



# Wisconsin TAX BULLETIN

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

Number 135

July 2003

## New Tax Laws

The Wisconsin Legislature has enacted changes to the Wisconsin tax laws. On page 20 of this issue of the Wisconsin Tax Bulletin is a supplement containing brief descriptions of the new laws enacted as of July 31, 2003. Any laws enacted after this date will be reported in the October Bulletin. [↗](#)

## Department of Revenue Receives Awards from NACTP

The National Association of Computerized Tax Processors ("NACTP"), comprised of organizations and software vendors involved with computer tax processing, gives annual awards to the states that have the highest ratings based on guidelines set by the organization. The Wisconsin Department of Revenue received both second place and third place awards in this year's national competition, for electronic filing ("e-filing") friendliness.

The second place award was for promoting electronic filing by:

- Eliminating paperwork requirements.
- Encouraging a complete menu of software options (without requiring that all forms be supported).
- Standardizing its electronic forms and e-filing season dates.

The third place award was for communicating Wisconsin's e-filing specifications. This recognition was for:

- Presenting workshops, seminars, and conferences to explain e-filing procedures.
- Promoting e-filing to both practitioners and taxpayers.

- Having a high-profile Internet presence in posting changes and other information for use by both practitioners and taxpayers.
- Offering several electronic payment options. [↗](#)



## Free-File is an On-Line Hit!

In its first season, the Department of Revenue's new Free-File program proved to be a critical success. Over 65,000 taxpayers took advantage of the new Wisconsin Free-File program to file their 2002 Wisconsin income tax returns on-line, on time, and completely free of charge. Many of them took the time to tell the Department how much they loved this new service.

Louis E. Sather of Madison summed up the feelings of many after they've used Free-File when he e-mailed the department: *"Thank you, thank you, thank you."*

Taxpayers who are familiar with paper Forms 1, 1A, and WI-Z will find Free-File a comfortable way to update to the on-line world. Many users told the department they didn't even need the easy-to-understand on-line instructions to complete Free-File's on-screen fill-in forms.

Free-File is available through the state government e-portal at [www.Wisconsin.gov](http://www.Wisconsin.gov) or more directly at [www.dor.state.wi.us](http://www.dor.state.wi.us). Taxpayers have been asking for an income tax form they can file on-line. Free-File also takes homestead credit claims.

Unlike more full-featured commercial tax preparation software or professional tax preparers, Free-File does not offer tax preparation assistance or planning advice. Free-File is for taxpayers who do not file federal schedules C, C-EZ, D, E, F, or 4797.

To hold down costs, the program was developed in-house by the department's Office of Technology Services. Technologically, the program proved to be as solid and stable as a bank vault. The latest computer file encryption technology is used to ensure confidentiality.

*(continued on page 4)*

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## States Reach Milestone on Streamlined Sales Tax Legislation

The Streamlined Sales and Use Tax Agreement is a product of the Streamlined Sales Tax Project. This Project is an effort created by state governments, with input from local governments and the private sector, to simplify and modernize sales and use tax collection and administration. The Project's proposals include tax law simplifications, more efficient administrative procedures, and emerging technologies to substantially reduce the burden of tax collection.

The Streamlined Sales and Use Tax Agreement provides a threshold at which the Agreement becomes binding and effective. That threshold is 10 states with at least 20 percent of the total population of all states that impose a state sales tax. The states met that threshold in July 2003 when 17 states representing over 20 percent of the population enacted the Streamlined compliance legislation. The states are: Arkansas, Indiana, Iowa, Kansas, Kentucky, Nebraska, Nevada, North Carolina, North Dakota, Ohio, Oklahoma, South Dakota, Tennessee, Utah, Vermont, West Virginia, and Wyoming.

Another three states have enacted most of the compliance legislation. All three states have indicated they will follow up with additional legislation in 2004. These three states are Minnesota, Texas, and Washington.

Wisconsin is expected to introduce its compliance legislation in August 2003. Additional states will follow in late 2003 and early 2004. 

## Three Ways to File Sales Tax Returns Electronically

Taxpayers like choices. Soon, merchants who file sales tax returns with the Wisconsin Department of Revenue will have three electronic filing choices.

The Sales Internet Process ("SIP") blazed new electronic trails when it was launched over three years ago. In the fiscal year that ended in June 2003, over 160,000 sales tax returns were filed via SIP. That's up six-fold from the preceding year.

Two additional choices for filing electronically will be available shortly: File Transmission and TeleFile.

### File Transmission

Wisconsin sales tax filers requested an option to provide a direct electronic interface between their systems and the Wisconsin Department of Revenue. Soon they will have it. Merchants can simply upload their Sales and Use Tax returns over the Internet in an electronic file.

The new Sales File Transmission:

- Is a secure process for receiving formatted electronic transmissions of sales tax returns.
- Allows multiple XML files zipped together for one transmission.

### Wisconsin Tax Bulletin

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Document Sales  
P.O. Box 7840  
Madison, WI 53707-7840

*Annual cost \$7.00*

- Sends acknowledgements within one business day.
- Is available using the Electronic Funds Transfer (“EFT”) debit and credit payment process, if the Sales and Use Tax registrants are registered for EFT with the Wisconsin Department of Revenue.
- Incorporates work done by the IRS and the Federation of Tax Administrators standards group.

A program summary, the schema, a guide, a sample “instance document,” a sample script and instructions, and Wisconsin Publication 129, *Sales & Use Tax Returns Handbook – E-File File Transmission of Form ST-12*, will be offered on the Internet.

### Sales TeleFile

The TeleFile process will use the department’s existing voice-response unit and allow returns with sales in all counties to be filed. TeleFile is a fast, friendly, and free option to file a sales and use tax return electronically and remit the tax. All you need is a touch-tone telephone.

The new Sales TeleFile will:

- Allow the use of the keypad of a touch-tone telephone to enter the information from a completed TeleFile worksheet. TeleFile will use the information entered to calculate the sales and use tax.
- Provide three types of payments: electronic funds transfer (“EFT”), credit card, and check or money order.
- Ask to confirm that the information is true and correct.

### Sales Internet Process

Today, almost one of every three monthly sales tax returns is filed electronically via the Sales Internet Process. SIP is the Wisconsin Department of Revenue’s secure web-based application that combines the convenience of filing sales and use tax returns from a computer desktop, along with the speed and flexibility of making tax payments by electronic funds transfer (“EFT”).

Filing sales and use taxes electronically – whether through File Transmission, TeleFile, or SIP – offers these advantages over filing a paper return:

- Saves postage, printing, and handling costs.
- Provides a receipt or confirmation showing when the return was received.
- Allows an EFT payment to be initiated or warehoused.

### For more information about ...

- **File Transmission**, visit [www.dor.state.wi.us/eserv/salestr.html](http://www.dor.state.wi.us/eserv/salestr.html).
- **Sales TeleFile**, the Wisconsin Department of Revenue will post information on its web site in August 2003.
- **Sales Internet Process (“SIP”)**, visit [www.dor.state.wi.us/eserv/sip.html](http://www.dor.state.wi.us/eserv/sip.html).
- **Sales and Use Tax Changes**, the Wisconsin Department of Revenue will send you e-mail updates on sales and use tax issues. All you need to do is:
  1. Send an e-mail message to [majordomo@badger.state.wi.us](mailto:majordomo@badger.state.wi.us).
  2. Leave the subject line blank.
  3. In the body of the message, type... **subscribe dorsales**.
  4. **Do NOT enter your name or any other information.**
  5. **Delete any “signature” your e-mail system may add automatically.**

After following the above procedure, you will receive a return e-mail message confirming your subscription to the **dorsales** e-mail list.

**Sales Tax in General**, you may send an e-mail message to [sales10@dor.state.wi.us](mailto:sales10@dor.state.wi.us) or telephone (608) 266-2776.



**Free-File an On-Line Hit***(Continued from page 1)*

The free Internet income tax filing service is one of the ways the department is meeting its budget reduction targets, while maintaining and improving its quality of service to the taxpayers of Wisconsin.

This year, more than two of every five personal income taxpayers filed electronically – whether through Free-File, TeleFile, commercial on-line filing programs, or through practitioners who e-file. That's up 35 percent from last year, when one of every three filed electronically.

Electronically filed tax returns help the Department of Revenue save precious tax resources because e-filed returns capture the taxpayer's keystrokes. There's no need for the Department to manually enter or scan e-filed returns into its computers.

**Here's what else taxpayers say about Wisconsin Free-File:**

*"I didn't even need postage. The layout was clear, easy to navigate and there were help links available though I think I only needed one once."* – Gina Enzenbacher of West Allis.

*"Not only was it truly free but it was also quite simple and easy to understand."* – Barb Luther of Whitewater.

*"This was my first attempt at e-filing a tax return. I liked all the carryover and computation of the tax and standard deduction. ... I was very impressed. My refund was deposited to my bank account today ... This means I received my refund in 4 business days, another good reason to use Free-File."* – James Arter of Wauwatosa.

*"The Free File web site was the easiest and quickest site that I have ever used for filing my taxes. The layout was intuitive and simple to navigate. I tried several other free sites and gave up due to slow data ... and pop-up screens that tried to sell you something extra."* – D. Hines of Madison.

*"I just wanted to let you know that this was really the easiest state income tax filing we've done! I hope you do it again next year."* – Kathy and Bob Hawley of Kenosha.

*"Wow! I am impressed with the ease and speed of this program! I had absolutely no problems. ... This was simple, fast and fun."* – Cheryl Scholl of Appleton. [!\[\]\(626ce8ac21792b9405bfddfea8e0c96a\_img.jpg\)](#)

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**Undeliverable Income Tax Refunds**

The number of undeliverable refund checks and direct deposit bank rejects resulting from incorrect, incomplete, or illegible addresses and/or bank information increased by 20% this tax season.

Taxpayers who request electronic deposits but have incorrect bank numbers are issued paper checks instead. This adds approximately one month to the time for a

taxpayer to receive his or her refund. For taxpayers who request paper checks, checks that are returned by the Post Office are held until the taxpayer contacts Customer Service, (608-266-2772), and provides a new address.

To ensure the fastest possible refunds, please use extra care when filling in address and bank information on income tax returns. [!\[\]\(cbd8541a32dfc32f356f5c6c994b0a21\_img.jpg\)](#)

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**Treasury Offset Program Pays Big Dividends**

The Department of Revenue has collected over \$9.3 million in delinquent income taxes through the Treasury Offset Program ("TOP"), a federal offset program implemented in Wisconsin in February 2001.

Since the program's inception, the department has certified more than \$265 million of unpaid income taxes to Financial Management Services, the branch of the U.S. Treasury that disperses federal payments, including federal income tax refunds. More than 13,000

delinquent taxpayers in Wisconsin have had their federal refunds intercepted, either in whole or in part, as a result of the program.

TOP, an off-shoot of a larger program that offsets most types of federal payments on behalf of federal agencies, was first opened to state revenue departments in January 2000. As of May 2003, the thirty-one states participating in the program have collected more than \$331 million in delinquent income taxes. [!\[\]\(1f99bf65f43889da445ecc1fe8d9504f\_img.jpg\)](#)

## Use Tax Calculator Now Available

Do you buy items over the Internet, from mail-order companies, or while traveling in other states? If so, you may owe Wisconsin use tax. The Wisconsin Department of Revenue has developed a free **Use Tax Calculator** (in an Excel spreadsheet) to help individuals track and calculate use tax owed to Wisconsin.

If you purchase taxable items but do not pay Wisconsin sales tax to the seller, and you store, use, or consume these items in Wisconsin, Wisconsin use tax is due.

All merchandise that is taxable under Wisconsin's sales tax law is subject to Wisconsin use tax, if no sales tax was paid. Examples of taxable merchandise include antiques, artwork, books, cameras, carpeting, chinaware, computers, furniture, furs, clothing, jewelry, precious metals, gemstones, prewritten software, stereo equipment, tapes, and compact discs. Use tax applies to the total purchase price you pay to the seller for taxable items, including shipping and handling charges.

The new **Use Tax Calculator** can be used by persons who have some type of spreadsheet software on their computers, such as Excel, Lotus, or QuatroPro. If you don't have spreadsheet software, you can download a **free** Excel viewer that will enable you to **only** view and print the spreadsheet.

The Use Tax Calculator can be downloaded onto your computer from the department's web site at

[www.dor.state.wi.us](http://www.dor.state.wi.us). Click on "Forms," scroll down to "Sales and Use Tax," and click on "Form SU-102."

Throughout the year, you can add your purchases to the Use Tax Calculator and save the information. The spreadsheet calculates the appropriate tax due that can be reported annually on your Wisconsin income tax return.

### Any questions?

For additional information about Wisconsin use tax, you may refer to Wisconsin Publication 205, *Use Tax Information for Individuals*, available at [www.dor.state.wi.us/pubs/01pb205.pdf](http://www.dor.state.wi.us/pubs/01pb205.pdf), or you may contact the Department of Revenue in Madison, call or visit your nearest Department of Revenue office, or visit the department's web site.

Write: Wisconsin Department of Revenue  
Mail Stop 5-77  
P.O. Box 8902  
Madison, WI 53708-8902

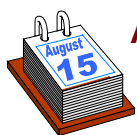
Telephone: (608) 266-2776

TTY: (608) 267-1049

Fax: (608) 267-1030

E-mail: [sales10@dor.state.wi.us](mailto:sales10@dor.state.wi.us)

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



## Automatic 4-Month Extension Expires August 15

If your 2002 Wisconsin and federal individual income tax returns were due April 15, 2003, but you filed an application for an automatic 4-month extension for filing your federal return with the Internal Revenue Service ("IRS"), both your federal and Wisconsin returns are due August 15, 2003. When you file your Wisconsin return, be sure to attach a copy of the federal extension application, Form 4868.

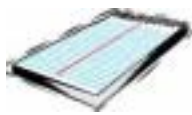
Any filing extension available under federal law may be used for Wisconsin purposes, even if you are not using that extension to file your federal return. If you did not file a federal extension application but needed a 4-month extension for Wisconsin only, your 2002 Wisconsin return, ordinarily due April 15, 2003, must be filed by August 15, 2003.

If you are extending the time to file your Wisconsin return only, attach one of the following items to the 2002 Wisconsin return you file:

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

**Note:** You were not required to pay your 2002 taxes by April 15, 2003, as a condition for receiving an extension of time to file your Wisconsin tax return. However, an extension does not extend the time to pay your tax; taxes paid after April 15 are subject to 12% per year interest during the extension period and 18% per year interest after the extension period. [✎](#)





## Index of Reference Material Available


Are you looking for an easy way to locate reference material to research a Wisconsin tax question? The *Wisconsin Topical and Court Case Index* may be just what you need.

This two-part index will help you find reference material relating to income, franchise, withholding, sales/use, estate, and excise taxes.

The “Topical Index” portion lists by tax type, alphabetically by subject, references to Wisconsin statutes, administrative rules, tax releases, private letter rulings, Wisconsin tax publications, *Sales and Use Tax*

*Reports*, Attorney General opinions, and *Wisconsin Tax Bulletin* articles.

The “Court Case Index” lists by tax type, alphabetically by issue, decisions of the Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court.

The *Wisconsin Topical and Court Case Index* is available by subscription for \$18 per year, plus sales tax. This includes a volume published in January and an addendum published in June. To order your copy, complete the order blank on page 27 of this Bulletin. The Index is also on the department’s web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Just click on “Publications.” 

## Additional Practitioners Must File Returns Electronically

Administrative rule section Tax 2.08 requires, in sub. (3)(b) to (3)(e), that certain tax practitioners file individual income tax returns electronically.

Beginning January 1, 2004, this requirement applies to practitioners who filed 100 or more 2002 Wisconsin individual income tax returns (Form 1, 1A, and WI-Z) and homestead credit claims. The threshold, which was 200 returns for the 2003 processing season, will remain at 100 for future years.

The Department of Revenue sent a letter to practitioners in June, notifying them of this requirement. If you are a practitioner who filed 100 or more 2002 Wisconsin individual income tax returns and/or homestead credit claims and did not receive a letter notifying you of this requirement, please contact the department using one of the methods listed at the end of this article.

While the department is committed to advancing electronic filing, the rule allows for a waiver in the case of undue hardship, and in specific cases when the

individual taxpayer does not want to file electronically. A taxpayer who prefers to file a paper return may write “no e-file” before his or her signature on the tax return; this will relieve the practitioner of the e-filing requirement for that return.

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

For more information about registering to submit individual income tax returns electronically through the fed/state e-file program, go to [www.dor.state.wi.us/eserv/e-ero.html](http://www.dor.state.wi.us/eserv/e-ero.html) or contact the department by any of the following methods:

Mail: Wisconsin Department of Revenue  
Electronic Filing Unit  
P.O. Box 8949  
Madison, WI 53708-8949

Phone: (608) 264-6886


Fax: (608) 267-1030

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

## Use Sufficient Postage

Every day, mail is sent to the Department of Revenue without sufficient postage affixed. Mailing an envelope with insufficient postage may result in the department not receiving it. The U. S. Post Office will return envelopes that do not have sufficient postage (for this reason, it is important to include your complete return

address, so the envelope won’t end up in the “dead-letter office”).

Envelopes that will need additional postage include those that weigh more than one ounce. This may occur if the envelope contains more than five pages or is oversized (for example, more than ¼ inch thick). 

## 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 page, [www.irs.gov/formspubs/index.html](http://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 but 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. [☎](#)

## Nonfiler Convicted

Mark W. Hummel, age 31, was convicted and sentenced in April 2003 before Winnebago County Circuit Court Judge Barbara Key, for failure to file a Wisconsin income tax return. Hummel, who operates a roofing business known as Premier Construction, was sentenced to nine months in jail. The jail sentence was stayed, and Hummel was placed on probation for two years with the conditions that he undertake counseling, pay costs of supervision, and make restitution to the Department of Revenue. In staying the jail sentence, Judge Key took into consideration that Hummel just completed a jail

sentence in Outagamie County, for failure to support a child.

Failure to file a Wisconsin income tax return when due is a crime punishable by up to nine months imprisonment, up to \$10,000 in fines, or both, together with the cost of prosecution. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, penalties, and interest due follows a conviction for criminal violations. [☞](#)



## 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](http://www.dor.state.wi.us); click on “Training.” [☞](#)

## Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division and the Processing and Customer Services Division. A comprehensive listing of telephone numbers and addresses appears in *Wisconsin Tax Bulletin* 134 (April 2003), pages 31 to 34.

### Madison – Main Office Area Code (608)


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

### District Offices

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

## Any Suggestions for 2003 Tax Forms?


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

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



## 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). 

## Dry Cleaning Fees Help the Environment

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

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

The Department of Revenue has registered many dry cleaning facilities. However, audits of accounts have





shown that not *all* dry cleaning facilities are registered for this license, which has been **required under state law** since October 14, 1997. When the Department of Revenue contacts a dry cleaning facility that has failed to register for this license, costly negligence penalties can result. If the department has not previously contacted a cleaning facility, the facility can still register under a “voluntary disclosure” process that will eliminate the costly negligence penalty and will even reduce late interest.

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

Mail: Wisconsin Department of Revenue  
Customer Service and Taxpayer Education  
Technical Assistance – Business  
P.O. Box 8902  
Madison, WI 53708-8902

Phone: (608) 266-2776

Fax: (608) 267-1030

E-Mail: [sales10@dor.state.wi.us](mailto:sales10@dor.state.wi.us) 



### Wisconsin/Minnesota Sales Tax Seminars

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


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

October 7, 2003 – Duluth, Minnesota  
Minnesota Department of Revenue Office  
2711 West Superior Street

\*\*\*\*\*

October 14, 2002 – Hudson, Wisconsin  
Hudson House  
1616 Crestview Drive

\*\*\*\*\*

October 21, 2002 – Onalaska, Wisconsin  
Onalaska Omni Center  
225 Rider Club Street 

## Question and Answer ?

**Caution:** The answers in this article reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date of this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations.

### (Individual Income Tax)

**Q** I am a single retired person. Am I eligible for the working families tax credit, even though I am no longer working and I don't have a family?

**A** Yes, if your income is less than \$10,000 and you are a full-year Wisconsin resident. This credit, which is available to single taxpayers with income of less than \$10,000 and married couples filing a joint return whose income is less than \$19,000, reduces or completely eliminates the Wisconsin income tax for persons who are full-year Wisconsin residents. It is not

necessary for a person to be employed or to have a family in order to receive the credit.

**Q** I recently retired from the U. S. Army. Is my military pension taxable for Wisconsin tax purposes?

**A** No. Beginning with taxable year 2002, retirement payments received from the U. S. military system and from other uniformed services are not taxable for Wisconsin income tax purposes. This includes payments received from the Retired Serviceman's Family Protection Plan, and from the United States government that relate to service with the Coast Guard, the commissioned corps of the National Oceanic and Atmospheric Administration, and the commissioned corps of the Public Health Service.

**(Sales and Use Tax)**

**Q** Is shipping and handling subject to sales and use tax when I charge my customer for the delivery?

**A** Yes. When a seller charges a purchaser for the delivery of taxable tangible personal property, the seller's total charge, including any transportation and service charges, is subject to the sales or use tax. It is immaterial whether the delivery is made by the seller's vehicle, a common or contract carrier, or the United States Postal Service.

**Q** Can a restaurant charge sales tax on sales of drinks in the dining room differently than sales of drinks at the bar?

**A** Yes. A restaurant may choose to include the sales tax in beverage prices when served at the bar, but separately state the sales tax when beverages are served in the dining room, where a bill or invoice can be given.

For example, a customer may buy a drink in the restaurant bar for \$3.00, which includes the sales tax. The customer may buy another drink in the restaurant dining room for \$3.00, where 5% sales tax is added to the price for a total charge of \$3.15. This is a correct application of the Wisconsin sales tax. The establishment is simply charging a slightly higher price for the drink served in the restaurant than for the same drink sold at the bar.

**Note:** In order for the restaurant to claim a deduction on its sales tax return for the sales tax included in the price of items served at the bar, the customers must be notified that prices include sales tax. This may be done by posting a sign on the premises, indicating that sales tax is included in prices charged at the bar. [✍](#)

**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](mailto:forms@dor.state.wi.us).

*Via Your Fax Machine*

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

*Via the Internet*

Access the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us), and click on "Publications" and then "Tax Publications."

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

**Income and Franchise Taxes**

- 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 (4/03)
- 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? (4/03)
- 213\* Travelers: Don't Forget About Use Tax (4/03)
- 214\* Businesses: Do You Owe Use Tax? (4/03)
- 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 (6/03)
- 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 (5/03)
- 509 Filing Wage Statements and Information Returns on Magnetic Media (2/01)
- 700 Speakers Bureau presenting . . . (6/00) [⤿](#)

## Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of July 1, 2003, and at each step where action occurred during the period from April 2, 2003, through July 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 27 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 Adopted but Not Yet Effective (anticipated effective date 8/1/03)

- 11.001 Forward and definitions – A
- 11.13 Direct pay – A
- 11.14 Exemption certificates – A
- 11.84 Aircraft – A [⤿](#)

## Soon-to-Be Adopted Rules Summarized

Summarized below is information regarding four sales and use tax administrative rules that have been revised: sections Tax 11.001 relating to applicability and definitions, Tax 11.13 relating to direct pay, Tax 11.14 relating to exemption certificates, and Tax 11.84 relating

to aircraft. It is anticipated that the effective date of the revisions will be August 1, 2003.

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

To order up-to-date administrative rules of the department, you can use the order blank that appears on page 27 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

**Tax 11.001 Forward and definitions.** The (intro.) and subs. (1), (2), (3)(intro.), (4), (5), and (6) are renumbered to be subs. (1) and (2)(a) to (2)(f), to conform the numbering of the rule to Legislative Council Rules Clearinghouse (“Clearinghouse”) standards. Subsections (3)(a) to (3)(d) are renumbered to be subs. (3)(a)1. to (3)(a)4., to remove substantive provisions from the definition of “retailer” and move them to new sub. (3). As renumbered:

- Subsection (1) is revised, to remove the introductory clause for definitions, as the definitions are moved to new sub. (2).
- Subsection (2)(a) is revised, to remove two substantive provisions from the definition of “consumers.” One provision is moved to new sub. (3), and the other is deleted because it is not applicable to this rule.
- Subsection (2)(c) is revised, to reference the definition of “retailer” to the statutory definition and to remove a substantive provision, which is moved to new sub. (3)(a)(intro.).
- Subsection (2)(d) is revised, to include the football stadium tax in the definition of “stadium tax,” allowed pursuant to 1999 Wis. Act 167, effective May 27, 2000.
- Subsection (2)(e) is revised, to reflect that the definition of “tax” includes county and stadium sales and use taxes.
- Subsections (3)(a)1., (3)(a)2., and (3)(a)3. are revised, to reflect correct punctuation per Clearinghouse standards.

Titles are created for subs. (1) to (3) as renumbered, to conform format to Clearinghouse standards and to clarify the content of each subsection.

Subsection (2)(intro.) is created, to provide an introductory clause for the definitions in pars. (a) to (f) as renumbered.

In sub. (3), par. (a)(intro.) is created, to provide an introductory clause for requirements with which retailers must comply, and par. (b) is created, to move a substantive provision in the definition of “consumers” to a separate subsection.

The text of Tax 11.001(1)(title), (2)(title) and (intro.), and (3)(title), (a)(intro.), and (b) is as follows:

Tax 11.001(1)(title) APPLICABILITY.

(2)(title) DEFINITIONS.

(intro.) In this chapter, unless otherwise specified:

(3)(title) RETAILERS AND RETAIL SALES.

(a)(intro.) Retailers shall comply with all requirements imposed upon them, including all of the following:

(b) Sales to consumers are retail sales to which either the sales tax or the use tax applies.

**Tax 11.13 Direct Pay.** Subsection (1)(a) is revised, to remove a substantive provision from the definition of “continuous.” The removed provision is covered in sub. (5)(b)1.

Subsection (3)(b) is revised, to eliminate a reference to a fee requirement that is no longer applicable, and to add the name of the direct pay permit application form. The note at the end of par. (b) is revised, to update the department’s mailing address and to include the Internet address.

In sub. (5), par. (a)2.(intro.) is revised, to provide that Form S-211 may be used as the written document in that subdivision, and par. (b)3. and the example following are revised, to update and to eliminate references to obsolete exemption certificates.

An obsolete note at the end of sub. (3)(a) is removed, and the example and note following subs. (3)(c) and (4)(b) are updated.

**Tax 11.14 Exemption certificates.** Subsection (6)(a)2. is revised, to reflect that a purchaser is subject to a sales tax rather than a use tax when it gives an exemption certificate claiming resale.

In sub. (13), par. (a)(intro.) is revised, to update a reference to a subsection in s. Tax 11.001, and par. (b) is revised, to correct a typographical error.

**Tax 11.84 Aircraft.** In sub. (1), pars. (b)1. and (b)2. are revised, to update punctuation per Clearinghouse standards, and par. (c) is revised, to update the name of the division in the Department of Transportation where aircraft are registered.

Subsection (2)(c) is renumbered to be sub. (2)(c)(intro.) and revised, and pars. (c)1. to (c)3. are created, to provide an introductory clause and to set forth the taxable items in separate subdivisions. Paragraph (c)4. is created, to reflect the taxability of towing 1) banners that



are not provided by the person towing them, 2) hang glider pilots, per the department's Private Letter Ruling, # W0124006 dated March 22, 2001, and 3) gliders.

In sub. (4), par. (a) is revised, to reflect the taxability of towing hang glider pilots as discussed above, and par. (c) is revised, to clarify a provision regarding the taxability of advertising banners towed by aircraft.

The text of Tax 11.84(2)(c)(intro.) and 1. to 4. is as follows:

Tax 11.84(2)(c)(intro.) *Other taxable receipts.* The gross receipts from charges for ~~aerial photographs and maps, and from charges for sightseeing flights and for carrying a skydiver are taxable.~~ the following are taxable:

1. Aerial photographs and maps.
2. Sightseeing flights.
3. Carrying a skydiver.
4. Towing a banner that is not provided by the person towing it, towing a hang glider pilot or towing a glider.






## Report on Litigation

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

The following decisions are included:

Individual Income Taxes	
Alimony, separate maintenance	
<i>Mary L. Sahs and Richard C. Sahs</i> .....	15
Business expenses - installment payments	
<i>Dean F. Blackwell</i> .....	16
Farm loss - limitation	
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Retirement funds exempt	
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Termination payments - ordinary income vs. capital gain	
<i>William and Kathleen Jakel</i> .....	17
Sales and Use Taxes	
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### INDIVIDUAL INCOME TAXES

 **Alimony, separate maintenance.** *Mary L. Sahs and Richard C. Sahs vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2003). The issue in this case is whether payments that Richard Sahs made to Mary Sahs in 1998 were alimony or separate maintenance, reportable as income by her and deductible by him.

Mary L. Sahs (“Mary”) and Richard C. Sahs (“Richard”) were married in November 1973 and divorced in June 1997. The Marital Settlement Agreement as amended was incorporated into and made part of the Judgment of Divorce. The agreement provided for maintenance payments by Richard to Mary, at the rate of \$500 per month for five years beginning July 1, 1997.

Beginning with July 1997, Richard paid \$500 per month to Mary, and in 1998 he paid \$6,000 to her. He deducted the payments as alimony or separate maintenance on his 1998 Wisconsin income tax return. Mary did not report the payments as income on her 1998 Wisconsin income tax return.


The department issued income tax assessments in the alternative against each taxpayer. Mary’s income for 1998 was adjusted to include the \$6,000 in payments from Richard, and Richard’s \$6,000 deduction was denied. Each taxpayer filed a petition for redetermination with the department, the department denied both of the petitions, and both Mary and Richard filed petitions for review with the Commission.

On appeal, Mary contends that the payments are not alimony or separate maintenance as defined by sec. 71(b) of the Internal Revenue Code (“IRC”), because the Marital Settlement Agreement does not provide that Richard’s maintenance obligation terminates upon her death. She indicated that her attorney intentionally omitted that provision from the agreement.

The Commission concluded that the payments at issue were alimony or separate maintenance under IRC sec. 71, and as such the payments were properly deducted by Richard and should have been included in Mary’s income. Despite the absence of a provision in the Marital Property Agreement regarding the termination of payments upon the death of either spouse, that element of the definition in IRC sec. 71 is met by operation of Wisconsin law in the Wisconsin Supreme Court decision *Kuether v. State*, 174 Wis. 538, 540-41 (1921).

Based on the Commission’s conclusion, the assessment against Mary L. Sahs was affirmed, and the assessment against Richard C. Sahs was reversed.

Neither the department nor either of the taxpayers has appealed this decision.

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

### **Business expenses - installment payments.**

*Dean F. Blackwell vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 19, 2003). The issue in this case is whether Dean F. Blackwell (“the taxpayer”) was entitled to deduct principal payments made under a Retail Installment Contract.

In October 1995, the taxpayer attended an investment training course in Las Vegas, Nevada. The cost of the course was \$6,950. The taxpayer paid \$2,500 in cash, and in order to pay the remaining \$4,450, he entered into a Retail Installment Contract (“the Contract”) with the course provider, Capital Investment System (“Capital Investment”). Under the terms of the Contract, the taxpayer agreed to pay Capital Investment 24 monthly payments, which included interest at 18%.

Within a matter of days, Capital Investment sold its interest in the Contract to Travelers Acceptance Corp. (“Travelers Acceptance”). Travelers Acceptance notified the taxpayer that he should make payments to that company.

On his 1997 and 1998 Wisconsin income tax returns, the taxpayer claimed deductions for the interest and principal paid under the Contract.

The department issued an income tax assessment against the taxpayer in January 2001. Among the adjustments in the assessment was the denial of principal payments

made under the Contract. The taxpayer filed a timely petition for redetermination, which was granted in part and denied in part. The taxpayer then filed a timely petition for review with the Commission, with respect to the denial of the principal payments made under the Contract.


On appeal, the department contended that the principal payments were not deductible in 1997 and 1998, because the payment for the course was made entirely in 1995 from the loan proceeds under the Contract. It argued that the payments made under the Contract were merely repayments of the loan proceeds.

The Commission concluded that the taxpayer was entitled to deduct the principal payments made under the Contract, because the payments amounted to nothing more than installment payments of an otherwise deductible expense. Since the installment payments were made under a contract with the course provider, and it was the course provider who sold the Contract to Travelers Acceptance, the payments are deductible in the year paid.

The department has not appealed this decision.

**CAUTION:** This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. [!\[\]\(0d5ec72f61334709c3fc9450209b754f\_img.jpg\)](#)

### **Farm loss - limitation.**

 *James F. Stace vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2003). The issue in this case is whether the department correctly limited the taxpayer’s farm losses for 1996, 1997, and 1998 (“the period under review”), pursuant to sec. 71.05(6)(a)10, Wis. Stats.

During the period under review, the taxpayer was single and a resident of Wisconsin.

For each year under review, the taxpayer had non-farm Wisconsin adjusted gross income, as well as net losses from the operation of a farming business. On his Wisconsin income tax return for each year under review, the taxpayer claimed the full amount of his farm losses,

without any reduction for farm loss limitations under sec. 71.05(6)(a)10, Wis. Stats.

In March 2001, the department issued an assessment to the taxpayer, in which it disallowed portions of the farm losses incurred by the taxpayer for each year of the period under review. The taxpayer timely filed a petition for redetermination with the department, which the department denied. The taxpayer then timely filed a petition for review with the Commission.

The Commission concluded that the department did correctly limit the taxpayer’s farm losses for each year of the period under review, pursuant to sec. 71.05(6)(a)10, Wis. Stats.

The taxpayer has not appealed this decision. [!\[\]\(aff7c69c44a5e015f18c35867ef3f5c3\_img.jpg\)](#)



**Retirement funds exempt.** *John Q. Kamps and Ruth R. Kamps, and Edward C. Wilkinson and Jean F. Wilkinson vs. Wisconsin Department of Revenue* (Court of Appeals, District II, April 24, 2003). This is an appeal from a July 23, 2002, order of the Circuit Court for Waukesha County. (**Note:** The Kamps' did not appeal the Circuit Court's decision; only the Wilkinsons appealed. The Kamps' are listed as petitioners because their appeal of a Wisconsin Tax Appeals Commission ("Commission") decision was consolidated by the Waukesha County Circuit Court with the appeal of the Wilkinsons.) The issue in this case is whether certain of Edward Wilkinson's ("the taxpayer's") retirement payments are exempt from Wisconsin taxation under sec. 71.05(1)(a), Wis. Stats. (2001-02).

The Commission held that the retirement payments were not exempt, and the Circuit Court affirmed the Commission's ruling. The taxpayer contends that: (1) the Commission erred in its construction of the statute,

(2) the department is equitably estopped from taxing the benefits, (3) taxation of these benefits denies his right to equal protection, and (4) the Commission's decision is contrary to the department's policy and practice.

The Court of Appeals concluded that the Commission's construction of sec. 71.05(1)(a), Wis. Stats. (2001-02), is not contrary to the clear language of the statute, and that the Circuit Court thus correctly upheld the Commission's decision that the retirement payments at issue are not exempt from Wisconsin taxation. It also concluded that the department is not equitably estopped from taxing the retirement payments, and that doing so does not violate the taxpayer's right to equal protection. Finally, it concluded that the taxpayer is not entitled to reversal of the Commission's decision on the ground that it is contrary to the department's prior policy and practice.

The taxpayers have not appealed this decision.



**Termination payments - ordinary income vs. capital gain.** *William and Kathleen Jakel vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, February 24, 2003). This is a review of a June 3, 2002, oral decision of the Wisconsin Tax Appeals Commission (the Commission's decision was not summarized in the *Wisconsin Tax Bulletin*). The issue in this case is whether termination payments received by William Jakel ("the taxpayer") from State Farm Insurance Company ("State Farm") should have been taxed as ordinary income or as a capital gain from the sale of a capital asset (goodwill).

The taxpayer worked for State Farm as a claims adjuster from 1958 until 1966, when he started his own agency for State Farm. He worked as a State Farm insurance agent until retiring at the end of 1995. The taxpayer's compensation was through commissions based on premiums from the policies he sold.

In January 1996, State Farm began paying the taxpayer "extended termination pay," which he will receive for life. If Kathleen Jakel survives him, she will continue receiving the payments. The termination pay is based on a formula taking into account the premiums the taxpayer's customers paid to him during the twelve months preceding his retirement, his years of service, and his age.


In December 2000, the department sent a "Notice of Amount Due" to the taxpayers for \$968.14, for the 1997, 1998, and 1999 tax years, on the basis that the termination payments did not qualify as capital gain income. The taxpayers filed a timely petition for redetermination with the department, and the department denied the petition. The taxpayers then filed a petition for review with the Commission. The Commission conducted a hearing and rendered an oral decision on June 3, 2002, affirming the department's determination that the payments do not qualify as capital gain income.

On appeal, the taxpayers contend that the department incorrectly assessed taxes on the termination payments. They asserted that the payments were from the sale of goodwill, which is a capital asset, and therefore should be taxed as a capital gain.

The Circuit Court concluded that the Commission's decision was reasonable, and that the termination payments received by the taxpayer from State Farm in 1997 through 1999 were properly taxed as ordinary income because they do not qualify as capital gain income.

The taxpayers have appealed this decision to the Court of Appeals.

## SALES AND USE TAXES


 **Officer liability.** *Eugene C. Rondon vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, May 8, 2003). On January 29, 2002, the Circuit Court for Dane County affirmed the Wisconsin Tax Appeals Commission's decision dated June 5, 2001. See *Wisconsin Tax Bulletin* 129 (April 2002), page 24, and *Wisconsin Tax Bulletin* 127 (October 2001), page 25, for summaries of the Circuit Court and Commission decisions. The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of National Vehicle Management, Inc. ("the corporation"), under sec. 77.60(9), Wis. Stats., for the periods of February, May through August, November, and December 1995, and January through July 1996, and for a dealer plate project assessment for January 1992 to December 1995 ("the period under review").


The taxpayer was president and sole shareholder of the corporation and was in charge of the corporation's day-to-day operations.

The taxpayer paid creditors other than the Department during the period under review, even though he knew there were unpaid sales taxes due to the Department.

The Circuit Court held that the Commission properly granted summary judgment to the Department of Revenue in the absence of any disputed issue regarding any material fact.

Affirming the Circuit Court's decision, and giving great weight to the Commission's interpretation, the Court of Appeals concluded that the taxpayer's behavior was willful under sec. 77.60(9), Wis. Stats., because he had the authority and the duty to pay the taxes, but paid other creditors instead. The taxpayer's claim that the Commission had discretion under the statute in assessing the taxes is rejected because he willfully failed to pay the taxes, and the statute provides that he "shall be personally liable." The taxpayer's argument that the assessment is excessive is rejected because the purpose of the assessment is to recover the revenue lost to the state rather than to punish the taxpayer.

The taxpayer appealed this decision to the Wisconsin Supreme Court. On July 9, 2003, the Supreme Court denied the petition for review. Therefore, the Court of Appeals decision is final. 

 **Transportation charges.** *Paul Bugar Trucking, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 10, 2003). The issue in this case is whether amounts charged by the taxpayer to transport breaker run, base course, and sand ("products") that it sold to its customer ("the customer") are subject to sales tax.

During the period from April 1, 1996, through March 31, 2000 ("the period under review"), the taxpayer was a corporation located in Wisconsin, engaged in the business of selling and supplying aggregates, gravel, and other stone products to contractors. The taxpayer had operations at four parcels of land in central Wisconsin, each of which were owned by unrelated property owners with whom the taxpayer had royalty agreements to extract aggregate from the parcels.

In May or June of 1998, the taxpayer entered into an oral contract with the customer, under which the taxpayer was to provide products for a road project in central Wisconsin. Because of uncertainties with the project, the customer wanted a supply of products available at all times. Therefore, the taxpayer agreed to

maintain separate piles of different products at its quarry. The customer agreed to purchase each product as it was placed in the respective piles, although the taxpayer did not charge the customer for the products until the products were actually removed from the quarry, in either the taxpayer's trucks or trucks owned by or contracted to the customer. The taxpayer's employees loaded all trucks with products at the quarry, after which the trucks were weighed and the customer was billed for the difference between the truck's loaded weight and its tare weight.

Initially, the agreement between the taxpayer and the customer provided that the customer would arrange for the transportation of products from the taxpayer's quarry to the project site, either in the customer's own trucks or in trucks contracted to the customer. However, as the need for more products became apparent, the customer entered into an agreement with the taxpayer to have the taxpayer transport the products to the project site in the taxpayer's trucks.

At the end of the 1998 construction season, approximately 7,000 to 8,000 tons of products remained at the



taxpayer's quarry in the customer's segregated stockpiles, for which the taxpayer had not billed the customer. In 1999, the customer needed the remaining 7,000 to 8,000 tons of products for the project, and the taxpayer billed the customer for the remaining products after the products were delivered to the customer. The taxpayer charged sales tax on the gross receipts for the products sold to the customer for the project, but not on the gross receipts charged to the customer for delivering the products to the project site.

The Commission concluded that the amounts charged by the taxpayer to the customer for delivering the products to the project site were subject to sales or use tax, because physical possession of the products did not transfer to the purchaser or the purchaser's agent until the products were delivered to the project site.

Section 77.51(14r), Wis. Stats., provides that a sale or purchase is deemed to be completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent. Although the products were stockpiled for use by the customer, the products remained in the taxpayer's possession until the products were delivered in the taxpayer's trucks to the customer at the project site. Gross receipts and sales price include the cost of transportation of property prior to its sale or purchase. The transportation occurred prior to the completion of the sale of the products and is subject to sales or use tax.

The taxpayer has not appealed this decision. [!\[\]\(d66ff64371a51729ac8c1cdaa685ba6f\_img.jpg\)](#)

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## DRUG TAX

**Drug tax, appeals - jurisdiction.** *Forest J. Morkin*  
 vs. *Wisconsin Department of Revenue* (Circuit Court for Walworth County, January 10, 2003).

This is a review of a July 10, 2002, decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 132 (October 2002), page 26, for a summary of the Commission's decision. The issue in this case is whether the Commission had subject matter jurisdiction over the taxpayer's petition for review, appealing the department's denial of his claim for refund.

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

In January 1997, the Wisconsin Supreme Court held that the controlled substances tax violates the constitutionally guaranteed privilege against self-incrimination. *State v. Hall*, 207 Wis. 2d 54, 557 N.W. 2d 778 (1997).

In a letter dated September 13, 2000, the taxpayer requested a refund of the taxes seized by the department. The department denied the request, on the basis that the claim was not filed within the statutory two-year time limit pursuant to sec. 71.75(5), Wis. Stats.

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

The Circuit Court concluded that the administrative remedies provided in sec. 71.75(5), Wis. Stats., must be timely pursued in connection with all claims, including claims that a state taxing statute is unconstitutional. Since the taxpayer did not make the refund claim within the statutorily required two-year period, the Circuit Court dismissed the taxpayer's petition for review.

The taxpayer has not appealed this decision. [!\[\]\(b4eeff342f60cc7bcd67d869b4fedca2\_img.jpg\)](#)

# New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, and sales/use tax provisions. These provisions are contained in 2003 Acts 33 and 37.

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

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## A. Individual and Fiduciary Income Taxes

### 1. Internal Revenue Code References Updated for 2003 for Individuals, Estates, and Trusts (2003 Act 33, amend sec. 71.01(6)(o), repeal sec. 71.01(6)(i), and create sec. 71.01(6)(p), effective for taxable years beginning on or after January 1, 2003.)

For taxable years that begin on or after January 1, 2003, “Internal Revenue Code” for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 2002, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

**Exceptions:** The following federal provisions do not apply for Wisconsin.

- Section 13113 of Public Law 103-66, relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years.
- Section 1311 of Public Law 104-188, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation’s accumulated earnings and profits.
- Public Law 106-519, FSC Repeal and Extraterritorial Income Exclusion Act of 2000, enacted November 15, 2000, relating to the repeal of the foreign sales corporation treatment and the allowance of an exclusion for extraterritorial income.
- Section 162 of Public Law 106-554, relating to the expensing of environmental remediation costs and the extension of the termination date.
- Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers.

- Section 431 of Public Law 107-16, relating to the deduction for higher education expenses.
- Section 101 of Public Law 107-147 relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001.

In addition, for property placed in service in taxable years beginning on or after January 1, 2001, individuals and fiduciaries must compute depreciation or amortization under the Internal Revenue Code as amended to December 31, 2000.

### 2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes 2003 Act 33, amend sec. 71.01(6) (j), (k), (L), (m), (n), and (o), and create a nonstatutory provision, effective for taxable years beginning before January 1, 2003.)

The changes to the Internal Revenue Code by the following federal laws apply for Wisconsin individual and fiduciary income tax purposes at the same time as for federal purposes:

- Section 527 Organization Disclosure (Public Law 106-230, enacted July 1, 2000).
- Fallen Hero Survivor Benefit Fairness Act of 2001 (Public Law 107-15, enacted June 5, 2001).
- Coverdell Education Savings Accounts (Public Law 107-22, enacted July 26, 2001).
- Mental Health Parity (Public Law 107-116, enacted January 10, 2002).
- Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134, enacted January 23, 2002).
- Job Creation and Worker Assistance Act of 2002, excluding section 101, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001, and section 406, relating to a de-

duction for classroom materials (Public Law 107-147, enacted March 9, 2002).

- Clergy Housing Allowance Clarification Act of 2002 (Public Law 107-181, enacted May 20, 2002).
- Trade Act of 2002 (Public Law 107-210, enacted August 6, 2002).
- Amend Section 527 to Eliminate Certain Notification and Return Requirements (Public Law 107-276, enacted November 2, 2002).
- Holocaust Restitution Tax Fairness Act of 2002 (Public Law 107-358, enacted December 17, 2002).

**3. Single Sales Factor Apportionment Adopted** (2003 Act 73, renumber sec. 71.04(4) to 71.04(4)(intro.) and (8)(b) to (8)(b)1 and amend as renumbered, amend sec. 71.04(5)(intro.), (6)(intro.) (7)(d), (8)(c) and (10), and create sec. 71.04(4)(a), (b), (c), (d), and (e) and (4m) and nonstatutory provision, various effective dates.)

See Item B.3.

**B. Corporation Franchise or Income Taxes**

**1. Internal Revenue Code References Updated for 2003 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Non-profit Organizations, Regulated Investment Companies, Real Estate Mortgage Investment Conduits, Real Estate Investment Trusts, and Financial Asset Securitization Investment Trusts** (2003 Act 33, repeal secs. 71.22(4)(i), 71.22(4m)(g), 71.26(2)(b)9, 71.34(1g)(i), and 71.42(2)(h), amend secs. 71.22(4)(o), 71.22(4m)(m), 71.26(2)(b)15, 71.34(1g)(o), and 71.42(2)(n), and create secs. 71.22(4)(p), 71.22(4m)(n), 71.26(2)(b)16, 71.34(1g)(p), and 71.42(2)(o), effective for taxable years beginning on or after January 1, 2003.)

For taxable years that begin on or after January 1, 2003, "Internal Revenue Code" for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real

estate mortgage investment conduits (REMICs), real estate investment trusts (REITs), and financial asset securitization investment trusts (FASITs) means the federal Internal Revenue Code as amended to December 31, 2002, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

**Exceptions:** The following federal provisions do not apply for Wisconsin corporate franchise or income tax purposes:

- Section 1311 of Public Law 104-188, relating to the elimination of earnings and profits from pre-1983 S corporation years from an S corporation's accumulated earnings and profits.
- Public Law 106-519, FSC Repeal and Extraterritorial Income Exclusion Act of 2000, enacted November 15, 2000, relating to the repeal of the foreign sales corporation treatment and the allowance of an exclusion for extraterritorial income.
- Section 162 of Public Law 106-554, relating to the expensing of environmental remediation costs and the extension of the termination date.
- Section 165 of Public Law 106-554, relating to the enhanced deduction for corporate donations of computer technology and the extension of the termination date.
- Public Law 106-573, Installment Tax Correction Act of 2000, enacted December 28, 2000, relating to the restoration of the installment method of accounting for accrual basis taxpayers.
- Section 101 of Public Law 107-147, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001.

In addition, the Internal Revenue Code is modified as follows:

- For corporations (except nonprofit organizations, RICs, REMICs, REITs, and

FASITs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 2001, depreciation or amortization must be computed under the federal Internal Revenue Code as amended to December 31, 2000.

- For corporations (except nonprofit organizations, RICs, REMICs, REITs, and FASITs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in pass-throughs for taxes at the S corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
- For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
- For RICs, REMICs, REITs, and FASITs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.

**2. Certain Federal Laws Enacted Apply Simultaneously for Wisconsin Purposes** (2003 Act 33, amend secs. 71.22(4)(j), (k), (L), (m), (n), and (o), 71.22(4m)(h), (i), (j), (k), (L), and (m), 71.26(2)(b)10, 11, 12, 13, 14, and 15, 71.34(1g)(j), (k), (L), (m), (n), and (o), and 71.42(2)(i), (j), (k), (L), (m), and (n) and create a nonstatutory provision, effective for taxable years beginning before January 1, 2003.)

The changes to the Internal Revenue Code by the following federal laws apply for Wisconsin

corporation franchise and income tax purposes at the same time as for federal purposes:

- Section 527 Organization Disclosure (Public Law 106-230, enacted July 1, 2000).
- Fallen Hero Survivor Benefit Fairness Act of 2001 (Public Law 107-15, enacted June 5, 2001).
- Coverdell Education Savings Accounts (Public Law 107-22, enacted July 26, 2001).
- Mental Health Parity (Public Law 107-116, enacted January 10, 2002).
- Victims of Terrorism Tax Relief Act of 2001 (Public Law 107-134, enacted January 23, 2002).
- Job Creation and Worker Assistance Act of 2002, excluding section 101, relating to the 30% bonus depreciation allowance for property acquired after September 10, 2001, and section 406, relating to a deduction for classroom materials (Public Law 107-147, enacted March 9, 2002).
- Clergy Housing Allowance Clarification Act of 2002 (Public Law 107-181, enacted May 20, 2002).
- Trade Act of 2002 (Public Law 107-210, enacted August 6, 2002).
- Amend Section 527 to Eliminate Certain Notification and Return Requirements (Public Law 107-276, enacted November 2, 2002).
- Holocaust Restitution Tax Fairness Act of 2002 (Public Law 107-358, enacted December 17, 2002).

**3. Single Sales Factor Apportionment Adopted** (2003 Act 37, renumber and amend secs. 71.04(4) and (8)(b), 71.25(6) and (10)(b), and 71.45(3)(b), amend secs. 71.04(5)(intro.), (6)(intro.), (7)(d), (8)(c), and (10), 71.25(7)(intro.), (8)(intro.), (9)(d), (10)(c), and (11), and 71.45(3)(intro.), (3)(a), and (3m), and create secs. 71.04(4)(a), (b), (c), (d), and



(e) and (4m), 71.25(6)(a), (b), (c), (d), and (e) and (6m), and 71.45(3d) and (3e), and non-statutory provision, see effective dates below.)

Under current law, multistate businesses generally determine the amount of net income attributable to Wisconsin using a three-factor formula. The sales factor represents 50% of the formula and the property and payroll factors each represent 25% of the formula. Insurance companies use an apportionment formula based on the average of a premiums factor and a payroll factor.

For taxable years beginning after December 31, 2005, and before January 1, 2007, the general apportionment formula will be composed of the sales factor representing 60% of the formula and the property and payroll factors each representing 20% of the formula. For insurance companies, the premiums factor will represent 60% of the apportionment formula and the payroll factor will represent 40% of the formula.

For taxable years beginning after December 31, 2006, and before January 1, 2008, the general apportionment formula will be composed of the sales factor representing 80% of the formula and the property and payroll factors each representing 10% of the formula. For insurance companies, the premiums factor will represent 80% of the apportionment formula and the payroll factor will represent 20% of the formula.

For taxable years beginning after December 31, 2007, the apportionment formula will be composed of the sales factor. For insurance companies, the apportionment formula will be composed of the premiums factor.

For taxable years beginning after December 31, 2005, the premiums factor for insurance companies will be determined by dividing the sum of direct premiums written for insurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in Wisconsin, and assumed premiums written for reinsurance, other than life insurance, with respect to all property and risks resident, located, or to be performed in Wisconsin, by the sum of direct premiums written for insurance on all property

and risks, other than life insurance, wherever located, and assumed premiums written for reinsurance on all property and risks, other than life insurance, wherever located.

For taxable years beginning after December 31, 2005, the income of multistate electric and gas utilities will be apportioned in the same manner as other corporations. Under current law, these utilities apportion their income using a three-factor formula consisting of equally weighted property, payroll, and sales factors.

For taxable years beginning before January 1, 2008, if both the numerator and the denominator of the sales factor are zero, the sales factor is eliminated from the apportionment formula. If the numerator of the sales factor is a negative number and the denominator of the sales factor is a positive number, a negative number, or zero, the sales factor is zero. If the numerator of the sales factor is a positive number and the denominator of the sales factor is zero or a negative number, the sales factor is one.

For taxable years beginning after December 31, 2007, if both the numerator and the denominator of the sales factor are zero, none of the taxpayer's apportionable net income is attributed to Wisconsin. If the numerator of the sales factor is a negative number and the denominator of the sales factor is a positive number, a negative number, or zero, none of the taxpayer's apportionable net income is attributed to Wisconsin. If the numerator of the sales factor is a positive number and the denominator of the sales factor is zero or a negative number, all of the taxpayer's apportionable income is attributed to Wisconsin.

Under current law, the net income of financial organizations is apportioned under rules established by the Department of Revenue. This law provides that for taxable years beginning after December 31, 2005, and before January 1, 2008, the income shall be apportioned using a fraction that includes a sales factor representing more than 50% of the formula, as determined by rule by the Department of Revenue. For taxable years beginning after December 31, 2007, the income of a financial organization will be apportioned using a sales

factor as determined by the Department of Revenue.

The net income of railroads, sleeping car companies, car line companies, pipeline companies, air carriers, and telecommunications companies will continue to be apportioned pursuant to rules of the Department of Revenue.

**Note:** Although Act 37 was signed by the Governor on July 31, 2003, the date of publication was not known at the time this issue of the Wisconsin Tax Bulletin was sent to the printer. Information on the date of publication will be included in the October issue of the Wisconsin Tax Bulletin.

### C. Sales and Use Taxes

#### 1. Clarify the Taxation of Lodging (2003 Act 33, amend sec. 77.52(2)(a)1, effective for sales of lodging after November 30, 1999.)

This provision clarifies that transient lodging sold by hotel and motel operators and other persons furnishing accommodations to the public are taxable regardless of whether the use of the lodging is fixed at the time of sale as to the starting date or lodging unit.

Effective December 1, 1999, sec. 77.52(2)(a)1, Wis. Stats. (1997-98), was amended by 1999 Wisconsin Act 9, to remove from imposition of sales or use tax, sales of time-shares where the starting date and lodging unit were not fixed at the time of sale. However, due to an oversight, the entire language pertaining to these time-shares was not removed at that time.

#### 2. Require Persons and Their Affiliates Selling to State to Register and Remit Sales or Use Tax (2003 Act 33, create secs. 16.70(1b) and (3e), 16.75(10m), and 77.66, effective July 26, 2003.)

The Secretary of Revenue shall determine and periodically certify to the Secretary of Administration the names of persons and their affiliates, who make sales of tangible personal property and taxable services that are subject to Wisconsin sales or use tax, but who are not registered with the department to collect and

remit such taxes or, if registered, do not collect and remit such taxes.

The Department of Administration and certain designated purchasing agents, agencies, and authorities may not contract for the purchase of materials, supplies, equipment or contractual services with a person or its affiliate who has been certified by the Secretary of the Department of Revenue as described above.

“Affiliate” means a person, as defined in sec. 77.51(10), Wis. Stats., that controls, is controlled by, or is under common control with another person.

“Control” means to own, directly or indirectly, more than 10% of the interest in or voting securities of a business.

### D. Other

#### 1. Additional Debts May Be Certified for Refund Setoff Program (2003 Act 33, amend sec. 71.93(1)(a)4 and 5, effective July 26, 2003.)

A refund may be offset for the following:

- Wisconsin works overpayments (trial jobs overpayments, community service jobs and transitional placements overpayments, and overpayments caused by intentional program violations).
- Amounts certified by the Department of WorkForce Development for job access loan repayments that are delinquent.

#### 2. Medicare Assignment Information No Longer Required (2003 Act 33, repeal sec. 71.55(10), effective July 26, 2003.)

The Department of Revenue is no longer required to distribute enrollment cards and materials explaining the Wisconsin program under which a physician voluntarily agrees to accept assignment of a beneficiary's benefits for reimbursement for the provision of medical or other health service authorized under medicare Part B.

#### 3. Enforcement of Video Gambling Law (2003 Act 33, amend secs. 73.031 and 125.14(1) and

create secs. 73.03(59) and (60) and 175.38, effective July 26, 2003.)

No law enforcement officer, other than a special agent of the Department of Revenue who has been certified as a law enforcement officer

by the Law Enforcement Standards Board, may investigate or enforce video gambling violations on Class B alcohol beverage licensed premises, if the Class B premises has not more than five video gambling machines.