



Wisconsin TAX BULLETIN

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2002 Income Tax Instructions Contain an Error

The instructions for certain 2002 Wisconsin income tax forms contain an error with respect to the farmland tax relief credit. The Forms 1 and 1NPR instructions for individuals and the Form 2 instructions for fiduciaries incorrectly state that the maximum farmland tax relief credit is \$3,000.

The 2002 instructions for the farmland tax relief credit should indicate that the maximum credit that may be claimed for 2002 is \$1,500. Although the rate used to compute the credit for 2002 is 30%, and the first \$10,000 of property taxes on qualifying farmland is recognized, the Wisconsin Statutes limit the maximum credit to \$1,500.

Corrected versions of the affected instructions, and a practitioner "News" article calling attention to the error, were placed on the Department of Revenue's web site on January 22, 2003. In addition, an e-mail notice regarding the error was sent to those practitioners who subscribe to the department's Tax Practitioner E-Mailing list called "dornews." The department also sent a letter to persons who claimed the farmland tax relief credit on their 2001 return and appeared likely to be affected by the error in the 2002 instructions.

Any 2002 tax returns that are filed claiming a farmland tax relief credit that exceeds the \$1,500 maximum allowable will be adjusted to reduce the credit to the proper amount allowable. [✎](#)

States Move Forward to Adopt Streamlined Legislation

A critical mass of states that approved the Streamlined Sales and Use Tax Agreement on November 12, 2002, are moving forward to draft, introduce, and enact the legislation necessary to comply with the simplifications and uniformity provided in the Agreement.

As of the middle of April, seven states – Arkansas, Kentucky, North Dakota, South Dakota, Utah, West Virginia, and Wyoming – have adopted all provisions. Another 14 states have introduced legislation to come into compliance with all or most of the Agreement. These states include: Florida, Indiana, Kansas, Maine, Minnesota, Missouri, Montana, Nebraska, Nevada, North Carolina, Oklahoma, Oregon, Texas, and Washington.

Wisconsin is expected to introduce legislation later this year. Another 10 states are drafting the legislation, including: Alabama, Iowa, Louisiana, Michigan, New Jersey, New Mexico, Ohio, Pennsylvania, South Carolina, and Tennessee. [✎](#)

Information or Inquiries?

This issue of the *Wisconsin Tax Bulletin* includes a comprehensive listing of addresses and telephone numbers to use if you wish to contact the Department of Revenue about any of the taxes administered by the Processing and Customer Services Division, and the Income, Sales, and Excise Tax Division.

The listing appears on pages 31 to 34 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. [✎](#)

Wisconsin Wins Taxpayer Service Award

Note: Information in this article was obtained from the March 31, 2003, issue of "TaxExPRESS," the Federation of Tax Administrators' weekly electronic newsletter.

COOL AWARD WINNERS. This year there are two cool ideas that have been officially judged as the best of the bunch – winners of FTA's annual awards for taxpayer service and training. FTA awards are judged by an independent panel. Both award winners have been invited to accept their awards and to share the details of their programs during the FTA annual meeting, June 15-18 in Oklahoma City.

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TAXPAYER SERVICE: The Wisconsin Department of Revenue won the 2003 Leon Rothenberg Award for Taxpayer Service and Education, for its “ReVITALization Initiative,” a program that helps taxpayers in poor, non-English-speaking and underserved neighborhoods prepare their state and federal income tax returns and file electronically at no charge. Wisconsin redesigned its VITA program from top to bottom, eliminating a series of temporary locations and working in partnership with public service groups to set up permanent sites in underserved neighborhoods. The agency then re-equipped the offices and developed a new training program, so that the VITA volunteers can electronically file the returns. Judges were particularly pleased with the fact that it was a “low-cost, high creativity” program.

(The California Franchise Tax Board won the other award, the Award for Training, for its internal training program for employees who work with the state’s new Integrated Nonfiler System.) [🔗](#)

Reduce Processing Delays – Use Preferred W-2 Forms

To provide fast and accurate income tax processing, the Department of Revenue uses scanner technology to capture wage statement (Form W-2) information. The department is requesting that employers NOT use carbon copied W-2 forms, including NCR. **Carbon and NCR copied W-2 forms do not scan well**, and this often necessitates additional time-consuming steps. This can result in **delays in processing refunds** for tax returns with those forms.

The preferred format for a Form W-2 is the Internal Revenue Service (“IRS”) approved format, which can be viewed on the IRS web site, at www.irs.gov/formspubs/index.html. The IRS format W-2 form is 8.5 by 5.5 inches and can easily be imaged by production scanners. All information on the Form W-2 should be printed as large as possible within each space allotment and should not be printed over preprinted information on the form. Always complete the form using black ink.

If you have questions regarding the use or preparation of preferred W-2 forms, you may call the department at (608) 261-6223. [🔗](#)

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Use Correct County Tax Codes

When completing the Wisconsin Sales and Use Tax return, Form ST-12, if county sales or use taxes are reported, the two-digit county code and the first five letters of the county name must be entered in Steps B and F. In the case of St. Croix County, the correct five-letter code is “STCRO.”

There are two exceptions to using the first five letters of the county name:

- The five-letter code for Green Lake County is “GLAKE.”
- For the counties with only four letters in their names, enter just the four letters.

Since both Green and Green Lake counties now have a county sales/use tax, it is important to enter the correct codes for these two counties, so the county tax is not credited to the wrong county. Use #23 and GREEN for Green County, and #24 and GLAKE for Green Lake County. [↗](#)

2003 Estimated Income Tax Requirements for Individuals, Estates, and Trusts

Individuals and fiduciaries that expect to owe \$200 or more of income tax (including recycling surcharge) with their 2003 Wisconsin income tax return are required to pay 2003 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 2003 Form 1-ES, Wisconsin Estimated Tax Voucher, is filed with each estimated tax payment. (**Note:** Only individuals and fiduciaries making estimated **income** tax payments may file a Form 1-ES.)

For calendar year taxpayers, the first estimated income tax payment was due on April 15, 2003. Installment payments are also due on June 16, 2003 (June 15 is a Sunday), September 15, 2003, and January 16, 2004. For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year.

Estates and grantor trusts that are funded on account of a decedent's death are only required to make estimated tax payments for taxable years that end two or more years after the decedent's death. For example, an individual died on March 28, 2002. A grantor trust that was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 28, 2004.

A trust that is subject to tax on unrelated business income is generally required to pay 2003 Wisconsin estimated income tax if it expects to owe \$500 or more (including recycling surcharge) on a 2003 Wisconsin franchise or income tax return (Form 4T). A 2003 Form 4-ES, Wisconsin Corporation Estimated Tax Voucher, is filed with each estimated tax payment. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If a taxpayer does not make the estimated tax payments when required or underpays any installment, interest may be assessed. [↗](#)

Integrated Tax System – Early Results

The first release of the Wisconsin Department of Revenue's Integrated Tax System (“ITS”) went online November 30, 2002. ITS Release 1 includes:

- Business tax registration and financial handling of new registrant fees.
- Returns processing of the sales and use tax return, Form ST-12, and the consumer use tax return, Form UT-5.
- Taxpayer accounting and revenue accounting of these forms, and sales tax distribution to counties and stadium districts.


- Revenue accounting for all tax systems within the department.

On many accounts, it has been one of the smoothest implementations of a major new system in Department of Revenue (“DOR”) history. But implementing a system on the size and scale of ITS has also presented its share of challenges. The most persistent challenge was obtaining stability in processing paper sales tax returns that are scanned by DOR. Various software bugs prevented DOR from processing these returns at the rate it would like. The resultant backlog forced DOR to estimate monthly sales tax distributions to counties and stadium districts for several months and created a ripple effect in other areas of DOR.

Stepping back from this to look at the larger picture, the transformation ITS is making at DOR in the way it collects and administers taxes becomes clear. The department is moving away from the technology of the 60s, toward the technology of the 21st century. DOR has implemented a process that can be completed electronically – paper-free from beginning to end.

By way of illustration, consider that customers using the Sales Internet Process (“SIP”) and Electronic Funds Transfer (“EFT”) to file returns and submit payments to DOR can do so without touching a piece of paper. Furthermore, working with the state’s depository bank, DOR is able to process the payment and the return without handling any paper. From beginning to end,

sales tax returns, payments, and accounting can now be handled electronically.

The Department of Revenue has begun the groundwork to integrate the individual income tax into ITS. One related project, Wisconsin Free-File, was implemented in January of this year. It enables individuals to file their state individual income tax returns using the Internet. Tens of thousands of Wisconsin residents have already taken advantage of this convenient, free service offered directly by the Department of Revenue through its web site at www.dor.state.wi.us. 


Waste Hauler May Qualify For Common or Contract Carrier Exemption

In its Ruling and Order in the case of *Freight Lime And Sand Hauling, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 20, 2002), the Commission held that a contract motor carrier, that transported waste for hire, could purchase trucks and related equipment exempt from sales and use tax under sec. 77.54(5)(b), Wis. Stats. See page 24 of this Bulletin for a summary of the Commission’s Ruling and Order, including a description of the contract carrier operation engaged in by Freight Lime And Sand Hauling, Inc.

The Department of Revenue, in sec. Tax 11.16, Wis. Adm. Code (June 1991 Register), and the Commission in its prior decisions, had limited the exemption found in sec. 77.54(5)(b) to contract carriers that transported property that had value, taking the position that persons hauling waste were not hauling “property” and, therefore, did not fall within the definition of a contract carrier hauling property for hire.

In *Freight Lime And Sand Hauling, Inc.*, the Commission concluded those previous holdings are to be disregarded. Therefore, the Commission’s decision in *Superior Hazardous Waste Group, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 17, 1998), no longer applies. See *Wisconsin Tax Bulletin* 111 (October 1998), page 18, for a summary of the Commission’s decision in *Superior Hazardous Waste Group, Inc.* There is no requirement by sec. 77.54(5)(b) that the property hauled have value, as long as it is property of others and is hauled for hire. The Ruling and Order in *Freight Lime And Sand Hauling, Inc.* applies to all periods open to adjustment.

Caution: This Ruling and Order does **not** reverse prior decisions by the Commission that held that waste disposal companies do not qualify for the common or contract carrier exemption. The Commission still states the carrier must haul exclusively “for hire.”

In *J. M. Disposal Service, Inc. vs. Wisconsin Department of Revenue* (Dane County Circuit Court, December 10, 1970, CCH 200-622), the Court affirmed the Commission in holding that the definition of contract carrier does not include the operator of a disposal service that is free to haul or use the waste it transported as it wished, without regard to the supplier of the waste. Similarly, in *James W. Rieder vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 15, 1970, CCH 200-641), the Commission held that a truck and accessories used to haul waste materials were not exempt because the materials were hauled to a county dump, or sold to customers for landfill or other purposes. There were no restrictions as to how, when, and where to dispose of the materials. In its Ruling and Order in *Freight Lime And Sand Hauling, Inc.*, the Commission states that “We believe that the important distinction between a disposal firm (which may dispose of waste as it sees fit, without regard to the wishes of the waste generator) and a contract carrier is that the latter is mandated to transport property owned by another to a party or place of the shipper’s choosing, and that a contract carrier does not take title to the property. The value of the property is immaterial.” Therefore, if a disposal service provider is free to haul or use the material it collects as it wishes, without regard to the supplier of the waste, the Commission’s Ruling and Order in *Freight Lime And Sand Hauling, Inc.* does not apply to the disposal service provider’s purchase of trucks used to haul waste. 

Collecting Sales Tax at Temporary Events


Spring is here, and so are flea markets and craft fairs. Again this year, representatives from the Department of Revenue will be attending selected events across the state, to determine if vendors are appropriately registered for and collecting Wisconsin sales tax.

Vendors who make taxable sales of \$1,000 or more in a year are required to hold a Wisconsin seller's permit. They need to charge sales tax at a rate ranging from 5% to 5.6%, depending on the county in which the sale takes place.

For those vendors who do not have a seller's permit or who have a delinquent account with the Department of

Revenue, department representatives will be meeting them at the registration table, to get them registered and/or to collect their delinquent account.

Organizers of these temporary events are required by law to report to the Wisconsin Department of Revenue the name, address, and seller's permit number of each vendor selling merchandise at an event. A social security number or federal employer identification number is required if the vendor does not have a seller's permit number.

Questions about the responsibilities of operators or vendors at temporary events can be referred to the department's Temporary Events Coordinator, Tom Beyer, at (608) 266-7183 or at tbeyer@dor.state.wi.us. 


Delinquent Taxes May Be Offset Against Unclaimed Property

The list of assets held by the Unclaimed Property Program, which is administered by the Office of the State Treasurer ("OST"), is now matched quarterly with the Department of Revenue's Delinquent Tax System ("DTS") records of delinquent taxpayers. The match is on property that is identified by either a social security number or federal identification number. When there is a match, a levy will be served on OST, unless the taxpayer is in bankruptcy, so that DTS can apply the unclaimed property to the taxpayer's delinquent tax account.

Generally, unclaimed property is a financial asset that has had no account activity by its owner for five years or more, **and** the owner cannot be contacted by the asset's

holder (for example, a bank, savings institution, credit union, insurance company, or utility company). Financial assets include savings accounts, checking accounts, uncashed dividends, stocks, customer deposits or overpayments, certificates of deposit, credit balances, refunds, matured life insurance policies, and uncashed death benefit checks.

Unclaimed property also includes utility deposits, unclaimed wages, and property resulting from business dissolutions that have had one year or more of inactivity. Unclaimed property does **not** include real estate.

Further information about the Unclaimed Property Program is available at the State Treasurer's web site, at www.ost.state.wi.us/home/html/unclaim.html. 

Taxability of Funeral Trust Interest

Individuals may create a pre-need funeral trust, also referred to as a burial agreement, to prepay costs of funeral and burial services and merchandise. Investment earnings (for example, interest) that accrue from a pre-need funeral trust are taxable. The earnings may be includable in taxable income of the trust, or in taxable income of the purchaser/grantor, depending on whether the trustee has or has not made an election under sec. 685 of the federal Internal Revenue Code ("IRC").

If the trustee of a pre-need funeral trust elects to have the trust treated as a "qualified funeral trust" ("QFT") under IRC sec. 685, the **trust** is taxed on the investment earnings generated by the trust. In that case, the earnings are not includable in the purchaser/grantor's taxable

income (or household income for homestead credit purposes).

In all other cases (that is, when an IRC sec. 685 election has not been made), the investment earnings from a pre-need funeral trust are includable in taxable income of the purchaser/grantor. The earnings are also includable in the purchaser/grantor's household income for homestead credit purposes. This is true even if the trust is irrevocable with respect to the purchaser's inability to revoke or amend the agreement with the funeral provider or use the funds for some other purpose.

Two letter rulings issued by the Internal Revenue Service, #9120024 dated February 20, 1991, and #9140006 dated June 26, 1991, held that when a state's

laws require a decedent's estate to pay for his or her funeral (which is the case with Wisconsin), the purchaser/grantor of a pre-need funeral trust in that state is considered the owner if he or she has a reversionary interest in the trust corpus and earnings. The fact that funds from a pre-need funeral trust may be used only to pay for the purchaser's funeral results in the purchaser

having a reversionary interest, per IRC sec. 673(a). The purchaser/grantor is then treated as the owner, even if he or she does not have control over or access to the funds in the trust, and as such, the earnings from the trust are taxable to him or her, and not to the trust (except if an IRC sec. 685 election has been made). [✎](#)

Refund Interception Program Continues to Grow

Due to recent changes in technology, participation in the Department of Revenue's ("DOR's") refund interception program for local governments has grown tremendously. First authorized in 1995, this program was initiated so that DOR could intercept state tax refunds for debts owed to local governments. Information was exchanged between DOR and participating local governments via a standard telephone modem, a system that, while functional, was not very "user friendly."

All that changed in January 2001, when DOR replaced its modem system with an Internet-based application that made data exchange considerably easier. Prior to the implementation of the new application, only twenty local governments were participating in DOR's refund interception program and had collected approximately \$1.9 million since the program's inception. In the past

two years alone, however, the number of participating agencies has grown to over 90, and collections surpassed \$3.2 million. Clearly, this change in technology has resulted in tremendous growth in the refund interception program, and new agencies are enrolling at a steady pace.

County clerks of court can look forward to even more technological advancements that will make participation in the program even easier. Through a partnership with Circuit Court Automation Programs ("CCAP"), an interface is being constructed that will allow the clerks to exchange program information with DOR, directly from the financial management software they already use to track court-assigned fines, fees, and forfeitures.

For more information about DOR's refund interception program, you may contact the Department of Revenue at (608) 266-8517, or via e-mail at trip@dor.state.wi.us. [✎](#)

Filing Wisconsin Fiduciary Income Tax Returns (Form 2) for Trusts

(Note: The fiduciary income tax return filing requirements for estates are discussed in the article titled "Filing Wisconsin Tax Returns for a Deceased Taxpayer," on page 9 of this Bulletin. Refer to the section in that article titled "Fiduciary Income Tax Return(s).")

- A Wisconsin "resident" trust must file a Wisconsin fiduciary return if it has (a) any taxable income for the taxable year, or (b) gross income of \$600 or more, regardless of the taxable income.

Gross income means all income, before deducting expenses, reportable to Wisconsin that is received in the form of money, property, or services. It does not include items that are exempt from Wisconsin tax.

Example: A resident trust has \$400 of interest income. It makes no distributions and therefore only has an exemption of \$100, which would result in

taxable income of \$300. The trust is required to file a Wisconsin fiduciary return, because it has taxable income.

- A "nonresident" trust must file a Wisconsin fiduciary return if it has (a) any Wisconsin taxable income for the year, or (b) gross income from Wisconsin sources of \$600 or more, regardless of the taxable income.

Wisconsin source income includes income or gain from:

- a. Real or tangible personal property located in Wisconsin.
- b. A business, trade, profession, or occupation carried on within Wisconsin, including a corporation taxed under Subchapter S of the Internal Revenue Code.

- c. Personal or professional services performed in Wisconsin either as an individual or as a member of a partnership.
- d. Income received from the Wisconsin State Lottery or a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

Resident Trust

A trust created by a decedent's will (testamentary trust) is resident at the domicile of the decedent at the time of the decedent's death, unless transferred by a court having jurisdiction, to another court's jurisdiction.

Inter vivos trusts that are made irrevocable and were administered in Wisconsin before October 29, 1999, shall be considered resident at the place where the trust is being administered.

The following inter vivos trusts that become irrevocable on or after October 29, 1999, or that became irrevocable before October 29, 1999, and are first administered in Wisconsin on or after October 29, 1999, are resident of Wisconsin:

1. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of Wisconsin at the time that the property was placed in the trust if, at the time that the assets were placed in the trust, the trust was irrevocable.
2. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of Wisconsin at the time that the trust became irrevocable if, at the time that the property was placed in the trust, the trust was revocable.

A trust is revocable if the person whose property constitutes the trust may revest title to the property in that person.

A trust is irrevocable if the power to revest title does not exist.

Examples:

Law prior to October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Wisconsin

that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.

- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Florida that is to be administered in Florida. The trust will not be taxable to Wisconsin.
- c. Mary Doe, a resident of Florida, set up an irrevocable trust on October 22, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is to be administered in Arkansas. The trust became irrevocable at his death on October 22, 1999. James was a Wisconsin resident at death. This trust will not be subject to Wisconsin income tax.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On October 22, 1999, she made an irrevocable gift to the trust of her company stock. The earnings on the stock, if taxable at the trust level, would not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust administered in Wisconsin in 1997. Martha moved to Florida on October 22, 1999, established Florida residency, and moved her trust to Florida. The trust would no longer be taxable to Wisconsin as the trust would now be administered in Florida.

Law change effective on October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2002, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2002, in Florida that is to be administered in Florida. The trust will be taxable to Wisconsin. The trust will continue to be taxable to Wisconsin even if Jack Doe changes his domicile to another state.
- c. Mary Doe, a resident of Florida, set up an irrevocable trust on December 15, 2002, in Wisconsin to be administered in Wisconsin. The trust would not be taxable to Wisconsin since Mary

Doe was not a Wisconsin resident at the time the trust became irrevocable.

- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is administered in Arkansas. The trust became irrevocable on James's death on December 15, 2002, and James was a Wisconsin resident at the time of death. The trust would be taxable to Wisconsin.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On December 15, 2002, she made an irrevocable gift to the trust of \$2 million of her company stock. The value of the assets in the trust is \$1.5 million before the gift, and \$3.5 million after. All income from the \$2 million which was placed in the trust on December 15, 2002, will be taxable to Wisconsin. The assets put into the trust prior to October 29, 1999, will not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust in Wisconsin on December 15, 1999. In March 2002, Martha moved to Florida and became a Florida resident. The trust would remain taxable to Wisconsin since Martha Doe was a resident of Wisconsin at the time the trust became irrevocable.

This law change provides that any and all trusts funded by a Wisconsin resident, that became irrevocable on or after October 29, 1999, and contributions to such trusts by a Wisconsin resident, are subject to Wisconsin income tax. It exempts from Wisconsin income tax all trusts that became irrevocable on or after October 29, 1999, and are funded by a nonresident, even if administered in Wisconsin.

Qualified Funeral Trust ("QFT")

For taxable years beginning after August 5, 1997, if a qualified funeral trust ("QFT") makes the election under sec. 685 of the Internal Revenue Code for federal income tax purposes, that election also applies for Wisconsin income tax purposes. A QFT must treat each beneficiary's interest as a separate trust. A copy of the federal Form 1041-QFT must be attached to the Form 2.

Electing Small Business Trust ("ESBT")

For taxable years beginning on or after January 1, 1997, electing small business trusts ("ESBTs") may be

S corporation shareholders. The portion of an ESBT that consists of stock of one or more S corporations is treated as a separate trust. The separate trust is subject to Wisconsin income tax at the highest rate under sec. 71.06(1), (1m), (1n), or (1p), Wis. Stats. (2001-02).

Closing Certificates

A trust may request a Closing Certificate for Fiduciaries from the Wisconsin Department of Revenue on the Form 2 that is filed for the year prior to the final year. Section 71.13(2), Wis. Stats., provides that the department may issue a Closing Certificate for Fiduciaries to an "Executor, administrator, personal representative or trustee applying to a court having jurisdiction" in order to obtain the court's approval for final distribution and discharge of the fiduciary. The department will issue the Closing Certificate for Fiduciaries only in cases where the court has required it to close a proceeding.

The Form 2 on which the closing certificate is requested must include all of the following:

- Payment of any tax due.
- The trust instrument and any amendments.
- The annual court accountings, or the fiduciary accounting of income for the last three years.
- A detailed statement of why the trust is closing.
- A completed Schedule D on page 3 of Form 2.
- A copy of the inventory of the assets in the trust.

In addition, before a closing certificate will be issued, all fiduciary returns and all taxes due must be filed and paid (except the final return and the tax on that return).

The certificate request should be mailed to:

Wisconsin Department of Revenue
Mail Stop 5-144
P.O. Box 8904
Madison, WI 53708-8904

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return. [!\[\]\(c1168d6a8b365d11e842ece304635fa7_img.jpg\)](#)

Filing Wisconsin Tax Returns for a Deceased Taxpayer

More than one type of Wisconsin tax return may be required for a deceased taxpayer, such as:

- Individual income tax return
- Fiduciary income tax return(s)
- Estate tax return
- Inheritance tax return (for deaths prior to January 1, 1992).

Individual Income Tax Return

A personal representative or petitioner must file an individual income tax return, Form 1, 1A, 1NPR, or WI-Z, for a decedent from the beginning of the year to the date of death. The due date of the individual return is April 15th of the year following death.

The filing requirements for tax years beginning in 2002 are as follows:

- a. Single person - gross income of \$9,000 or more.
- b. Married persons filing jointly - gross income of \$18,000 or more.
- c. Married person filing separately - gross income of \$9,000 or more (each spouse).
- d. Head of household:
 - (1) Under age 65 - gross income of \$10,580 or more.
 - (2) Age 65 or over - gross income of \$10,830 or more.
- e. Part-year resident or nonresident - gross Wisconsin income of \$2,000 or more.

When a surviving heir files a return claiming a refund on behalf of a person who died and the refund is larger than \$100, a completed Form I-804, *Claim for Decedent's Wisconsin Income Tax Refund*, should be attached to the front of the return. If a refund of \$100 or less is being claimed, a note should be attached to the front of the tax return, listing the survivor's name, address, social security number, and relationship to the person who died, and the note should be signed.

The person who files the return should write "deceased" after the decedent's name in the name and address area at the top of the return.

If the taxpayer did not have to file a return but paid estimated tax or had tax withheld, a return must be filed to get a refund.

If a taxpayer's spouse died during 2002 and the taxpayer did not remarry in 2002, a joint return can be filed. A joint return for 2002 can also be filed if a taxpayer's spouse died in 2003 before filing a 2002 return. A joint return should show the deceased spouse's 2002 income before death and the surviving spouse's income for all of 2002. "Filing as surviving spouse" should be written in the area where the return is signed. If someone else is the personal representative, he or she must also sign.

If a refund is being claimed as a surviving spouse filing a joint return with the deceased and the above instructions are followed, a Form I-804 is not required.

Fiduciary Income Tax Return(s)

Resident Estate

Every personal representative or special administrator of an estate of a Wisconsin decedent must file a *Wisconsin Fiduciary Income Tax Return*, Form 2, if the gross income of the estate is \$600 or more. Gross income means all income, before deducting expenses, reportable to Wisconsin that is received in the form of money, property, or services. It does not include items that are exempt from Wisconsin tax.

The decedent is considered a resident of the state in which the decedent was domiciled at the time of death.

Nonresident Estate

A nonresident estate must file a Wisconsin fiduciary return, Form 2, if it has gross income (as described in "Resident Estate" above) of \$600 or more from Wisconsin sources, and a federal fiduciary return is required to be filed with the Internal Revenue Service. Income from sources within Wisconsin includes income or gain from:

- a. Real or tangible personal property located within the state.
- b. A business, trade, profession, or occupation carried on within the state, including a corporation taxed under Subchapter S of the Internal Revenue Code.
- c. Personal or professional services performed within the state as an individual or a member of a partnership.

- d. Income received from the Wisconsin State Lottery or a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

The first fiduciary income tax return filed by a personal representative or petitioner of an estate covers the period from the date of death of the decedent to the end of the first year selected by the fiduciary. The taxable year cannot be longer than 12 months, must end on the last day of a month, and must coincide with the year selected for filing the federal return. The return is due on the 15th day of the 4th month after the close of the taxable year.

Closing Certificates

An estate may request a Closing Certificate for Fiduciaries from the Wisconsin Department of Revenue on the Form 2 that is filed for the year prior to the final year. Section 71.13(2), Wis. Stats., provides that the department may issue a Closing Certificate for Fiduciaries to an "Executor, administrator, personal representative or trustee applying to a court having jurisdiction" in order to obtain the court's approval for final distribution and discharge of the fiduciary. The department will issue the Closing Certificate for Fiduciaries only in cases where the court has required it to close a proceeding.

Copies of the inventory and will including any codicils should be attached with the request. If these documents were previously submitted with a Wisconsin Estate Tax Return, it is not necessary to submit them again.

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return.

Note: If an estate does not have enough income to require filing and needs a Closing Certificate for Fiduciaries, or if the estate will be filing only one fiduciary return when the estate is closed and needs the closing certificate before filing the return, the following procedures should be used.

- a. Complete the top third of the Form 2, page 1.
- b. Insert the appropriate statement in line 1:
 - (1) "Gross income is less than \$600 and no 1041 is required," or
 - (2) "A first and final return will be filed upon closing the estate."

- c. Complete the appropriate "Information Required" section of Schedule D, on page 3 of Form 2.

- d. Sign and date the Form 2.

- e. Attach copies of the inventory, will, and domiciliary letters.

- f. Mail the certificate request to:

Wisconsin Department of Revenue
Mail Stop 5-144
P.O. Box 8904
Madison, WI 53708-8904

Estate Tax Return

A tax is imposed upon any transfer of property to any distributee in either of the following cases: (a) when the transfer is from a person who dies while a resident of Wisconsin at death; or (b) when the transfer is of property within the jurisdiction of Wisconsin, and the decedent was not a resident of Wisconsin at death.

Wisconsin Estate Tax Basis

1/1/92 to 9/30/02 For deaths occurring from January 1, 1992, through September 30, 2002, the Wisconsin estate tax is a tax based on the federal credit for state death taxes. This tax is imposed upon both resident and nonresident decedents.

10/1/02 to 12/31/07 For deaths occurring from October 1, 2002, through December 31, 2007, the Wisconsin estate tax will be based on the federal credit for state death taxes and the federal estate tax as computed under the federal estate tax law in effect on December 31, 2000.

After 12/31/07 For deaths occurring after December 31, 2007, the Wisconsin estate tax will again be based on the federal credit for state death taxes, and the federal estate tax is to be computed under the federal estate tax law in effect on the date of the decedent's death. Under current federal estate tax law, there is no state death tax credit for deaths occurring in 2008 or 2009, and there is no federal estate tax for deaths occurring in 2010. See the note in the next section regarding deaths occurring in 2011 and thereafter.

Wisconsin Estate Tax Filing Requirements

The Wisconsin estate tax filing requirements for deaths occurring on or after January 1, 1992, are as follows:

<u>Period</u>	<u>Gross Estate</u>
1992 to 1997	\$ 600,000
1998	\$ 625,000
1999	\$ 650,000
2000 and 2001	\$ 675,000
1/1/02 to 9/30/02	\$1,000,000
10/1/02 to 12/31/07	\$ 675,000
2008 through 2010	NO WISCONSIN ESTATE TAX FOR 2008-2010
2011 and after	\$ 675,000*

***Note:** The federal estate tax changes are “sunsetting.” In the absence of further changes, the federal estate tax as it existed prior to the 2001 federal law changes will be restored in 2011, and unless there are changes to Wisconsin law, the Wisconsin estate tax will also be restored in 2011.

Since the Wisconsin estate tax for deaths occurring from October 1, 2002, through December 31, 2007, will be based on the federal estate tax law in effect on December 31, 2000, the filing requirements for filing a *Wisconsin Estate Tax Return*, Form W706, will differ from the federal filing requirements for those years. For example, the federal filing requirement is \$1,000,000 in 2002 and 2003 and goes up in later years. Therefore, there may be a Wisconsin filing requirement for those years, even though no federal estate tax return will be required.

Wisconsin Estate Tax Forms

The *Wisconsin Estate Tax Return*, Form W706, should be filed by the person responsible for filing the federal estate tax return (personal representative, special administrator, trustee, distributee, or other person signing the federal Form 706). A *Tax Computation Schedule*, Schedule TC, should accompany the Form W706.

The Form W706 is due nine months after the date of death or when the federal estate tax return is required to be filed, as extended, whichever is later. For federal estate tax returns filed after July 25, 2001, the Internal Revenue Service (“IRS”) provides an automatic six-month extension of time to file the return. A request for a federal extension must be made on federal Form 4768 and filed with the IRS on or before the due date of the return. Wisconsin will accept the federal extension; a copy of the approved Form 4768 must be filed with the

Wisconsin Form W706. If no federal estate tax return is required, a Wisconsin-only extension can be requested using using Wisconsin Form W4768, *Application for Extension of Time to File a Wisconsin Estate Tax Return (W706)*.

Regardless of when the tax return is filed, the tax is due nine months after date of death. There is no provision for extending the time to pay the Wisconsin tax (even though a federal extension is available for paying the federal tax). If the tax is not paid within nine months of the decedent’s death, interest is imposed at 1% per month **from the date of death**. If an advance payment of Wisconsin estate tax is to be made (before the estate tax return is filed), the payment should be submitted with a completed Wisconsin Form 401T, *Report of Estate or Inheritance Tax Payment*.

If the return is filed after the due date, as extended, there is a penalty equal to 5% of the tax. The minimum penalty is \$25 and the maximum penalty is \$500.

Examples:

1. Decedent A died April 15, 2002. An extension of time to file the federal estate tax return was obtained from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on January 31, 2003, which was within the extension period. Tax of \$1,200 was due. The total amount due is \$1,314, computed as follows:

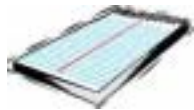
Tax	\$1,200
Interest	<u>114</u> (1% x 9 1/2 months)
Total	\$1,314

2. Decedent B died April 15, 2002, and did not obtain an extension to file from the IRS or from the Wisconsin Department of Revenue. The Wisconsin estate tax return was filed January 31, 2003, and showed no tax due. This estate owes the minimum penalty of \$25.

Copies of Form W706, instructions, Schedule CT, Form W4768, and Form 401T appear on pages 35 to 41 of this Bulletin. All of the forms on those pages, except the Form 401T, are only for estates of decedents whose date of death is on or after October 1, 2002. Those forms, as well as earlier versions of the forms, are available by accessing the department’s web site, www.dor.state.wi.us. Click on “Forms,” then scroll to “Estate, Inheritance and Gift Tax” and click on “Estate.”

Certificate Determining Estate Tax

Upon receipt of the Wisconsin estate tax return and after review for correctness, the Department of Revenue will issue a Certificate Determining Estate Tax. If the IRS increases or decreases the federal estate tax, the person entitled to the refund or liable for the additional tax is required to notify the Department within 30 days.




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*

Inheritance Tax Return

There is no Wisconsin inheritance tax for decedents dying on or after January 1, 1992. If death occurred prior to January 1, 1992, you may obtain information and the appropriate forms by calling (608) 266-2772, or by accessing the department’s web site, www.dor.state.wi.us. Click on “Forms,” then scroll to “Estate, Inheritance and Gift Tax” and click on “Inheritance.” 

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 43 of this Bulletin. The Index is also on the department’s web site at www.dor.state.wi.us. Just click on “Publications.” 


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 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.” 



Wisconsin Tax Bulletin Annual Index Available

Once each year the *Wisconsin Tax Bulletin* includes an index of materials that have appeared in past Bulletins. The index will help you locate reference materials including articles, court case

summaries, tax releases, and private letter rulings, to research questions about Wisconsin taxes.

The latest *Wisconsin Tax Bulletin* index available appears in *Wisconsin Tax Bulletin* 133 (January 2003), pages 48 to 80. It includes information for issues 1 to 132 (through October 2002). 

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 8949, Madison, WI 53708-8949; 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 (2/03)

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? (2/03)

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 (2/03)

410* Local Exposition Taxes (2/03)

503 Wisconsin Farmland Preservation Credit (11/02)

508* Wisconsin Tax Requirements Relating to Nonresident Entertainers (2/03)

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 2003 Handbook for Federal/State Electronic Filing (11/02)

117 Guide to Wisconsin Information Returns (11/02)

124* Petition for Compromise of Delinquent Taxes (4/03)

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) 

Farmers Receive More Than \$30 Million in Farmland Credits

Direct benefits of approximately \$30.3 million were distributed to Wisconsin farmers in 2002, primarily for the 2001 tax year, through the farmland preservation credit program and the farmland tax relief credit program. These credits are paid as a reduction in Wisconsin income tax, or as a cash refund if the credits exceed income tax due. The total amount of farmland preservation credit and farmland tax relief credit may not exceed 95% of the farm property taxes.

Farmland Tax Relief Credit Program

It is not necessary for the farmland to be subject to agricultural zoning or a farmland preservation agreement to receive farmland tax relief credit. This program provides direct benefits to any qualifying farmland owner with 35 or more acres of farmland. About 56,400 farmers, including about 900 corporations, claimed farmland tax relief credits totaling \$13.7 million in 2002, for an average credit of \$242.

The credit is computed as a percentage of up to \$10,000 of property taxes on farmland (exclusive of improvements), up to a maximum credit of \$1,500. The Department of Revenue calculates the percentage each year, based on the amount appropriated for the program. The credit for 2001 claims equaled 13% of the first

\$10,000 of property taxes on farmland. For the 2002 tax year (credits claimed in 2003), the credit is equal to 30% of the first \$10,000 of property taxes, but limited to a maximum credit of \$1,500. The credit rate is much higher this year because use value assessment has sharply reduced property taxes on farmland.

Farmland Preservation Credit Program

About 21,000 farmers, including about 375 corporations, claimed farmland preservation credits totaling \$16.6 million in 2002. The credit averaged \$797 per claimant. About 37% of farm owners with 35 or more acres claimed the credit, which equaled about 21% of claimants' average property tax bills.

The goals of the farmland preservation credit program are twofold –

- To preserve Wisconsin farmland by means of local land use planning and soil conservation practices.
- To provide property tax relief to farmland owners.

To qualify for the credit, farmland must be 35 acres or more and must either be zoned for exclusive agricultural use (about 80% of claims), or be subject to a farmland preservation agreement between the farmland owner and the state (about 20% of claims). In addition, participants must comply with soil and water conservation standards set by the state Land Conservation Board. [LE](#)

To File or Not to File – Corporation Tax Returns

The Department of Revenue (“DOR”) sends corporation tax forms and instructions to corporations annually, to help the corporations comply with their filing requirements. Sometimes corporations that are no longer in business, or have never done business after incorporation, receive these tax forms as well. This is because the corporation has not filed a proper return with DOR.

If a corporation dissolves, the corporation must contact the Department of Financial Institutions (“DFI”) and file an *Articles of Dissolution* form. Many corporations believe that by contacting DFI to dissolve, DOR records will also be updated to reflect the dissolution, and no further action is required. DFI does notify the Department of Revenue of the dissolution; however, the corporation is required to file a tax return with the Department of Revenue as well. Until this is done, DOR will continue to send the corporation tax forms.

Following are various circumstances a corporation may be in, and the proper filing action.

Circumstance	Filing Requirement
Activity in Wisconsin and elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T).
Activity in Wisconsin but not elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T).
No activity in Wisconsin, but activity elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T), and indicate no activity by entering zeros or “none.”
No activity in Wisconsin or elsewhere, but may become active in Wisconsin later.	File Form 4H, <i>Wisconsin Corporation Declaration of Inactivity</i> .
No activity now in Wisconsin or elsewhere, and will not become active in Wisconsin later. *	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T), and check “Final return” in Box E (or Box H of Form 4T).

*See next page


*This applies whether the corporation had no activity during the year, or it had some activity but is now out of business.

Questions regarding incorporation or dissolution can be directed to:

Wisconsin Department of Financial Institutions
Division of Corporate and Consumer Services
Corporate Section
P.O. Box 7846
Madison, WI 53707
Phone (608) 261-7577
Fax (608) 267-6813

Questions regarding corporation tax filing requirements can be directed to:

Wisconsin Department of Revenue
Corporation Review & Adjustment Unit
Mail Stop 3-14
P.O. Box 8908
Madison, WI 53708-8908
Phone (608) 266-0800
Fax (608) 264-6884
Email: corptax@dor.state.wi.us

All corporation tax forms and instructions can be found on the Department of Revenue's web site at www.dor.state.wi.us. 

Take Advantage of Wisconsin's Voluntary Disclosure Program

The Wisconsin Department of Revenue encourages businesses and individuals who are not in compliance with Wisconsin tax laws to voluntarily come forward. Taxpayers may remain **anonymous** throughout the voluntary disclosure process. Voluntary disclosure applies to all types of taxes administered by the Department of Revenue's Income, Sales, and Excise Tax Division and Processing and Customer Services Division.

Benefits of Voluntary Disclosure

- Written agreement to restrict the statute of limitations.
- Waiver of penalties.
- Possible reduction in number of periods for which returns must be filed.
- Elimination of the risk of being discovered under audit.

Taxpayer Qualifications

To be considered for voluntary disclosure treatment, a taxpayer must meet certain conditions and enter into a written agreement with the department. The following conditions must be met for a taxpayer to qualify for voluntary disclosure treatment:

- No returns of the tax type filed for the period in question.
- No registration for the type of tax involved during the period in question.

- No contact by the department within the last 6 years regarding a registration/filing requirement or an assessment/audit assignment.

How to Apply

A taxpayer or the taxpayer's representative may request voluntary disclosure treatment by submitting a written request to the department for consideration. The request must include the following information:

- Description of Wisconsin activities for the years involved.
- List of property owned or leased in Wisconsin.
- Taxable year ending date.
- Date taxable activities began in Wisconsin.
- Whether the tax involved has been collected or withheld, and if so, for what periods.
- Prior contacts by the Department of Revenue.
- Other types of tax returns currently being filed with the department.
- Whether the taxpayer is registered with the Wisconsin Department of Financial Institutions (formerly the Secretary of State) to transact business in Wisconsin.

Taxpayer Responsibilities

- File all returns for the periods agreed upon within ninety days.
- Pay all tax, late filing fees, and interest according to the agreement.

- Make books and records available to the department.

Department Rights

All voluntary disclosure agreements include provisions reserving the department's right to:

- Audit factual representations made as part of the agreement.
- Audit the taxpayer and any returns filed.
- Void the agreement if factual misrepresentations have been made by the taxpayer, and assess additional tax, penalties, and interest, as appropriate.

Confidential Inquiries About Voluntary Disclosure

Information regarding Wisconsin's Voluntary Disclosure Program can be found on the department's Internet web site at www.dor.state.wi.us. If you prefer, you may submit any questions you may have, by phone at (608) 266-3969, by e-mail at wivoldis@dor.state.wi.us, or by letter. Send written requests to the following address:

Voluntary Disclosure Program MS 6-40
Wisconsin Department of Revenue
2135 Rimrock Road
P.O. Box 8933
Madison, WI 53708-8933. [✉](#)

Three Sentenced in Homestead Fraud Ring

Three Milwaukee women have been sentenced in the homestead credit fraud ring dubbed the "780 Club," which involved the filing of 500 false homestead credit claims in 297 different names. Sentenced in Milwaukee County Circuit Court were:

- Yvette Peterson, 31.
- Beatrice Sims, 47.
- Tracy D. Perkins, 32.

Peterson was sentenced in January 2003, by Judge William Brash, for filing a false Wisconsin homestead credit claim. The sentence called for 60 days in the House of Corrections. Sims and Perkins were sentenced in February 2003, by Judge Louis Butler, after both pled guilty to filing a false tax document. Each one was fined \$500 and given the opportunity to serve 10 days in the House of Corrections in lieu of paying the fine. All three were referred to the Milwaukee County District Attorneys Office after an investigation by the Department of Revenue's Fraud Unit.

Filing a false Wisconsin homestead credit claim is a crime punishable by up to 7 ½ years imprisonment, \$10,000 in fines, or both, together with prosecution costs. In addition, Wisconsin law provides for substantial civil penalties on the civil tax liability, and assessment and collection of the taxes, penalties, and interest due follows a conviction for criminal violations. All participants in the "780 Club" fraud scheme will be billed for the money they received, as well as penalties and interest.

In January 2003, Rachel A. Bonander, 32, of Eau Claire, had 14 additional felony charges added to her other 15 charges, in which she is accused of embezzling nearly \$400,000 as a bookkeeper for three Chippewa Valley automotive businesses. She now faces 15 counts of theft, five counts of credit card fraud, and nine counts of failing to pay sales taxes.

Bonander pled not guilty to the charges and now faces a jury trial. At the time of the 14 additional charges, she was serving an eight year prison term for violating terms of her probation stemming from a 1998 theft case. Her probation was revoked after she became the chief suspect in the embezzlement investigation.

Shannon Jefferson, 28, formerly of Milwaukee, was sentenced in January 2003, to nine months in Milwaukee County Jail on each of two counts of failure to file timely Wisconsin income tax returns.

In February, Darryl A. Welch, age 40 and Jefferson's former boyfriend, also formerly from Milwaukee, was also sentenced. His sentence was for one year in Wisconsin state prison for filing a false income tax return, and for nine months in the House of Corrections on each of two counts of failure to file timely tax returns.

Jefferson and Welch were sentenced on the tax charges by Milwaukee County Circuit Court Judge Victor Manian. At the time of the sentencings, Jefferson was incarcerated at the Robert E. Ellsworth Correctional Center and Welch was incarcerated at the Dodge Correctional Center.

In 2002, Jefferson and Welch each pled guilty to Medicaid Fraud. They ran a transportation service and billed \$350,000 from the state by billing Medicaid during two and a half years, for hundreds of trips that were never provided. They were both convicted under the racketeering law and sentenced by Milwaukee County Circuit Court Judge Jeffrey Conen.

Jefferson was sentenced on the racketeering charge to three years prison, followed by three years probation. Welch was sentenced on the racketeering charge to five years prison, followed by five years extended supervision. Their sentences on the tax counts are to run concurrent with each other and concurrent to the racketeering charges.

Kathryn M. Richardson, 45, a former Greenfield Public School teachers aide and Junior Miss pageant organizer, was sentenced in March 2003, to seven years in State Prison for theft and state income tax fraud. Milwaukee County Circuit Court Judge Jean DiMotto also imposed an additional five years of probation on Richardson, upon completing her prison sentence.

Richardson was previously found guilty of theft of \$66,504, and for falsifying her 1996, 1997, and 1998 income tax returns after a five-day jury trial in December 2002.

According to the original criminal complaint, Richardson was the office manager for Dr. Deborah Luetzow, who operated a family health practice in South Milwaukee. As office manager, 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 the business by writing out unauthorized checks to herself. She concealed her theft by fraudulently coding amounts to a medical supply expense account, or by giving herself extra "salary" payments that she was not entitled to.

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

Department of Revenue's Fraud Unit, which ultimately resulted in criminal charges filed against Richardson by the Milwaukee County District Attorney's Office in April 2002.

During the trial Richardson attempted to convince jurors that the money she had stolen was actually a commission she earned for doing billing work for Dr. Luetzow. She further told them that it was her husband, Daniel, and not herself, who had miscoded the entries into the check register as medical supply expenses. Her husband did not testify in the trial and did not appear at her sentencing.

Also in March, Terri L. Messer, 47, of Columbus, Wisconsin, was charged with four counts of theft from a business setting and three counts of filing a false income tax return. Messer is a former employee in the finance department of the Sun Prairie, Wisconsin-based Wisconsin Conference of the United Methodist Church, an organization that governs almost 500 United Methodist churches in Wisconsin. She is accused of embezzling more than \$158,000.

According to a criminal complaint, she had access to four bank accounts of the organization. Also according to the complaint:

- Messer allegedly wrote 70 checks to herself and her credit card and phone companies between November 1999 and March 2002; eight of the checks were for \$4,000 or more.
- After she and her ex-husband separated in late 1999 or early 2000, she purchased a car, paid off debts on some of her children's cars, bought a big-screen television, and continued to make house payments, despite making only about \$30,000 per year.
- Messer admitted writing three checks for a total of about \$12,000 and paid the money back. An audit by the Methodist Church Conference uncovered many more checks.
- The Department of Revenue alleges that Messer evaded almost \$9,000 in income taxes for 1999 to 2001, because of her alleged increased income.

If convicted, Messer could be sentenced to more than 68 years in prison and fined up to \$70,000. [!\[\]\(e3275251d0893157c3584e20c81dc3ba_img.jpg\)](#)

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 April 1, 2003, and at each step where action occurred during the period from January 2, 2003, through April 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 43 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 Committees

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





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

Appeals - jurisdiction

Assessment - correctness

Appeals - frivolous

Dennis and Pamela Jacobson 20

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Daniel and Mary Callahan 21

Assessments - presumption of correctness

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Claims for refund - within four years of original return's due date

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INDIVIDUAL INCOME TAXES



Appeals - jurisdiction; Assessment - correctness; Appeals - frivolous.

Dennis and Pamela Jacobson vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 15, 2002). The issues in this case are:

- Whether the Wisconsin Tax Appeals Commission ("Commission") has subject matter jurisdiction over the taxpayers' petition for review.
- Whether the taxpayers have met their burden of proving that they did not have taxable income during any of the years 1997, 1998, or 1999 ("the years at issue").
- Whether the positions asserted by the taxpayers in this matter are frivolous and groundless, thereby subjecting them to a penalty under sec. 73.01(4)(am), Wis. Stats.

During the first part of 1997, taxpayer Dennis Jacobson was employed by a freight company in Wisconsin. A few months after he left the company's employ in 1997, he returned to the company as a contractor, supplying trucking services to it from that point forward and for all of 1998 and 1999. During most or all of the years at issue, the taxpayers' son lived with them and paid them \$500 per month.

The taxpayers did not file Wisconsin income tax returns for any of the years at issue. The department sent them a letter requesting that they file Wisconsin returns for those years. The taxpayers did not file returns in response to the letter, and consequently the department issued a default assessment against the taxpayers for the years at issue. The taxpayers filed a document which the department construed as a petition for redetermination. The department denied the petition for redetermination, and the taxpayers filed a timely petition for review with the Commission.

The taxpayers argue that the Commission lacks subject matter jurisdiction over the assessment at issue, because the statutory section that specifies much of the Commission's appellate authority does not list any of the substantive provisions of the tax statutes (chapter 71)

imposing the income tax and determining the measure of tax. They further argue that they have no taxable income because the payments from the freight company were payments for labor, and Wisconsin has no authority to tax labor.


The Commission concluded as follows:

A. The Wisconsin Tax Appeals Commission does have subject matter jurisdiction over the taxpayers' petition for review.

B. The taxpayers have failed to meet their burden of proving that they did not have taxable income during any of the years at issue.

C. The positions asserted by the taxpayers in this matter are frivolous and groundless, thereby subjecting them to a penalty under sec. 73.01(4)(am), Wis. Stats. The Commission assessed an additional \$750 pursuant to that statute.

The taxpayers have appealed this decision to the Circuit Court. [!\[\]\(003082e50e3009141f59bd5df831749f_img.jpg\)](#)

 **Appeals - timeliness.** *Daniel and Mary Callahan vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 7, 2002). The issue in this case is whether the Tax Appeals Commission ("Commission") has subject matter jurisdiction to consider the taxpayers' petition for review.

The taxpayers failed to file Wisconsin income tax returns for 1998 and 1999. The department issued an assessment of income taxes to the taxpayers for those years, in October 2001. The taxpayers filed a timely petition for redetermination with the department, arguing that because they had filed with the federal Internal Revenue Service for a "Due Process Hearing," all "state action must be abated until a determination is made."


The department denied the petition for redetermination in a notice received by the taxpayers via certified mail on February 13, 2002. The taxpayers mailed a petition for review dated April 15, 2002, via certified mail,

stamp dated April 18, 2002, and received by the Commission on April 22, 2003. The petition for review was filed three days late, as the statutory 60-day period for filing a timely petition for review expired on April 15, 2002.

The taxpayers did not dispute that their petition for review was filed beyond the 60-day filing period. Their sole argument was that the department had issued a "defective" assessment against them.

The Commission concluded that it lacks subject matter jurisdiction to consider the petition for review, because the taxpayers failed to file the petition in a timely matter. Because it does not have subject matter jurisdiction, the Commission cannot rule on the taxpayers' "defective assessment" argument.

The taxpayers have appealed this decision to the Circuit Court. [!\[\]\(b4eeff342f60cc7bcd67d869b4fedca2_img.jpg\)](#)

 **Assessments - presumption of correctness; Partnerships - basis.** *Gayle R. Dvorak and Norene M. Dvorak vs. Wisconsin Department of Revenue* (Circuit Court for Milwaukee County, November 25, 2002). This is an appeal by the taxpayers, of an April 30, 2002, decision of the Wisconsin Tax Appeals Commission ("Commission"). See *Wisconsin Tax Bulletin* 130 (July 2002), page 23, for a summary of the Commission's decision.

The department made two assessments against the taxpayers, one for tax year 1986 and the other for tax years 1982 through 1985. The taxpayers filed petitions for redetermination of both of the assessments, and after

numerous extension agreements, the department granted the petitions for redetermination in part and denied them in part.


Most of the disputes in this case relate to four issues involving four corporations and a partnership in which Gayle Dvorak ("the taxpayer") had an interest. The four issues are; (1) whether the taxpayer had substantiated adjustments to his bases in the corporation, (2) the taxpayers' gain on the sale of their personal residence, (3) the adjusted total of the itemized deductions claimed on the taxpayers' 1983 tax return, and (4) an addition of \$83,500 to the taxpayers' 1985 income tax return for the asserted cancellation of a debt. The Commission held

that the taxpayers did not overcome the presumptive correctness of the department's actions on these four issues, thus affirming the department's actions on the petitions for redetermination.

The Circuit concluded that as for the arguments in the taxpayers' brief, they have failed to produce evidence

that the department's assessments were incorrect. Based on that conclusion, the Circuit Court affirmed the decision of the Commission.

The taxpayers have not appealed this decision. [!\[\]\(339a16584d5da0f0a3ca4e9ec17bf6a1_img.jpg\)](#)

 **Claims for refund - within four years of original return's due date; Appeals - premature.** *Gabriel F. De Rango vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 2, 2003). The issue in this case is whether the Wisconsin Tax Appeals Commission ("Commission") has subject matter jurisdiction over two petitions for review filed by the taxpayer. The first petition the taxpayer's claim for refund for 1992, and the other relates to his claim for refund for 1996.

The taxpayer filed a timely original 1992 Wisconsin income tax return. In June 1997, he filed an amended 1992 return, constituting a 1992 claim for refund. The department denied the 1992 refund claim on the basis that it was filed more than four years following the unextended due date of the original 1992 tax return. The taxpayer filed a timely petition for redetermination, the department denied it, and the taxpayer then filed a timely petition for review with the Commission.


The taxpayer filed his original 1996 Wisconsin income tax return in April or May of 1997. He filed an amended 1996 return in June 1997, constituting a 1996 claim for refund. The department denied the 1996 refund claim in October 1997, and the taxpayer filed a timely petition for redetermination.

On April 29, 1998, the taxpayer and the department agreed to extend the due date to May 11, 1999, for the department to act on the petition for redetermination. On July 16, 1998, the taxpayer filed a petition for review with the Commission with respect to his 1996 refund claim.

On May 11, 2001, the department denied the taxpayer's petition for redetermination with respect to the 1996 refund claim. The taxpayer subsequently filed a timely petition for review of the department's action. That petition for review is not a part of these proceedings.

The Commission concluded that it lacks subject matter jurisdiction over the 1992 refund claim, because the refund claim was filed more than four years after the unextended due date of the original 1992 Wisconsin income tax return. It further concluded that it lacks subject matter jurisdiction over the petition for review regarding the 1996 refund claim, because the petition for review was filed before the department acted on the petition for redetermination.

The taxpayer has appealed this decision to the Circuit Court. [!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd_img.jpg\)](#)

 **Claims for refund - within two years following assessment.** *Marvin D. Coleman vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2003). The issue in this case is whether the amendment to sec. 71.75(5), Wis. Stats., whereby the time period for filing a claim for refund after an assessment was increased from two years to four years after the assessment, applies to the department's assessment against the taxpayer.

The taxpayer did not file a 1996 Wisconsin income tax return by the April 15, 1997, due date. The department sent him a letter requesting that he file the 1996 return,

and the taxpayer claims he did not receive it. The department issued an estimated assessment against the taxpayer on November 9, 1998, which included 1996 income tax, interest, penalties, and a late filing fee. Concerned over the demand for payment without proper representation, the taxpayer paid the assessment, with updated interest, in October 1999.

The taxpayer filed his 1996 Wisconsin income tax return in January 2001, reflecting an \$84 refund, not including the estimated assessment that had been paid. The department issued a refund for \$54 in February 2001, after subtracting a \$30 late filing fee.


The taxpayer filed a petition for redetermination with the department, dated May 8, 2001, in which he did not object to the \$54 refund but asked for a refund of the estimated assessment payment he had made in October 1999. The department denied the petition for redetermination, on the basis that the statute in effect when the assessment was made and paid provided that a claim for refund had to be made within two years after the assessment (i.e., by November 2000). The taxpayer filed a timely appeal to the Commission.

On appeal, the taxpayer contends that the amended statute applies and that he had four years (i.e., until November 2002) to file his claim for refund, on the basis that there was not an effective date in the Act that provided the amendment to four years. The department

counters that there *was* an effective date in the Act that provided the amendment, and that the treatment of the amendment “first applies to refunds for taxable years beginning on January 1, 2000.”

The Commission concluded that the amendment to sec. 71.75(5), Wis. Stats., whereby the time period for filing a claim for refund after an assessment was increased from two years to four years after the assessment, does not apply to the department’s assessment against the taxpayer. The amendment first applied to refunds for taxable year 2000, and the taxpayer’s claim pertains to taxable year 1996.

The taxpayer has not appealed this decision. [!\[\]\(cbe2492b119e39e02a1dab2af4a4b296_img.jpg\)](#)

 **Employer - nonresident entertainer; Employer - required to withhold; Business deductions - wages.** *Kirk D. and Maria A. Seefeld vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 13, 2002). The issues in this case are:

- A. Whether the taxpayers were the “employer” of nonresident entertainers, as the term is defined in sec. 71.63(3), Wis. Stats., during 1994 through 1996 (“the period under review”).
- B. Whether the department correctly assessed the taxpayers under sec. 71.80(15)(e), Wis. Stats., the amounts which they were required to withhold and transmit to the department because they failed to require proof that the nonresident entertainers had filed surety bonds or made cash deposits, pursuant to sec. 71.80(15)(b), or (c), Wis. Stats.
- C. Whether, under sec. 71.05(6)(a)8, Wis. Stats., the department correctly disallowed deductions for commission fees that the taxpayers claimed on their Wisconsin income tax returns during the period under review, because they failed to comply with secs. 71.63(3) and (4), 71.64(4) and (5), and 71.80(15), Wis. Stats.

The taxpayers filed their 1994 through 1996 Wisconsin income tax returns. During this period, they were Wisconsin residents and married to each other.

In November 1998, the department issued an assessment to the taxpayers, consisting of income tax, interest, and a penalty. The adjustments included changes to the tax-

payers’ federal Schedule Cs, their self-employment tax deduction, recycling surcharge, and, significantly in this case, deductions claimed on their Schedule Cs for commissions paid to nonresident entertainers on engagement contracts (“contracts”) exceeding \$3,200. The taxpayers filed a petition for redetermination with the department, in which they admitted that they paid commissions to nonresident entertainers and filed Forms 1099 for the payments. The department issued a Notice of Action on the petition for redetermination, granting it in part and denying it in part. The taxpayers then filed a petition for review with the Commission.

During the period under review, the taxpayers owned and operated, as a sole proprietorship, an entertainment-bookings agency. They generated business by seeking out or providing services to entertainment buyers and venue owners/operators, who wanted entertainment for certain occasions. They also found specific types of entertainment at the request of the buyers of the entertainment (i.e., their clients). They used contract forms in their business. Each of the 22 contracts in the record was for nonresident entertainers performing in Wisconsin. Each one is signed on a line designated “Purchaser Name” (“taxpayers’ client”), and on all 22 contracts, the line designated “Leader Name” is signed on behalf of the nonresident entertainer or nonresident entertainment company (“nonresident entertainer”).

The taxpayers negotiated the terms and conditions in the contracts on behalf of their clients and arranged for the entertainment performed by nonresident entertainers. They prepared the contracts, which were signed by their clients and nonresident entertainers; approved the contracts before they were sent to be signed; sent the

contracts to their clients and to nonresident entertainers, who signed them; approved any amendment to the contracts; and booked the entertainment covered by the contracts.

The taxpayers were paid a “binder fee” for finding entertainers, negotiating the contracts, and booking the entertainment. Pursuant to the contracts, the taxpayers’ clients sent them the security deposit, balance due, and binder fee. The taxpayers deposited these amounts into their business checking account; paid each nonresident entertainer the security deposit, and paid each nonresident entertainer the balance due under the contracts, immediately before the entertainment.

The department considers the taxpayers the employers of the non-resident entertainers under sec. 71.63(3), Wis. Stats. The nonresident entertainers covered by the contracts (which, in every instance here, exceeded \$3,200 per performance) did *not*; (a) provide the department with a surety bond equal to 6% of the total contract amount; (b) make a cash deposit with the department equal to the amount of surety bond required; or (c) provide the taxpayers with proof that a surety bond had been provided to the department. The taxpayers did not require or receive proof that the nonresident entertainers did any of the above.

Neither the taxpayers nor any other person or business withheld taxes from the amounts paid to the nonresident entertainers. Neither did the taxpayers withhold amounts


from nonresident entertainers’ payments for which a surety bond should have been provided. The department did not issue to the nonresident entertainers a Form WT-11 to prove that the department received a surety bond or cash deposit from the nonresident entertainers.

The Commission concluded as follows:

- A. The taxpayers were the “employer” of nonresident entertainers, as the term is defined in sec. 71.63(3), Wis. Stats., during the period under review.
- B. The department did correctly assessed the taxpayers under sec. 71.80(15)(e), Wis. Stats., the amounts which they were required to withhold and transmit to the department because they failed to require proof that the nonresident entertainers had filed surety bonds or made cash deposits, pursuant to sec. 71.80(15)(b), or (c), Wis. Stats.
- C. The department did correctly disallow, under sec. 71.05(6)(a)8, Wis. Stats, deductions for commission fees that the taxpayers claimed on their Wisconsin income tax returns during the period under review, because they failed to comply with secs. 71.63(3) and (4), 71.64(4) and (5), and 71.80(15), Wis. Stats.

The taxpayers have not appealed this decision. [!\[\]\(aa53ad6fea213b8b2226d3077e30533a_img.jpg\)](#)

SALES AND USE TAXES

 **Exemptions - common or contract carriers.** *Freight Lime And Sand Hauling, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 20, 2002). The issue in this case was whether the Commission should adhere to its prior decisions that limit the application of the exemption from sales and use tax found in sec. 77.54(5)(b), Wis. Stats., to contract carriers that transport property that has value, so that the taxpayer’s purchases of trucks and related equipment during the period from January 1, 1992, through December 31, 1998, do not qualify for the exemption.

The taxpayer is a Wisconsin corporation, licensed by the Wisconsin Department of Transportation as a contract motor carrier, and in the business of hauling items in three distinct divisions or lines of business. One division

hauled bulk materials such as sand, lime, and other aggregates for factories and other uses. Another division hauled bulk food grade product throughout the United States. The third division contracted with disposal companies to transport waste between the disposal companies’ transfer stations and their disposal sites. It is the taxpayer’s purchases of trucks and related equipment for use in the third division’s operations that are in question.

Disposal companies picked up waste from homes and businesses in municipalities with which these companies contracted and hauled the waste to their respective intermediate transport stations. The taxpayer would then haul the waste from these transfer stations to disposal sites designated by the disposal companies. The ultimate control over the waste hauled by the taxpayer remained with the disposal companies. The taxpayer was paid by the disposal companies based on the volume of waste the taxpayer hauled, set as an amount per ton of waste,

with a minimum load guarantee. The waste hauled by the taxpayer had no positive economic value and was not marketable at the time the taxpayer hauled it.

The Commission concluded the taxpayer's purchases of trucks and related equipment during the period from January 1, 1992, through December 31, 1998, qualify for exemption from sales and use tax under sec. 77.54(5)(b), Wis. Stats., because the destination of the waste hauled by the taxpayer was determined by the taxpayer's customers, not the taxpayer.

Section 77.54(5)(b), Wis. Stats., exempts from sales and use tax certain items "sold to ...contract carriers who use such (items) exclusively as ...contract carriers..." This section does not define "contract carriers." In *Gen-sler v. Department of Revenue*, 70 Wis. 2d 1108 (1975), the Supreme Court held that in construing this exemption it was appropriate to rely upon the definitions set forth in sec. 194.01, Wis. Stats. This section defines contract carrier as "any person engaged in the transportation by motor vehicle over a regular or irregular route upon the public highways of property for hire."

In *Superior Hazardous Waste Group, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 17, 1998), the Commission held that the

definition of "contract carrier" was limited to a carrier that hauled property with value. The department took the position that persons hauling waste were not hauling "property" and, therefore, did not fall within the definition of a contract carrier hauling property for hire. However, the Commission now concludes "...We believe that construing the definition of contract carrier in section 77.54(b) to apply only to carriers that transport property with positive value is unreasonably narrow...." Therefore, to the extent the prior decisions held that property transported has to have value in order to qualify for the exemption in sec. 77.54(5)(b), Wis. Stats., the Commission concludes those holdings are to be disregarded. There is no requirement by either sec. 77.54(5)(b), or 194.01(2), Wis. Stats., that the property hauled have positive, negative, or no value, as long as it is property of others and is hauled for hire.

The Commission concluded that the exemption for trucks and related equipment used by contract carriers does not extend to disposal services. The taxpayer does not operate a disposal service. Rather, the taxpayer hauls property from one point to another point as designated by its customers.

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



Exemptions - printed advertising materials.

Plaza Publications, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 31, 2003). The issues in this case are:

- A. Whether purchases of printed advertising materials by Plaza Publications, Inc. ("Plaza") during the years 1996 through 1999 ("the period under review"), that were shipped outside Wisconsin, qualify for the exemption in sec. 77.54(25), Wis. Stats., for printed advertising materials purchased and stored for the purpose of subsequently transporting them outside the state by the purchaser for use solely outside the state.
- B. Whether an exemption certificate provided by Plaza to a printing company ("the printer") was sufficient to exempt Plaza from use tax due on printed advertising materials purchased from the printer and distributed free to Wisconsin locations.
- C. Whether Plaza was negligent under sec. 77.60(3), Wis. Stats., for failure to report use tax on the pur-

chases of printed advertising materials that were shipped to Wisconsin locations.

- D. Whether the tax due on the printed advertising materials shipped to Wisconsin locations was subject to delinquent interest under sec. 77.60(2), Wis. Stats.

Plaza is a Wisconsin corporation engaged in the publication of printed advertising materials. Plaza's primary business is the publication of tourism-related publications for which Plaza sells advertising. A major client was the Greater Milwaukee Convention and Visitor's Bureau ("GMCVB"), for which Plaza published the *Milwaukee Visitor's Guide* and the 1994 *Greater Milwaukee Meeting Planner's Guide*. Plaza was not paid by GMCVB, but kept revenues it generated from the sales of advertising in the publications. The publications are printed by the printer and are distributed free, within and outside Wisconsin.

Plaza had a Wisconsin seller's permit but did not report any sales during the period under review, and it had the seller's permit inactivated in December 1997. Plaza purchased taxable printed advertising materials or printing

services from the printer during the period under review, paying no sales tax to the printer, and providing the printer with a continuous exemption certificate stating “Our publications are always given away free. Never sold.” The printed advertising materials were delivered by contract carrier, at Plaza’s direction, to locations within and outside Wisconsin. None of the publications were sold by Plaza. GMCVB gave away and did not sell the publications.

The Commission concluded as follows:

A. Plaza’s purchases of printed advertising materials during the years 1996 through 1999, which were shipped outside Wisconsin, qualify for the exemption in sec. 77.54(25), Wis. Stats. The printed materials Plaza purchased from the printer for use by GMCVB outside Wisconsin are covered by this exemption. The printed materials delivered to GMCVB for use in Wisconsin are not exempt.

The Department contended the exemption in sec. 77.54(25), Wis. Stats., did not apply because the printed advertising materials were not transported outside the state “by the purchaser.”


B. The improperly completed exemption certificate given to the printer did not relieve Plaza from the use tax due on printed advertising materials purchased from the printer and distributed free to *Wisconsin locations*.

C. Plaza was negligent under sec. 77.60(3), Wis. Stats., for failure to report use tax on the purchases of printed advertising materials that were shipped to Wisconsin locations. Plaza cannot delegate its responsibility to comply with the tax law to the printer, and it has not demonstrated that its non-compliance with the law was due to good cause and not due to neglect.

D. The tax due on the printed advertising materials shipped to Wisconsin locations was subject to delinquent interest under sec. 77.60(2), Wis. Stats., because the tax was not paid by the due date of a return, had one been filed.

The department has appealed this decision to the Circuit Court. The taxpayer has not appealed the decision. [↗](#)

SALES AND USE TAXES, AND WITHHOLDING OF TAXES


 **Officer liability.** *Michael A. Pharo and Brenda Pharo vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, October 16, 2002). This is an appeal of an order of the Circuit Court for Dane County, dated October 30, 2001. The Circuit Court dismissed the taxpayers’ appeal of the March 23, 2001, decision of the Wisconsin Tax Appeals Commission, which held that both taxpayers were persons responsible for the withholding and sales/use taxes of American Alarm & Telephone Corporation. The basis for the dismissal was that the taxpayers failed to comply

with the briefing schedule that the Circuit Court had issued. See *Wisconsin Tax Bulletin* 125 (July 2001), page 20, for a summary of the Commission’s decision (the Circuit Court order was not summarized).

The Court of Appeals concluded that the Circuit Court’s order of dismissal was appropriate, because the taxpayers failed to show a clear and justifiable excuse for their failure to comply with the Circuit Court’s briefing schedule, and it affirmed the order of the Circuit Court.

The taxpayers appealed the Court of Appeals’ decision to the Wisconsin Supreme Court. The Supreme Court denied the petition for review on January 21, 2003. [↗](#)

MOTOR VEHICLE FUEL TAX

 **Officer liability.** *Daniel J. Bender and Carol J. Bender vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 11, 2002). Although each taxpayer was heard as a separate case, the decisions were combined and therefore they

are summarized together. The issues in these cases are whether the taxpayers are responsible persons who are liable for the unpaid motor vehicle fuel tax of L. L. Bender Oil Corporation (“the corporation”), under sec. 78.70(6), Wis. Stats., for July 1998.

The taxpayers were officers of the corporation, were in charge of the corporation’s day-to-day operations, and

were authorized to sign checks on the corporation's checking account.

In July and August 1998, the taxpayers signed and issued checks to pay creditors other than the department. The corporation sold fuel and collected motor vehicle fuel tax from customers, but it did not remit the fuel tax it collected on sales made during July 1998. One of the corporation's suppliers of motor vehicle fuel provided the department with substantiation that it was unable to recover the fuel tax from the corporation pursuant to sec. 78.01(25), Wis. Stats., on fuel sold to the corporation.

The Commission concluded that the taxpayers are personally liable under sec. 78.70(6), Wis. Stats., for the unpaid motor vehicle fuel tax of the corporation for July 1998. 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 taxpayers were **officers** of the corporation, were in charge of the corporation's day-to-day operations, were authorized to sign checks on the corporation's checking account, and had **authority** to pay the corporation's motor vehicle fuel tax. As persons with authority, and who knew or should have known that the corporation had not paid the July 1998 fuel tax, the taxpayers had a **duty** to see that corporate funds were used to pay the fuel tax liability. The taxpayers paid several creditors while the fuel tax for July 1998 was not paid.

The taxpayer's claim that the motor vehicle fuel tax is not imposed on them is not supported because sec. 78.12(3), Wis. Stats., provides that any person in possession of motor vehicle fuel, upon which the fuel tax has not been paid, shall pay the tax.

The taxpayers have appealed this decision to the Circuit Court. [!\[\]\(e474458956c9a37fbf9586ddb60a7fa1_img.jpg\)](#)



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:

Fiduciary Income Tax

Trusts - situs and resident status; Trusts - taxation generally; Trusts - taxation if ESBT or QSST elections are made

W 0315002 (p. 28)

✱ W 0315002 ✱

January 17, 2003

Type Tax: Fiduciary Income Tax

Issue: Trusts - situs and resident status; Trusts - taxation generally; Trusts - taxation if ESBT or QSST elections are made

Statutes: Sections 71.04(1)(a),(b)1 and (b)2, 71.04(4), 71.125(2), and 71.25(2), Wis. Stats. (1999-00)

This letter responds to your request for a private letter ruling, regarding the resident status of certain enumerated trusts and the Wisconsin tax treatment of the trusts and the beneficiaries under qualified subchapter S trust (“QSST”) and electing small business trust (“ESBT”) elections. Appendix I provides the names and addresses of the Co-Trustees of the trusts and the beneficiaries of these trusts.

Facts as stated in your request:

The thirteen trusts are separate testamentary trusts and were created under the will of Decedent D, a decedent from a state other than Wisconsin (the “decedent”). The will is being probated in the other state. There also is an ancillary administration in Wisconsin. A copy of the decedent’s will was attached as Appendix II.

Each trust has a single beneficiary during the trust’s term, and each of the beneficiaries is the grandchild of the decedent. Appendix I lists each trust and the sole current beneficiary of each trust. All but one of the trusts terminates 20 years after the death of the decedent and is payable outright to the grandchild/beneficiary. One trust is to exist for the entire life of the beneficiary of that trust. The beneficiary of each trust has a general testamentary power of appointment over the trust for his or her benefit.

Appendix I breaks the trusts into two categories: trusts with beneficiaries who currently are Wisconsin residents (each such trust and respective beneficiary is hereinafter referred to as “Trust A” and “Beneficiary A”); and trusts with beneficiaries who currently are not Wisconsin residents (each such trust and respective beneficiary is hereinafter referred to as “Trust B” and “Beneficiary B”).

The trusts all have the same four Co-Trustees. The Co-Trustees are individuals. Three Co-Trustees presently reside in Wisconsin, and one of the Co-trustees resides in the other state. There is no requirement that the Co-Trustees reside in Wisconsin or the other state.

The trusts are not subject to Wisconsin jurisdiction. They are not required to file any annual trust reports with the Wisconsin probate court.

The trusts are cash method taxpayers and operate on a calendar year.

The decedent owned an interest in Corporation XYZ, a Wisconsin S corporation (the “Company”). The Company has income from both Wisconsin and non-Wisconsin sources and apportions its income. Pursuant to the decedent’s will, the decedent’s interest in the Company, as well as the balance of the decedent’s residuary estate, will be distributed to the trusts.

The trusts qualify under Federal law for both a Qualified Subchapter S trust (QSST) election and an Electing Small Business Trust (ESBT) election. The Co-Trustees and the beneficiaries are deciding whether to make a QSST or ESBT election with respect to the trusts.

Request: The Co-Trustees request the following rulings:

1. The trusts are not Wisconsin residents.
2. As to the portion of the trusts that do not hold the Company stock, secs. 71.04(4) and 71.04(1)(b)1, Wis. Stats., shall apply.
3. If an ESBT election is made with respect to one of the trusts, then, as to the ESBT portion of that trust:
 - a. Pursuant to sec. 71.04(4), Wis. Stats., the trust only will be taxed by Wisconsin on the trust's income that is derived from business transacted and property located within Wisconsin, which in this case, would be the trust's share of Company income apportioned to Wisconsin.
 - b. Beneficiary A and Beneficiary B will have no Wisconsin income with respect to distributions from the ESBT portion of the beneficiary's respective trusts.
4. If the QSST election is made with respect to one of the trusts, then, as to the QSST portion of that trust:
 - a. The trust will be disregarded for Wisconsin income tax purposes.
 - b. The trust's share of Company income will be taxed to the beneficiary according to the beneficiary's resident status (i.e., as if the beneficiary owned directly the Company stock owned by the beneficiary's respective trust). Thus, Beneficiary A, a Wisconsin resident, would report S Corporation income from all sources, and Beneficiary B, a non-Wisconsin resident, would report S corporation income from Wisconsin sources only.

Ruling:

1. Yes, the trusts are not Wisconsin residents.
2. Yes, for the portion of the trusts that do not hold the Company stock, secs. 71.04(4) and 71.04(1)(b)1, Wis. Stats., shall apply.

3. Yes, if an ESBT election is made with respect to one of the trusts, then, as to the ESBT portion of that trust:
 - a. Pursuant to sec. 71.04(4), Wis. Stats., the trust only will be taxed by Wisconsin on the trust's income that is derived from business transacted and property located within Wisconsin, which in this case, would be the trust's share of Company income apportioned to Wisconsin.
 - b. Beneficiary A and Beneficiary B will have no Wisconsin income with respect to distributions from the ESBT portion of the beneficiary's respective trusts.
4. Yes, If the QSST election is made with respect to one of the trusts, then, as to the QSST portion of that trust:
 - a. The trust will be disregarded for Wisconsin income tax purposes.
 - b. The trust's share of Company income will be taxed to the beneficiary according to the beneficiary's resident status (i.e., as if the beneficiary owned directly the Company stock owned by the beneficiary's respective trust). Thus, Beneficiary A, a Wisconsin resident, would report S Corporation income from all sources, and Beneficiary B, a non-Wisconsin resident, would report S corporation income from Wisconsin sources only.

Applicable Law:

Section 71.04(1)(a), Wis. Stats. (1999-00), provides in pertinent part:

All income or loss of resident individuals and resident estates and trusts shall follow the residence of the individual, estate or trust.

Section 71.04(1)(b)1, Wis. Stats. (1999-00), provides:

The situs of income derived by any taxpayer as the beneficiary of the estate of a decedent or of a trust estate shall be determined as if such income had been received without the intervention of a fiduciary.

Section 71.04(1)(b)2, Wis. Stats. (1999-00), provides:

The situs of income received by a trustee, which income, under the internal revenue code, is taxable to the grantor of the trust or any person other than the

trust, shall be determined as if such income had been actually received directly by such grantor or such other person, without the intervention of the trust.

Section 71.04(4), Wis. Stats. (1999-00), provides in pertinent part:

Nonresident individuals and nonresident estates and trusts engaged in business within and without the state shall be taxed only on such income as is derived from business transacted and property located within the state.

Section 71.25(2), Wis. Stats. (1999-00), provides:

The situs of income received by a trustee, which income, under the internal revenue code, is taxable to the grantor of the trust or to any person other than the trust, shall be determined as if such income had been actually received directly by such grantor or such other person, without the intervention of the trust.

Section 71.125(2), Wis. Stats. (1999-00), provides:

Each electing small business trust, as defined in section 1361(e)(1) of the Internal Revenue Code, is subject to tax at the highest rate under s. 71.06(1), (1m), (1n) or (1p), whichever taxable year is applicable, on its income as computed under section 641 of the Internal Revenue Code, as modified by s. 71.05(6) to (12), (19) and (20).

Internal Revenue Code (“IRC”) sec. 1361(d)(1)(B) provides for purposes of sec. 678(a), the beneficiary of a QSST shall be treated as the owner of that portion of the trust which consists of stock in an S corporation with respect to which the election under paragraph (2) is made.

Analysis:

Situs of the Trusts

The trusts are not Wisconsin trusts. Testamentary trusts are sited in the state where the decedent was domiciled at death, sec. 71.14(2), Wis. Stats. The trusts are not subject to the jurisdiction of Wisconsin courts, secs. 71.14(2) and 72.27(1), Wis. Stats. The Co-Trustees are not required to file any annual accounting with any court in Wisconsin.

The other state does not have a procedure for the transfer of the jurisdiction of a trust. Therefore, no transfer of

jurisdiction of the trusts from a court of the other state to a Wisconsin court has taken place or will take place.

The trusts should be treated as residents of the other state for income tax purposes.

Taxation of the Trusts Generally

The trust should only report income to Wisconsin that is attributable to Wisconsin sources. To the extent that distributable net income is carried out to the beneficiary, then the beneficiary will report such income consistent with the “beneficiary” status as a resident or non-resident of Wisconsin, secs. 71.04(4) and 71.04(1)(b)1, Wis. Stats.

Taxation if ESBT Elections are Made

If ESBT elections are made with respect to the trusts, the ESBT portion of each trust will be taxed by Wisconsin only on the trust’s income that is derived from business transacted and property located within Wisconsin, sec. 71.04(4), Wis. Stats. Under the facts as submitted, this would be each trust’s share of Company income apportioned to Wisconsin. This Wisconsin income would be taxed at the highest Wisconsin tax rate pursuant to sec. 71.125(2), Wis. Stats.

Each trust would owe no Wisconsin income tax on the trust’s share of the Company non-Wisconsin income, or on the trust’s other non-Wisconsin income.

Beneficiary A and Beneficiary B would have no Wisconsin income with respect to the distributions from the ESBT portion of the trust, as Wisconsin is taxing all such income at the trust level.

Taxation if QSST Elections are Made

If QSST elections are made with respect to a trust, the income of the QSST portion of the trust (the trust’s share of the Company income) will be treated as received directly by the beneficiary, sec. 71.25(2), Wis. Stats., and IRC secs. 1361(d), 678(a) and 671. The QSST portion of the trust will be disregarded for Wisconsin income tax purposes.

Beneficiary B (a non-resident of Wisconsin) will report to Wisconsin the Wisconsin portion of Trust B’s share of Company income. 