all of the agreed upon payments by their due dates, or incurring a new tax obligation while making payments, will automatically void the agreement. Should this occur, the full tax obligation that

was the subject of the compromise will become due and owing immediately.

Publication 124, *Petition for Compromise of Delinquent Taxes*, offers more information on this topic. Both the

Form A-212 and the publication are available on the department's web site, www.dor.state.wi.us. See the article titled "Tax Publications Available" on page 18 of this Bulletin, for other methods of obtaining Publication 124. [↗](#)

Negligence Penalties May Be Imposed in Field Audits

The Field Audit Section of the Wisconsin Department of Revenue has the authority to impose various negligence penalties during the field audit of a taxpayer's franchise, income, withholding, or sales and use tax returns.

Following are the main factors considered by the department in determining whether penalties should be imposed, and statistics indicating the percentage of field audit actions in the past four years that included negligence penalties.

The main factors considered by the department for the imposition of negligence penalties include:

- Taxpayer's awareness of the taxability of the items adjusted, including whether taxpayer should have been aware.

- Certainty or uncertainty of the taxable status of the items adjusted.
- Knowledge, education, and expertise of the person(s) responsible for filing the returns.
- Prior audit history and prior penalty imposition.
- Adequacy of the records and taxpayer's efforts to establish adequate records.
- Consistency and pattern of errors.
- Any other information that relates to whether or not there was good cause for underreporting.

Field audit negligence penalties imposed:

Fiscal Year Ending June 30...	<u>1999</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>
Number of Negligence Penalties	317	320	311	385
Number of Actions	1672	1638	1581	1631
Percentage	19.0%	19.5%	19.7%	23.6%

[↗](#)

Dry Cleaners Must Be Licensed, Pay Fees and File Returns Timely

License requirements

Dry cleaners operating in Wisconsin must be licensed by the Wisconsin Department of Revenue, to operate a dry cleaning facility. Dry cleaners that are not licensed could be subject to penalties for each day they operate without holding a valid dry cleaning license.

In order to obtain a dry cleaning license for the current year, a facility must have paid in full the dry cleaning facility fee from the previous calendar year, as explained below. When the January 25 quarterly installment is paid, the department mails a dry cleaning license, which is valid for the year in which the January 25 installment is due.

Under Wisconsin law, unless specifically exempted, any person who operates a dry cleaning facility without holding a valid dry cleaning license issued by the department is subject to a penalty. The penalty is \$5 per day for each day the person operates without a license.

Fees and dry cleaning returns

The dry cleaning facility fee and dry cleaning return are due to the department in four quarterly installments, on April 25, July 25, October 25, and January 25. The amount of the fee for each installment is 1.8% of the gross receipts received in the quarter ending the last day of the month preceding the payment due date.

Example:

Gross receipts –	
January	\$1,321
February	1,255
March	<u>982</u>
First quarter total	\$3,558
	<u>X .018</u>
Amount due April 25	\$64.04

Failure to pay the fee by the installment due date results in a penalty of \$5 per day for each day the installment is late. In addition, dry cleaners that file their dry cleaning return after the due date are subject to a late filing fee, as well as delinquent interest on fees due with the return. A

dry cleaner that files late may also be assessed negligence penalties.

For corporations, the late filing fee is \$30. For businesses other than corporations, the late filing fee is as follows:

- \$2 when the total fee for the quarter is less than \$10.
- \$3 when the total fee for the quarter is \$10 or more, but less than \$20.
- \$5 when the total fee for the quarter is \$20 or more.
- Exception - \$30 when the return is 60 or more days late.

The total fee due with a late-filed return is subject to interest at 1.5% per month until paid. If the dry cleaning return is filed late due to negligence, the fees due on the return are also subject to a negligence penalty of 5% for each month or fraction of a month the return is late, up to 25%.

If you have questions regarding dry cleaning facility fees or returns, or how to obtain a dry cleaning license, you may contact the department's Inquiry and Technical Assistance unit at (608) 266-2776. Additional information is also available on the department's web site, www.dor.state.wi.us, under "FAQs" (frequently asked questions). [↗](#)

Jury Trial Nets Tax Fraud Conviction

Kathryn M. Richardson, 45, a Greenfield Public School teachers aide and Greenfield Junior Miss pageant organizer, was convicted in December 2002, of theft and state income tax fraud after a five day jury trial in Milwaukee County Circuit Court. Richardson was charged in April 2002 with theft of \$66,504, and with filing fraudulent Wisconsin income tax returns for 1996, 1997, and 1998.

According to the criminal complaint, from 1992 to 1998, Richardson was the office manager for Dr. Deborah Luetzow, who operated a family health practice in South Milwaukee, Wisconsin. Richardson had control of both the computerized check register and the doctor's business bank account. Between February 1996 and April 1998, she embezzled money from Dr. Luetzow's account by either writing out checks of up to \$7,500 to herself, or by giving herself additional paychecks beyond her weekly salary. Luetzow fired Richardson in May 1998, after the theft was discovered.

On a number of occasions Richardson concealed the thefts by fraudulently coding the amounts to a medical supply expense in the computerized check register. While Richardson embezzled, she also fell behind in making employee withholding tax payments for the doctor's business. This resulted in several delinquent tax notices from both the state and federal governments, which Richardson concealed from the doctor.

The scheme ended in April 1998, when Dr. Luetzow received a call from the Wisconsin Department of Regulation and Licensing, informing her that her Physicians license had been revoked for failure to pay delinquent state employee withholding taxes during 1997. After being forced to close her office for a week,

Dr. Luetzow hired a CPA to audit her business records. The audit led to subsequent investigations by the South Milwaukee Police Department and Wisconsin Department of Revenue Fraud Unit, which ultimately resulted in the criminal charges filed against Richardson in April 2002.

Richardson is scheduled to be sentenced on March 6, 2003, and faces up to 25 years in prison.

Additional charges were filed in October 2002, relating to a state homestead credit fraud ring that was dubbed the "780 Club" by the Wisconsin Department of Revenue. See *Wisconsin Tax Bulletin* 132 (October 2002), page 18, for a summary of earlier charges. A criminal complaint was filed in Milwaukee County Circuit Court by the Milwaukee County District Attorney's Office, against Beatrice Sims, 47, of 5029 N. 46th St., Milwaukee.

Sims became the fifth person charged in connection with a fraudulent Wisconsin homestead credit refund scheme, dubbed the "780 Club." Previously charged in September 2002, were: Theresa Perkins McCoy, Tracy D. Perkins, Phyllis Davis, and Yvette Peterson. McCoy appeared in Milwaukee County Circuit Court before Judge Victor Manian in October 2002 and pled guilty to filing a false tax document, a felony punishable by 7 1/2 years imprisonment and/or a fine of up to \$10,000.

The "780 Club" participants are responsible for the filing of approximately 500 false Wisconsin homestead credit claims in 297 different names. 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 received 383 false homestead credit claims in 1998, each seeking a refund of \$780. The false claims totaled \$298,740. Before the scheme was uncovered, the Department of Revenue paid \$110,886 in false homestead claims. No false claims were paid after the investigation began.

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. [↗](#)

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 January 1, 2003, and at each step where action occurred during the period from October 2, 2002, through January 1, 2003.

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 81 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Rules Being Reviewed Following Publication of Scope Statement

- 11.19 Printed material exemptions – A
- 11.33 Occasional sales – A
- 11.46 Summer camps – A
- 11.48 Landlords, hotels and motels – R&R
- 11.50 Auctions – A
- 11.57 Public utilities – A
- 11.65 Admissions – A
- 11.87 Meals, food, food products and beverages – A

Rules Sent to Legislative Council Rules Clearinghouse

- 11.001 Forward and definitions – A

- 11.13 Direct pay – A
- 11.14 Exemption certificates – A
- 11.84 Aircraft – A

Rules Sent to Revisor for Publication of Notice

- 11.001 Forward and definitions – A
- 11.13 Direct pay – A
- 11.14 Exemption certificates – A
- 11.84 Aircraft – A

Rules Adopted and in Effect (and effective date)

- 1.14* Petition for redetermination – A (November 1, 2002)
* formerly 3.91
- 2.03 Corporation returns – A (November 1, 2002)
- 2.12 Claims for refund and other amended returns – A (November 1, 2002)
- 6.40 Waste treatment facilities – industrial/utility – A (December 1, 2002)
- 11.11 Utility, industrial and governmental waste treatment facilities – A (December 1, 2002)
- 11.66 Telecommunications and telecommunications message services - A (December 1, 2002)
- 12.40 Waste treatment facilities - industrial – A (December 1, 2002) [↗](#)

Recently Adopted Rules Summarized

Summarized below is information regarding seven administrative rules that have been revised: sections Tax 1.14 relating to petitions for redetermination, Tax 2.03 relating to corporation tax returns, Tax 2.12 relating to claims for refund, Tax 6.40 relating to industrial and utility waste treatment facilities (property tax exemption for public utilities), Tax 11.11 relating to waste treatment facilities (sales and use tax exemption), Tax 11.66 relating to telecommunications, and Tax 12.40 relating to industrial waste treatment facilities (property tax exemption under ch. 70, Wis. Stats.). The effective date of the revisions to Tax 1.14, 2.03, and 2.12 is November 1, 2002, and the effective date of the revisions to Tax 6.40, 11.11, 11.66, and 12.40 is December 1, 2002.

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

To order up-to-date administrative rules of the department, you can use the order blank that appears on page 81 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

Tax 1.14 Petition for redetermination. (Note: this rule was formerly Tax 3.91.) The rule is moved from chapter Tax 3 to chapter Tax 1, because the subject matter pertains to all taxes, credits, and fees administered by the department's Income, Sales and Excise Tax Division.

Subsection (1) is revised, to list additional taxes, credits, and fees to which the section pertains.

Subsection (2) is revised, to remove outdated requirements relating to the format of a petition for redetermination.

Subsection (3) is revised, to update filing deadline provisions, pursuant to amendments to secs. 71.80(18) and 77.61(4), Wis. Stats., by 1997 Wis. Act 27.

Subsection (4) is revised, to update provisions relating to deposits paid at the time of filing a petition for redetermination, pursuant to the amendment of sec. 71.90(1), Wis. Stats., by 1997 Wis. Act 27.

In addition, all of the subsections and notes are revised, to clarify language and update style and format, per

Legislative Council Rules Clearinghouse ("Clearinghouse") standards.

The text of Tax 1.14 (1), (2), and (3) is as follows:

Tax 1.14 (1) SCOPE. A person feeling aggrieved by a notice of additional assessment of income, franchise, ~~sales, use, withholding or gift tax, state, county or stadium sales or use, premier resort area, local exposition, motor vehicle fuel, alternate fuels, general aviation fuel, fermented malt beverages, liquor, cigarette, tobacco products or controlled substances tax or petroleum inspection, state rental vehicle or dry cleaning fee~~, by a notice of reduced homestead, farmland preservation or other credits, or by a notice of refund or denial of refund may petition the department ~~of revenue~~ for redetermination. This section describes the administrative provisions related to the petition for department redetermination.

(2) FORMAT OF THE PETITION. The petition for redetermination ~~specified in ss. 71.88(1) and 77.59(6), Stats., shall be written, preferably typed, on only one side of plain white paper not more than 8 1/2 inches wide by 11 inches long and shall be filed in duplicate. It shall be in writing and shall set forth clearly and concisely the specific grievances to the assessment, reduced credit, refund or denial of refund, including a statement of the relevant facts and propositions of law upon which the grievance is based. Every petition shall be signed by the taxpayer or by a duly authorized representative.~~

(3) FILING DEADLINE. A (a) To be considered "timely filed" a petition for redetermination shall be filed within 60 days after receipt of a notice of additional assessment, reduced credit, refund or denial of refund. A ~~Except as provided in par. (b), a petition for redetermination is not "filed" within the proper statutory 60-day time period unless only if it is actually received by the department, or at the destination that the department prescribes, within the 60-day period, or unless it is mailed in a properly addressed envelope, with postage prepaid, the envelope is postmarked before midnight of the sixtieth 60th day and the petition is actually received by the department, or at the destination that the department prescribes, within 5 business days of the prescribed sixtieth 60th day date.~~

(b) In lieu of being received by the department or at a destination prescribed by the department, a petition for redetermination may be received at a destination prescribed by the department of administration if the petition for redetermination relates to a notice of additional assessment, reduced credit, refund or refund denial of income, franchise, withholding, motor vehicle fuel, alternate fuels, general aviation fuel, fermented malt beverages, liquor, cigarette, tobacco products or controlled substances tax, homestead, farmland preservation or other credit or state rental vehicle fee.

Tax 2.03 Corporation returns. In sub. (1), par. (j) is repealed, to reflect the discontinuance of the use of Form 4X. Consequently, pars. (k) to (x) are renumbered (j) to (w). As renumbered, pars. (n), (o), and (s) are

revised, to correct the names of Forms 5S and 5S-1, and Schedule DC. Paragraph (x) is created, to list Schedule Z-1.

Subsection (4) is revised, to provide updated filing procedures per the amendment to sec. 71.80(18), Wis. Stats., by 1997 Wis. Act 27.

The two notes at the end of Tax 2.03 are revised, to provide the correct department office location and mailing address, and to add a statutory reference.

The text of Tax 2.03(1)(x) and (4) is as follows:

Tax 2.03(1)(x) Schedule Z-1. Manufacturer's sales tax credits passed through from other entities.

(4) FILING RETURNS. All forms and information required to be filed or furnished by corporations shall be ~~delivered to the department or mailed to the address specified by the department on the form or in the instructions or the department of administration, or delivered to the department or to the destination that the department or the department of administration prescribes.~~

Tax 2.12 Claims for refund and other amended returns. The title is revised, to clarify that claims for refund are amended returns.

Subsections (1) and (3)(a), (b), (c), and (e) are revised, to remove the word “temporary” and a note is added at the end of the rule, to reflect the replacement of the “temporary recycling surcharge” with a “recycling surcharge” pursuant to the amendment of subch. VII of ch. 77, Wis. Stats., by 1999 Wis. Act 9. Subsection (3)(b) is further revised, to remove a statutory reference that is no longer applicable and to add a reference to subs. (5) and (6), for clarity.

Subsection (2) is repealed and recreated, to change the title to “Definitions,” to provide a definition of “claim for refund” in par. (a), and to revise the definition of “timely filed” in par. (b), to reflect the amendment of sec. 71.80(18), Wis. Stats., by 1997 Wis. Act 27.

In sub. (4), pars. (b)1., (b)2., (b)4., and (b)5. are revised, to incorporate the term “claim for refund” as defined in sub. (2)(a). Paragraph (b)2. is further revised, to explain the provisions of sec. 71.88(1)(a), Wis. Stats., and to add examples. Paragraph (b)3. is repealed and recreated, to update provisions relating to filing a refund claim after paying an uncontested office audit or field audit assessment or refund, to reflect the amendment of sec. 71.75(5), Wis. Stats., by 1997 Wis. Act 27. Several examples are also added.

In sub. (5), par. (a) is repealed and recreated (the table is no longer needed), par. (b) is renumbered par. (c) and revised, and new par. (b) is created, to reflect the use of “Telefile” and “Netfile,” and the discontinuance of the use of Form 4X. Paragraph (d) is created, to set forth in a separate paragraph the format requirements for filing an amended return not requesting a refund. In addition, three obsolete notes at the end of Tax 2.12 are deleted and the last note is revised, to add an additional statutory reference.

In sub. (6), par. (b) is revised, to reflect the discontinuance of the use of Form 4X. Paragraph (c) is revised, to incorporate the term “claim for refund” as defined in sub. (2)(a). Paragraph (d) and the note following are revised, to reflect that mailing addresses are listed on amended forms or in their instructions.

The text of Tax 2.12(title), (2), (4)(b)2. and 3., and (5)(a), (b), and (d) is as follows:

Tax 2.12(title) ~~Amended~~ Claims for refund and other amended returns.

(2) DEFINITIONS. In this section:

(a) “Claim for refund” means an amended Wisconsin return or credit claim as described in sub. (1), on which a refund is requested.

(b) “Timely filed,” in the case of an amended return or credit claim, means either of the following:

1. If the amended return or credit claim is mailed, it is mailed in a properly addressed envelope with postage prepaid and is received by the department, or is received at the destination that the department or the department of administration prescribes, within 5 business days after the last day of the statutory limitation period or extended limitation period.

2. If the amended return or credit claim is not mailed, it is in the possession of the department, or is received at the destination that the department or the department of administration prescribes, prior to the expiration of the statutory limitation period or extended limitation period.

(4)(b)2. Except as provided in subs. 3. and 4., ~~an amended Wisconsin return or credit claim requesting a claim for refund may not be filed for any item of income or deduction assessed as a result of an office audit, provided the assessment has become final under s. 71.88(1)(a) or (2)(a), 71.89 (2), 73.01 or 73.015, Stats. Section 71.88(1)(a), Stats., provides that a taxpayer may file a petition for redetermination within 60 days of receipt of a notice of additional assessment, refund or denial of refund. If a taxpayer does not file a petition for redetermination of a notice of assessment, refund or refund denial, the adjustments made in the notice are final and conclusive. The taxpayer is not entitled to a refund on any subsequent claim for refund based on the same adjustments as those in the notice of assessment, refund or denial of refund.~~

Examples: 1) Taxpayer A files an amended 2000 return to claim additional business expenses. The department allows only a portion of the claimed additional expenses, based on a difference in interpretation of the law. A notice of refund is issued March 1, 2003. The taxpayer does not file a petition for redetermination. In December 2003, the taxpayer files another amended return claiming the same additional business deductions as those disallowed in the prior notice of refund. The taxpayer is not entitled to a refund on the claim for refund. The March 1, 2003, notice of refund is final.

2) Taxpayer B files an amended 2000 return to claim additional business expenses. The department disallows a portion of the claimed additional expenses, due to lack of substantiation of the expenses as requested in a letter to the taxpayer. A notice of refund is issued March 1, 2003. The taxpayer does not file a petition for redetermination. In December 2003, the taxpayer submits adequate substantiation to support the full deduction. The deduction is not allowed and no additional refund will be issued. Since no petition for redetermination was filed for the March 1, 2003, notice of refund, that notice is final.

3) Taxpayer C files a timely 1998 return claiming a refund of earned income credit and excess income tax withheld. During the processing of the return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. The taxpayer does not respond to the request for additional information. A notice of refund is issued in July 1999, to refund the excess income tax withheld only. The taxpayer does not file a petition for redetermination. The taxpayer files a timely 1999 return claiming a refund of earned income credit and excess income tax withheld. During the processing of this return the taxpayer is sent a letter requesting additional information to substantiate the earned income credit. This letter requests the same information that was requested for the processing of the 1998 return. The taxpayer submits the additional information needed for both the 1998 and 1999 returns. Since the taxpayer did not submit a petition for redetermination for the 1998 notice of refund, that notice is final. A notice of refund for the earned income credit is issued for 1999 only.

3.a. For taxable years beginning on or after January 1, 2000, a claim for refund for each year for which an amount due is calculated as a result of items adjusted in an office audit or field audit assessment or refund may be filed within 4 years of the date of the adjustment notice, provided no petition for redetermination was filed and, if the adjustment notice was an assessment, the amount due was paid. No refund claim may be filed under this subd. 3.a. for any year that resulted in a refund or no change in the amount owed.

Examples: 1) Taxpayer D files a timely 2000 return. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

2) Taxpayer E files timely 2000 and 2001 returns. The department completes an audit of the returns and issues a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit for each year but also disallows a portion of the claimed business expenses for each year, with the net result being a refund for each year. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

3) Taxpayer F files a timely 2000 return on April 15, 2001. The department completes an office audit of this return by issuing a notice of additional tax due dated March 30, 2005. The notice of additional tax due allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses.

4) Taxpayer G files timely 2000 and 2001 returns. The department completes an office audit of these returns by issuing a notice of refund dated March 30, 2005. The notice of refund allows an additional itemized deduction credit resulting in a refund for 2000 and disallows a portion of the claimed business expenses for an assessment for 2001, with the net result being a refund for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses for the year 2001.

5) Taxpayer H files timely 2000 and 2001 returns. The department completes an office audit of these returns by issuing a notice of additional tax due dated March 30, 2005. The notice of additional tax due allows an additional itemized deduction credit resulting in a refund for 2000 and disallows a portion of the claimed business expenses resulting in an assessment for 2001, with the net result being an assessment for the two years combined. The taxpayer does not file a petition for redetermination. The taxpayer has until March 30, 2009, to file a claim for refund for the disallowed business expenses for the year 2001.

b. For taxable years beginning prior to January 1, 2000, a claim for refund for each year for which an amount due is calculated as a result of items adjusted in an office audit or field audit net assessment may be filed within 2 years of the date of the assessment notice, provided no petition for redetermination was filed and the amount due was paid. No refund claim may be filed under this subd. 3.b. for any year that resulted in a refund or no change in the amount owed or, in the case of a multiple year audit resulting in a net refund, for any year for which an amount due is calculated.

Examples: 1) Taxpayer I files a timely 1999 return on April 15, 2000. The department completes an office audit of this return by issuing a notice of refund dated March 30, 2004. The notice of refund allows an additional itemized deduction credit and disallows a portion of the claimed business expenses. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for the disallowed business expenses.

2) Taxpayer J files timely 1998 and 1999 returns. The department completes an office audit of these returns by issuing a notice of refund dated March 30, 2003. The notice of refund allows an additional itemized deduction credit resulting in a refund for 1998 and disallows a portion of the claimed business expenses for an assessment for 1999, with the net result being a refund for the two years combined. The taxpayer does not file a petition for redetermination. The notice of refund is final, and the taxpayer is not entitled to any refund on a subsequent claim for refund for 1998 or 1999.

(5)(a) Except as provided in par. (b) or (c), a claim for refund shall be filed on the same form as the original form, in the manner prescribed in sub. (6).

(b) Except as provided in par. (c), a claim for refund shall be filed on a form 1X, in the manner prescribed in sub. (6), if any of the following apply:

1. The original return was filed on a form 1, 1A or WI-Z.
2. The original return was filed using “tefile” or “netfile.”
3. The original credit claim was filed with a form 1 or 1A.

(d) An amended Wisconsin return or credit claim filed for a purpose other than to request a refund is not required to be filed on a specific form.

Tax 6.40 Waste treatment facilities – industrial/utility. The title is revised, to update format per Clearinghouse standards.

Subsection (2)(b) is revised, to update the address for mailing applications for exemptions and to move it from the text to a note, per Clearinghouse standards.

In sub. (3), pars. (a)1. and (a)3. are renumbered pars. (a)3. and (a)1. and revised, to place definitions in alphabetical order and to update format, per Clearinghouse standards. Paragraphs (a)2., (a)4., (b), and (c) are revised, to update format and language per Clearinghouse standards. Paragraph (a)4. is further revised and par. (d) is created, to move a substantive provision in a definition to a separate paragraph.

The text of Tax 6.40(3)(d) is as follows:

Tax 6.40(3)(d) The exemption for industrial waste treatment facilities does not apply to monitoring equipment that is not a component or integral part of a waste treatment facility.

Tax 11.11 Utility, industrial and governmental waste treatment facilities. The title is revised, to clarify that Tax 11.11 provides separate treatment for utility waste treatment exemptions.

In sub. (2), the title is revised, to clarify that sub. (2) applies only to utility waste treatment exemptions.

Paragraph (b) is repealed, because it is obsolete, and consequently sub. (2)(a) is renumbered sub. (2). As renumbered, sub. (2) is revised, to provide that a utility waste treatment facility that qualifies for property tax exemption under sec. 76.025(1), Wis. Stats., qualifies for the sales and use tax exemption under sec. 77.54(26), Wis. Stats.

Subsection (2m) is created, to provide separate treatment for the sales and use tax exemption for industrial waste treatment facilities that are not utilities.

Subsection (4) is renumbered sub. (4)(a) and revised, and par. (b) is created, to provide that the exemption also extends to utility waste treatment facilities, and to set forth the exemption for chemicals and supplies in a separate paragraph.

In sub. (5), par. (a) is revised and par. (c) is repealed and recreated, to reflect the elimination of the approval process for sales tax exemptions for industrial waste treatment facilities, except utilities, per the amendment of sec. 70.11(21), Wis. Stats., by 2001 Wis. Act 16, effective January 1, 2002.

The text of Tax 11.11(2m), (4)(a) and (b), and (5)(c) is as follows:

Tax 11.11(2m) INDUSTRIAL WASTE TREATMENT EXEMPTION. (a) An industrial waste treatment facility is any property taxed under ch. 70, Stats., that is built, constructed or installed as a unit used for the treatment of liquid or other wastes resulting from any process of industry, manufacture, trade, business or the development of any natural resource.

(b) Tangible personal property becoming a component part of an industrial waste treatment facility is exempt from the sales and use tax under s. 77.54(26), Stats., if the facility qualifies for property tax exemption under s. 70.11(21)(a), Stats. To ascertain whether a manufacturing property would be exempt under s. 70.11(21), Stats., owners may contact the district office of the manufacturing and telco assessment bureau of the department. To ascertain whether a non-manufacturing property would be exempt under s. 70.11(21), Stats., owners may refer to the Wisconsin Property Assessment Manual or contact the local property tax assessor.

Note: Refer to s. Tax 12.40 for information related to the property tax exemption for industrial waste treatment facilities. For more information regarding the property tax exemption for industrial waste treatment facilities write or call the district office of the Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessments. To locate the district office, write or call Wisconsin Department of Revenue, Bureau of Manufacturing and Telco Assessment, P.O. Box 8933, Madison, WI 53708-8933; telephone (608) 266-1147. The web site is www.dor.state.wi.us/contact/slfbmta.

(4)(a) The repair, service, alteration, cleaning, painting and maintenance of a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m) and a municipal waste treatment facility described in sub. (3) as well as the repair parts and replacement for those types of facilities ~~and chemicals, supplies and utilities used or consumed in operating those types of facilities~~ are exempt from the sales and use tax.

(b) Chemicals, supplies and utilities used or consumed in operating a utility waste treatment facility described in sub. (2), an industrial waste treatment facility described in sub. (2m) and a municipal waste treatment facility described in sub. (3) are exempt from the sales and use tax.

(5)(c) *Determining exemptions.* 1. ‘Public utility property taxed under ch. 76, Stats.’ Contractors of public utility waste treatment facilities shall ascertain if the facility has been properly approved by the department for a property tax exemption under s. 76.025(1), Stats. If there has been no “approval,” the contractor or subcontractor may be liable for the sales and use tax on its purchases. Contractors may direct questions concerning the property to the department as provided in sub. (2).

2. ‘Industrial property taxed under ch. 70, Stats.’ Approvals are not required for industrial waste treatment facilities. Contractors shall ascertain whether the industrial waste treatment facility they are constructing qualifies for a property tax exemption under s. 70.11(21), Stats. Contractors may direct questions concerning the taxability of the waste treatment facility to the department as provided in sub. (2m).

3. ‘Municipal waste treatment facilities.’ Approvals are not required for municipal waste treatment facilities. Contractors shall ascertain whether the municipal waste treatment facility they are constructing qualifies for a property tax exemption under sub. (3). Contractors may direct questions concerning municipal waste treatment facilities to the department as provided in sub. (3).

Tax 11.66 Telecommunications and telecommunications message services. The title is revised, to remove cable television system services and to clarify that the section applies to telecommunications services and telecommunications message services.

In sub. (1), par. (a) is repealed and recreated, par. (b) is renumbered par. (d), and new pars. (b), (c), and (e) are created. The definition of “private line” in the repealed par. (a) is removed because of the repeal of sub. (4)(d), as explained below. The recreated par. (a) and the new pars. (b), (c), and (e) define “communications channel,” “customer channel termination point,” “private communication service,” and “telecommunications services.”

In sub. (2), sub. (2)(intro.) and pars. (a) and (b)(intro.) and 1. to 5. are renumbered sub. (2)(a)(intro.), 1. and 2.(intro.) and a. to e. and new sub. (2)(intro.), (a)(title) and (b) are created, to clarify the content of sub. (2) and

list the types of services discussed in Tax 11.66. As renumbered, par. (a)(intro.) is revised, to clarify that par. (a) does not apply if the provisions of sub. (3) apply, par. (a)1. is revised and examples are added, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, and par. (a)2.(intro.) is revised, to update language per Clearinghouse standards.

Subsection (3) is repealed and recreated. The listing for cable television system services in the repealed sub. (3) is removed because they are taxed separately from telecommunications services. Some of the taxable services listed in the repealed sub. (3) are moved to new sub. (4), as described below. The new sub. (3) discusses private communication service.

Subsection (5) is renumbered sub. (8) due to other renumbering as explained below.

In sub. (4), sub. (4)(intro.) and pars. (a) to (c) and (f) are renumbered sub. (5)(intro.) and pars. (a) to (c) and (e) and revised as explained below, and sub. (4)(d) is repealed to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, as a result of the amendment of sec. 77.52(2)(a)5., Wis. Stats., by 1997 Wis. Act 27. Subsection (4)(e) is repealed, to remove nonmechanical telephone answering services from the listing of nontaxable services, as a result of the creation of sec. 77.52(2)(a)5m., Wis. Stats., by 1997 Wis. Act 27.

New sub. (4) is created, to list taxable services. Several taxable telecommunications services that were previously listed in the repealed sub. (3) are included, as well as additional items not previously listed, to reflect technological advances. The listing for local and toll service is revised, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, as a result of the amendment of sec. 77.52(2)(a)5., Wis. Stats., by 1997 Wis. Act 27. Taxable telecommunications message services are added, as a result of the creation of sec. 77.52(2)(a)5m., Wis. Stats., by 1997 Wis. Act 27.

In sub. (5), sub. (5)(intro.) and par. (c) as renumbered from sub. (4) are revised, to correct grammar and punctuation in conformity with Clearinghouse standards, and to clarify that sales of the services to a reseller are nontaxable because they are resold. Paragraph (a) as renumbered is revised and par. (d) is created, to reflect the tax treatment of certain telecommunications services that originate or terminate in Wisconsin, as a result of the amendment of

sec. 77.52(2)(a)5., Wis. Stats., by 1997 Wis. Act 27. Paragraph (e) as renumbered is revised, to clarify that the sale of the services to the interexchange carrier are nontaxable because they are resold.

Subsection (6) is created, to reflect the tax treatment of prepaid telephone calling cards and authorization numbers, as a result of the amendment of sec. 77.52(2)(a)5., Wis. Stats., and the creation of sec. 77.52(3m), Wis. Stats., by 1997 Wis. Act 237.

Subsection (7) is created, to reflect the credit for taxes paid to other states, as a result of the creation of sec. 77.525, Wis. Stats., by 1997 Wis. Act 27.

The text of Tax 11.66 (1)(a), (b), (c), and (e), (2)(intro.), (a)(title) and (b), (4), (5)(a), (c), (d), and (e), (6), and (7) is as follows:

Tax 11.66(1)(a) “Communications channel” means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(b) “Customer channel termination point” means the location where the customer either inputs or receives the private communication service.

(c) “Private communication service” means a telecommunications service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which the channel or channels are connected, and includes switching capacity, extension lines, stations and any other associated services that are provided in connection with the use of the channel or channels.

(e) “Telecommunications services” has the same meaning as in s. 77.51(21m), Stats.

(2)(intro.) GENERAL. This subsection describes the conditions under which telecommunications services and telecommunications message services are taxable. The conditions are as follows:

(a)(title) *Telecommunications services.*

(b) *Telecommunications message services.* Telecommunications message services that consist of recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser’s direction are taxable, except that those services are not taxable if either of the following apply:

1. They are merely an incidental element of another service that is sold to the purchaser and is not taxable.

2. The situs of the service is outside this state. The situs of a telecommunications message service is the location where the customer, or someone at the direction of the customer, receives the message.

(4) TAXABLE SERVICES. Gross receipts that are subject to Wisconsin sales or use tax include gross receipts from the sale of the following services:

(a) Telecommunications services, including the following:

1. Local and toll service and Wide-Area Telecommunications Service or “WATS.”
2. Channel services.
3. Telegraph services.
4. Teletypewriter services.
5. Computer exchange services.
6. Cellular mobile telecommunications services.
7. Specialized mobile radio services and any other form of mobile one-way or two-way communications service.
8. Stationary two-way radio services.
9. Paging services.
10. Facsimile, or FAX, transmission services.
11. Teleconferencing services.
12. Call forwarding services.
13. Caller ID services.
14. Internet access services.
15. Any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite or similar facilities.

Note: Refer to sub. (6) regarding the sale of rights to purchase telecommunications services.

(b) Telecommunications message services, including the following:

1. Nonmechanical telephone answering services.

Examples: 1) A real estate business, whose employees spend considerable periods of time away from its office, contracts with Company A to answer incoming telephone calls during periods when employees are not available to answer the telephone. Employees of Company A receive the calls to the real estate office by telephone, take messages from incoming callers and transmit the messages to the real estate company or particular employees in that company. The service provided by Company A is not an incidental element of another service sold by the company that is not a taxable service. Company A’s charge for this service is subject to Wisconsin sales or use tax.

2) Company B employs an office management service that provides receptionist, typing, filing, scheduling, bookkeeping and similar services. Employees of the office management service also answer and route incoming telephone calls. When calls cannot be routed, the office management service takes and transmits messages to the appropriate person. This answering service is only a small part of the total services provided.

The telephone answering service provided as a part of the office management service is not subject to Wisconsin sales or use tax because it is incidental to the office management service provided and that office management service is not taxable.

2. Security monitoring services that consist of recording a telecommunications message and notifying the customer or local authorities of the message.

3. Electronic mail services.
4. Mechanical or electronic voice messaging and telephone answering services.

Example: Company A provides its customers access to an office message system computer through which a customer can deposit or retrieve telephone messages using a touch-tone

telephone. The service may be used as a message center, a call forwarding service or an answering service. Messages are stored in the computer, and the customer may send or retrieve messages, reply to a message directly, reroute messages to others, broadcast messages to a wider group, save selected messages and cancel messages no longer needed. The service is available 24 hours a day, and the customer accesses the computer through either a toll-free telephone number or a local telephone number. The service provided by Company A is not an incidental element of another service sold by the company that is not a taxable service. Company A's charges for this service are subject to Wisconsin sales or use tax.

(5)(a) Interstate or international telecommunications service if the service ~~originates from another state or country or if the service originates in Wisconsin but~~ is charged to a service address in another state or country.

(c) ~~Access Transfers of access services, Measured Toll Service, or MTS, or "MTS" and Wide-Area Telecommunications Service, or WATS, services resellers or "WATS" services to resellers who purchase, repackage, and resell the services to customers. The reseller is liable for sales tax on its final retail sales of those services.~~

(d) Services that are obtained by means of a toll-free number, that originate outside Wisconsin and terminate in Wisconsin.

(e) Transfers of services, commonly called "access services," to an interexchange carrier which permit the origination or termination of telephone messages between a customer in this state and one or more points in another telephone exchange, and which are resold by the interexchange carrier. The interexchange carrier is liable for sales tax on its final retail sales of those services.

(6) PREPAID TELEPHONE CALLING CARDS AND AUTHORIZATION NUMBERS. (a) The sale of rights to purchase telecommunications services, including purchasing reauthorization numbers, by paying in advance and by using an access number and authorization code, is subject to Wisconsin sales or use tax.

(b) The situs of the sale of the rights to purchase telecommunications services is as follows:

1. If the sale takes place at a retailer's place of business, the situs of the sale is that place of business.
2. If the sale does not take place at a retailer's place of business and an item that will implement the right to purchase telecommunications services, such as a calling card, is shipped, the situs of the sale is the customer's shipping address.

3. If the sale does not take place at a retailer's place of business and no item that will implement the right to purchase telecommunications services is shipped, the situs of the sale is the customer's billing address.

(7) CREDIT FOR TAX PAID TO ANOTHER STATE. Except as provided in sub. (3), any person who is subject to the tax under s. 77.52(2)(a)5., Stats., on telecommunications services that terminate in Wisconsin and who has paid a similar tax on the same services to another state may reduce the amount of the tax remitted to Wisconsin by an amount equal to the similar tax properly paid to another state on those services or by the amount due Wisconsin on those services, whichever is less. That person shall refund proportionally to the persons to whom the tax under s. 77.52(2)(a)5., Stats., was passed on an amount equal to the amounts not remitted.

Tax 12.40 Waste treatment facilities – industrial. The title is revised, to update format per Clearinghouse standards.

Subsection (2) is repealed, because it is obsolete. The approval process for obtaining property tax exemptions for industrial waste treatment facilities that are taxed under ch. 70, Stats., has been eliminated, per the amendment of sec. 70.11(21), Wis. Stats., by 2001 Wis. Act 16, effective January 1, 2002.

In sub. (3), pars. (a)1. and (a)3. are renumbered pars. (a)3. and (a)1. and revised, to place definitions in alphabetical order and to update format, per Clearinghouse standards. Paragraphs (a)2., (a)4., (b), and (c) are revised, to update format and language per Clearinghouse standards. Paragraph (a)4. is further revised and par. (d) is created, to move a substantive provision in a definition to a separate paragraph.

The text of Tax 12.40(3)(d) is as follows:

Tax 12.40(3)(d) The exemption for industrial waste treatment facilities does not apply to monitoring equipment that is not a component or integral part of a waste treatment facility. [☞](#)



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

Bad debts - nonbusiness <i>John and Frances (deceased) Debelak</i>	34
Capital losses - substantiation Nonbusiness bad debts <i>Kevin J. and Jennifer T. Amys</i>	35
Delinquent taxes - delinquent account fee Interest - delinquent <i>Andre O. Hastings</i>	35
Settlement agreement - taxable portion <i>Randall Schwartz and Gayle J. Nelson</i>	36
Statute of limitations - assessments <i>Dale W. and Cindy L. Kimmons</i>	37

Corporation Franchise and Income Taxes

Delinquent interest on underpayment interest <i>General Casualty Company of Wisconsin and Regent Insurance Company</i>	37
---------------------------------------------------------------------------------------------------------------------------------	----

Sales and Use Taxes

Refunds, claims for - timeliness <i>Terry E. Knope</i>	38
-----------------------------------------------------------------	----

INDIVIDUAL INCOME TAXES

Bad debts - nonbusiness. *John and Frances (deceased) Debelak vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 22, 2002). The issue in this case is whether it was proper for the department to disallow all or a portion of the taxpayers' bad debt deduction, which they claimed on their 1996 Wisconsin income tax return.

On their 1996 Wisconsin income tax return, the taxpayers reported a capital loss of \$730,118 from the sale of Debelak Brothers, Inc. ("Debelak Brothers"). In March 1998, they filed an amended 1996 Wisconsin tax return,

along with an amended 1996 federal return. The sale was reported on the federal Schedule D as a short-term capital loss, and described on an attachment as a short-term capital loss, a "Non Business Bad Debt," a "Demand laon [sic] to debtor," and as a "Debt written off as worthless."

In November 1999, the department issued an assessment to the taxpayers for tax years 1996 through 1998. Referring to the claimed bad debt deduction, the department concluded that the debt was not worthless, and that the proper way to characterize the amount claimed as a bad debt was as a long-term capital loss on the taxpayers' 1996, 1997, and 1998 income tax returns.

The taxpayers filed a petition for redetermination with the department objecting, in part, to the assessment. The department denied the petition for redetermination, stating that the taxpayers had not established that the nonbusiness debt was completely worthless in 1996, and that a voluntary cancellation of a debt does not give rise to a bad debt deduction. The taxpayers then filed a timely petition for review with the Commission.

Between December 31, 1993, and December 31, 1996, Mr. Debelak ("the taxpayer") made cash advances to Debelak Brothers totaling \$1,731,039. In 1995 and 1996 he received repayments totaling \$300,407, leaving a balance due him of \$1,430,632 as of December 31, 1996. In 1997 the taxpayer received cash and a promissory note totaling \$700,514, resulting in the \$730,118 balance still owed him.

The Commission concluded that the department properly disallowed the entire nonbusiness bad debt deduction that the taxpayers claimed on their 1996 Wisconsin income tax return. To qualify as a nonbusiness bad debt deduction, the entire debt must be worthless, under Internal Revenue Code sec. 166 and its regulations, adopted for Wisconsin law by sec. 71.01(6)(k), Wis. Stats. The debt was not entirely worthless as of December 31, 1996.

The taxpayers have not appealed this decision. [✉](#)

**Capital losses - substantiation; Nonbusiness bad debts.**

Kevin J. and Jennifer T. Amys vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 1, 2002). The issues in this case are:

- A. Whether the taxpayers have adequately substantiated the terms of Jennifer T. Amys' ("the taxpayer's") advance to a construction company and subsequent losses resulting from partial write-offs in 1996 and 1997.
- B. Whether the taxpayers are entitled to deduct the losses on their 1996 and 1997 tax returns, even though the losses did not become worthless until after 1997.

In August 1993, the taxpayer advanced \$78,170 to Whei Gen Construction Company ("Whei Gen"), a Taiwanese company formed to build a commercial office building in Taiwan. The only documentation of the advance was a receipt from The International Bank of China, evidencing the transfer of funds. Rather, the advance was a "handshake" deal and the terms of the arrangement were oral, which is common with respect to small companies in Taiwan.

The terms of the arrangement provided that Whei Gen was to use the funds to leverage conventional financing for the project, and the debt would accrue 10% interest on the balance until repaid.

By the time the project got off the ground in 1996, construction costs had inflated considerably. In need of additional funding, Whei Gen required investors to write off a portion of the amounts it owed to them. The taxpayer was required to write off \$13,000 of the amount she had advanced in 1993. Continually plagued by problems, Whei Gen told the investors in 1997 that the

remainder of the advances would have to be written off. The taxpayer negotiated an agreement by which \$14,170 of the initial advance would be repaid. Whei Gen provided the taxpayer with a statement regarding each partial write-off.

The construction project failed sometime after 1997, and Whei Gen became insolvent and went out of business, leaving no assets against which the taxpayer could recoup the amounts she had advanced.

The taxpayers claimed capital losses associated with the partial write-offs of \$13,000 and \$51,000 on their 1996 and 1997 Wisconsin income tax returns, respectively. The department issued an income tax assessment against the taxpayers, part of which consisted of denying the capital losses. The taxpayers filed a petition for redetermination, objecting only to the capital loss denials. The department denied the petition for redetermination, and the taxpayers then filed a timely petition for review with the Commission.

The Commission concluded as follows:

- A. The taxpayers adequately substantiated the terms of the taxpayer's advance to Whei Gen Construction Company and subsequent losses resulting from partial write-offs in 1996 and 1997.
- B. The taxpayers are not entitled to deduct the losses on their 1996 and 1997 tax returns. Section 166(d)(1) of the Internal Revenue Code, which is part of Wisconsin tax law, provides that a non-business bad debt may be deducted as a short-term capital loss only when it has become worthless, which did not occur until after 1997.

Neither the department nor the taxpayers have appealed this decision. [↗](#)

**Delinquent taxes - delinquent account fee; Interest - delinquent.**

Andre O. Hastings vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 19, 2002). The issue in this case is whether the department properly imposed (1) a delinquent account fee under sec. 73.03(33m), Wis. Stats., and (2) delinquent interest under sec. 71.82(2), Wis. Stats. The department made a motion that the petition for review be dismissed on several grounds, including that the petition for review fails to state a claim upon which relief can be granted.

In December 2000, the department issued an income tax assessment to the taxpayer, covering tax years 1997 and 1998, consisting of income tax, underpayment interest, regular interest, and penalties. The assessment was not appealed or paid and went delinquent in February 2001.

In May 2001, the taxpayer made a full payment of the delinquent assessment, which now also included a delinquent account fee and delinquent interest. The delinquent account fee and all of the interest charges were "Paid Under Protest." The letter accompanying the

payment requested a refund of the underpayment interest, delinquent account fee, regular interest, and delinquent interest. The department deemed the request a claim for refund, which it denied. The taxpayer filed a petition for redetermination, and the department denied it. The taxpayer then filed a timely petition for review with the Commission, appealing only the denial of his claim for refund of the delinquent account fee and the delinquent interest.

The Commission granted the department's motion to dismiss the petition for review on the ground that it fails to state a claim upon which relief can be granted. It concluded that the department properly applied sec. 73.03(33m), Wis. Stats., when it imposed the delinquent account fee, and that sec. 71.82(2), Wis. Stats., clearly requires the department to impose the delinquent interest.

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



Settlement agreement - taxable portion.

Randall Schwartz and Gayle J. Nelson vs. Wisconsin Department of Revenue and Wisconsin Tax Appeals Commission (Court of Appeals, District II, September 11, 2002). This is an appeal from an order of the Circuit Court for Waukesha County dated November 8, 2001, which affirmed a February 7, 2001, decision and order of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 125 (July 2001), page 14, for a summary of the Commission's decision (the Circuit Court decision was not summarized in the *Wisconsin Tax Bulletin*). The issue on appeal is whether the Commission properly determined the taxable portion of a \$175,000 settlement payment received by Randall Schwartz ("the taxpayer").

The Commission determined that \$112,278 of a \$175,000 payment the taxpayer received for the sale of his interest in Global Fastener & Supply, Inc. ("Global") was taxable income paid in exchange for a covenant not to compete. The Commission further determined that the remainder of the payment was nontaxable income paid in exchange for a release of the taxpayer's personal injury claims.

The taxpayer was one of three shareholders in Global. In 1990, he came to believe the other two shareholders were acting improperly, and as a result he suffered anxiety and panic attacks. In January 1991, the three shareholders and Global entered into a settlement and purchase agreement that was dated and effective September 15, 1990. Under the terms of the agreement, the taxpayer sold his interest in Global for \$350,000. Global paid him \$100,000 and executed a promissory note for the \$250,000 balance. The agreement provided that \$175,000 of the \$350,000 was allocated to his personal injury claims and his covenant not to compete. It did not specifically state how much of the \$175,000 was allocated for the release of the personal injury claim and how much for the covenant not to compete.

Global satisfied the \$250,000 note to the taxpayer by payments to the taxpayer of \$8,000 per month, consisting of \$6,139 of principal and \$1,861 of interest.

On his 1991 Wisconsin income tax return, the taxpayer attributed \$10,000 of the \$175,000 payment to the covenant not to compete and reported it as taxable income. He contended that the remainder represented nontaxable compensation for his personal injury claims.

In April 1994, the department issued an income tax assessment against the taxpayer for 1989 through 1992, in which, among other adjustments, it determined that all of the \$175,000 payment was fully taxable as payment for the covenant not to compete. The taxpayer filed a petition for redetermination, which the department denied, and he then filed a petition for review with the Commission.

The Commission held that the entire portion of the payment received prior to March 1, 1991 (the date the covenant not to compete expired) was attributable to the covenant not to compete. This included the \$100,000 initial payment plus two months of principal payments.

The Court of Appeals concluded that the Circuit Court's order upholding the Commission's decision and order is correct. It held that when, as in this instance, an agreement is silent as to the allocation of a payment between a covenant not to compete and other claims or compensation, the Commission may make a reasonable allocation, and it further held that the Commission's allocation was reasonable.

The taxpayers have not appealed this decision. [☞](#)

**Statute of limitations - assessments.**

Dale W. and Cindy L. Kimmons vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, October 7, 2002). The issue in this case is whether the department may issue an assessment against the taxpayers within six years after their 1996 Wisconsin income tax return was filed, under sec. 71.77(7)(a), Wis. Stats., or whether the four-year limitation under sec. 71.77(2), Wis. Stats., applies. Both the department and the taxpayers filed motions for summary judgment.

The taxpayers filed a timely 1996 Wisconsin income tax return by its April 15, 1997, due date. On May 7, 2001, the department issued an assessment against the taxpayers, for tax years 1996 through 1998. The assessment for 1996 adjusted the taxpayers' reported income of \$40,132 to \$65,162; the income reported was 62% of the amount as adjusted by the department.

The taxpayers filed a petition for redetermination with the department. The department granted in part and denied in part the petition for redetermination, making no change to its adjustment of the taxpayers' income for 1996. The taxpayers then filed a timely petition for review with the Commission, contesting only the adjustments to their 1996 income tax return.

The Commission concluded that the department properly assessed the taxpayers under sec. 71.77(7)(a), Wis. Stats., beyond the four-year statute of limitation in sec. 71.77(2), Wis. Stats., because the taxpayers reported less than 75% of the net income they should have reported. The Commission denied the taxpayers' motion for summary judgment and granted the department's motion for summary judgment.

The taxpayers have not appealed this decision. [↗](#)

CORPORATION FRANCHISE AND INCOME TAXES

**Delinquent interest on underpayment interest.**

General Casualty Company of Wisconsin and Regent Insurance Company vs. Wisconsin Department of Revenue (Court of Appeals, District IV, September 19, 2002). This is an appeal from a September 4, 2001, order of the Circuit Court for Dane County, which reversed a January 25, 2001, decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 128 (January 2002), page 29, for a review of the Circuit Court's decision.

The dispute in this case arises from a department audit that resulted in assessment against the taxpayers of, among other amounts, normal interest on underpaid estimated taxes and delinquent interest on the underpayment interest under sec. 71.84(2)(a), Wis. Stats. (1997-98). The taxpayers appealed the assessment of delinquent interest to the Commission, which held that the department correctly imposed the interest. The taxpayers petitioned the Circuit Court for judicial review, and the Circuit Court reversed the Commission.

The taxpayers were acquired by a third party in 1990. As a result, certain intangible assets of the companies were amortized over periods ranging from one to seven years. In 1997, the Internal Revenue Service increased the amortization period to 15 years, thus creating addi-


tional federal taxable income, which in turn increased the taxpayers' Wisconsin tax liability. A department field audit resulted in an assessment against the taxpayers for tax years 1990 through 1995.

The taxpayers had not reported the increased tax liability, and their estimated tax payments were therefore insufficient for those tax years. For each year in the audit period, the department assessed normal (12%) interest on the underpaid estimated taxes from their due date until March 15 of the following year, in addition to other assessments. The department then imposed delinquent (18%) interest on the underpayment interest from March 15 of the year following each tax year to the date the taxpayers made a final payment to the department. The taxpayers contend that normal, rather than delinquent, interest should apply on the underpayment interest after March 15.

The Court of Appeals concluded that sec. 71.84(2)(a), Wis. Stats. (1997-98), authorizes the department to impose delinquent interest on the underpayment interest after March 15, even though the tax shown on the return as filed has been modified by an audit. The Court of Appeals reversed the order of the Circuit Court and affirmed the decision of the Commission.

The taxpayers appealed the decision to the Wisconsin Supreme Court. The Supreme Court denied the petition for review on December 10, 2002. [↗](#)

SALES AND USE TAXES

 **Refunds, claims for - timeliness.** *Terry E. Knope vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 6, 2002). The issue in this case is whether the taxpayer is entitled to a refund of sales taxes overpaid for the period of May, June, and July 1997.

On May 15, 2001, the taxpayer filed a claim for refund of sales taxes paid for the period of May, June, and July 1997, which the department denied as being beyond the two-year limit for refunds that are not to be passed on to the customer. The department also denied the taxpayer's subsequent petition for redetermination, and the taxpayer appealed to the Commission stating he was ill and unable to determine he was eligible for a refund "until the spring of 2000."

The Commission concluded the taxpayer is not entitled to a refund of sales taxes paid for the period of May,

June, and July 1997. For the period of May, June, and July 1997, a refund claim would have to have been filed no later than 1999. There is no dispute that the taxpayer did not file a refund claim within the two-year limit, and the taxpayer did not claim that the refund was passed on to the customers. The Commission awarded summary judgment to the department as there was no genuine issue as to any material fact and the department is entitled to summary judgment as a matter of law.

The taxpayer's claim that a refund claim was submitted in June of 2000 is not supported by any documents, and even if such a claim was found, it also would have been filed after the expiration of the two-year limit to file such claims. Because the Commission lacks jurisdiction over late filed claims, the department's motion for summary judgment is granted.

The taxpayer has not appealed this decision. 



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter ruling is included:

Sales and Use Taxes

Exemptions - manufacturing equipment
W 0301001 (p. 39)

✱ W 0301001 ✱

October 16, 2002

Type Tax: Sales and Use Taxes

Issue: Exemptions - manufacturing equipment

Statutes: Section 77.54(6)(a), Wis. Stats. (1999-00)

This letter responds to your request for a private letter ruling.

Facts, as stated in your request:

XYZ Company (“XYZ”) is a Wisconsin manufacturer of various plastic molded products. XYZ manufactures a cosmetic merchandise system in Wisconsin for sale to Customer A, a large regional retailer. The merchandise system is made up of components that hold products and create the shelving that attaches to universal store brackets. Customer A resells the merchandise systems to cosmetics vendors, who are responsible for the mer-

chandise systems used to display products in Customer A’s stores.

XYZ manufactures permanent steel tooling in Wisconsin which in-turn is used by XYZ to manufacture the merchandise system. XYZ sells the steel tooling to Customer A, recording the transaction as a sale on its books. XYZ does not record any fixed assets related to the tooling on its books. Customer A receives separate invoices from XYZ for the tooling and the merchandise systems. Customer A then allows XYZ to use the tooling, at no cost to XYZ, to manufacture the merchandise systems. Customer A retains ownership of the tooling so that it may provide the tooling to another manufacturer if it desires to change manufacturers of the merchandise systems.

Request:

Is Customer A allowed to purchase exempt from Wisconsin sales or use tax the tooling from XYZ which Customer A in-turn allows XYZ to use exclusively and directly in manufacturing the merchandise systems?

Ruling:

Yes, provided Customer A gives a properly completed exemption certificate to XYZ. 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. XYZ is using the tooling it sold to Customer A in manufacturing, in the same manner as if XYZ had purchased the tooling for its use in manufacturing the merchandise systems.

In the event the tooling is not used exclusively and directly in manufacturing (e.g., XYZ or Customer A also uses the tooling for repairs or maintenance purposes), or if the tooling is 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.

Analysis:

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.

Because XYZ is using the tooling it sold to Customer A exclusively and directly in manufacturing, the purchase of the tooling by Customer A from XYZ qualifies for the exemption in sec. 77.54(6)(a), Wis. Stats. (1999-00). The exemption does not require the processing equipment to be **purchased** by the manufacturer, but rather **used** by the manufacturer. [↩](#)