



Wisconsin TAX BULLETIN

www.dor.state.wi.us

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April 2004

Nonresident Military Compensation No Longer Considered When Completing Form 1NPR

The federal Servicemembers Civil Relief Act (Public Law 108-189) was signed by the President on December 19, 2003. One of the provisions of this new law states that “A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.”

This provision will affect the computation of tax on Form 1NPR for a nonresident servicemember.

Form 1NPR has two columns, column A for reporting federal income and column B for reporting Wisconsin income. When completing line 1 of Form 1NPR (wages, salaries, tips, etc.), the amount of wages to report in the federal column should not include military compensation received while the servicemember was **not** a resident of Wisconsin. The servicemember should write “nonresident servicemember” and the amount of military compensation received while not a Wisconsin resident in the space to the left of line 1. Any taxable military compensation received while the servicemember was a resident of Wisconsin continues to be reported in column B of Form 1NPR.

(continued on page 3)

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 34 to 37 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. [↗](#)

New Tax Laws

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted changes to the Wisconsin tax laws. On pages 38 through 48 of this Bulletin is a supplement containing brief descriptions of the individual and fiduciary income tax, corporation franchise or income tax, sales and use tax, and alcohol beverage regulation provisions. [↗](#)

Rice Lake Office Closed

The Department of Revenue has closed its Rice Lake branch office, effective the end of April 2004. Customer services for persons in this location are being provided from the Eau Claire district and Hayward branch offices.

The Department of Revenue remains committed to providing the best possible service to its customers in the Rice Lake area, as well as statewide. Customers in that location may contact the Eau Claire district office (telephone 715-836-2811), the Hayward branch office (telephone 715-634-8478), or the Madison headquarters office (telephone 608-266-2772). Assistance and information are also available 24 hours a day, 7 days a week on the department's Internet web site, www.dor.state.wi.us. [↗](#)

Suggestions for Tax Practitioners - Mailing Addresses and Direct Deposit Information

With the increase in the number of electronically filed returns received this year, the Wisconsin Department of Revenue (“DOR”) has been encountering a significantly larger volume of direct deposit rejects from banks and undeliverable refund checks from the Post Office. A majority of the returns that have generated the rejects and returned checks were prepared by tax practitioners.

When a direct deposit reject occurs, the refund must be issued via a paper check instead. This adds approximately one month to the time it takes to receive a refund. Undeliverable refund checks are held until DOR is contacted with correct address information.

In This Issue**Articles –****Nonresident Military**

Compensation on Form 1NPR 1

Information or Inquiries? 1

New Tax Laws 1

Rice Lake Office Closed 1

Suggestions for Tax Practitioners 1

Estimated Tax Requirements 2

Farmers Receive Credits 3

Preferred W-2 Forms 4

Index of Reference Material 4

Temporary Events 4

Tax Publications Available 5

Filing Fiduciary Returns 7

Filing for a Deceased Taxpayer 9

Personal Representative Fees 12

Voluntary Disclosure Program 13

Woman Sentenced for Theft and

Fraud 14

Wisconsin Deductions for

Corporations 14

Sales and Use Tax Report Mailed ... 15

Bulletin Index Available 15

Hiring a Speaker? Withholding

May Be Required 16

File Corporation Returns 16**Delinquent Tax Help** 17**Question and Answer** 18**Administrative Rules in Process** 18**Report on Litigation** 19**Tax Releases** 24**Attachments –**

Addresses, Telephone Numbers 34

New Tax Laws 38

March Tax Report 49

Order Blank 53

The following suggestions are offered by DOR to tax practitioners, so they may better serve their customers:

- Verify the customer's current mailing address.
- When a customer elects a direct deposit of their refund, verify the accuracy of their bank routing number and account number. A check is the best document to use to verify the routing number, as this information is not always correct on a deposit slip.

Following the above steps will help customers receive their refunds timely, and in the manner they have elected. [✎](#)

2004 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 2004 Wisconsin income tax return are required to pay 2004 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 2004 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, 2004. Installment payments are also due on June 15, 2004, September 15, 2004, and January 17, 2005 (January 16 is a Sunday). 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. (**Note:** If any due date falls on a Saturday, Sunday, or legal holiday, use the next business day.)

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, 2003. 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, 2005. The first year that the trust is required to make estimated payments is 2005.

A trust that is subject to tax on unrelated business income is generally required to pay 2004 Wisconsin estimated income tax if it expects to owe \$500 or more (including recycling surcharge) on a 2004 Wisconsin franchise or income tax return (Form 4T). A 2004 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. [✎](#)

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Nonresident Military Compensation No Longer Considered When Completing Form 1NPR

(Continued from page 1)

The form instructions should be followed for the remainder of the form. For example, when adding the federal column, nonresident military compensation will not be included in the total federal income on line 30 of the 2003 Form 1NPR. This federal income from line 30 is then used to compute the ratio of Wisconsin income to federal income on line 31, complete line 32, and determine the standard deduction amount to enter on line 33c.

This revised computation of tax for nonresident servicemembers is available for all years open to adjustment. Amended returns must generally be filed within four years of the original due date of the return.

To file an amended Form 1NPR, servicemembers must complete another Form 1NPR for the same year as shown on the original return. Complete instructions for filing an amended Form 1NPR are included in the Form 1NPR instructions for each year. The Form 1NPR and instructions for 2003 and prior years are available on the Department of Revenue's web site at www.dor.state.wi.us. They are also available by contacting the department at (608) 266-1961 or forms@dor.state.wi.us.

Questions concerning the taxation of nonresident servicemembers may be directed to the department at (608) 266-2772 or income@dor.state.wi.us. 

Farmers Receive \$40 Million in Farmland Credits

Direct benefits of approximately \$40.0 million were distributed to Wisconsin farmers in 2003, primarily for the 2002 tax year, through the farmland preservation credit program and the farmland tax relief credit program. This is approximately a \$9.9 million increase over the amount of direct benefits that were distributed through these programs during 2002.

The farmland preservation credit and farmland tax relief credit are paid as a reduction in Wisconsin income tax, or as a cash refund if the credits exceed income tax due. The total combined amount of the 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 55,900 farmers, including about 840 corporations, claimed farmland tax relief credits totaling \$23.6 million in 2003, for an average credit of \$422.

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 2002 claims equaled 30% of the first \$10,000 of property taxes on farmland, but limited to a maximum credit of \$1,500. For the 2003 tax year (credits claimed in 2004), the credit is equal to 16% of the first \$10,000 of property taxes, but limited to a maximum credit of \$1,500.

Farmland Preservation Credit Program

About 20,500 farmers, including about 350 corporations, claimed farmland preservation credits totaling \$16.4 million in 2003. The credit averaged \$801 per claimant. About 37% of farm owners with 35 or more acres claimed the credit, which equaled about 23% 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, or be subject to a farmland preservation agreement between the farmland owner and the state. In addition, participants must comply with soil and water conservation standards set by the state Land Conservation Board. 

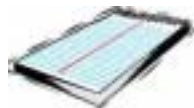
Reduce Processing Delays - Use Preferred W-2 Forms

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. 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) 261-7681. [☎](#)

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 53 of this Bulletin. The Index is also on the department’s Internet web site at www.dor.state.wi.us. Just click on “Publications.” [☎](#)

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.

Operators (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.

New for this year is a page on the department’s web site, www.dor.state.wi.us, devoted to temporary events. Click on “Business” and then “Temporary Events.” The page has links to forms, publications, and tax returns, as well as an e-mail address for any questions that an operator or vendor may have.

Questions about the responsibilities of operators or vendors at temporary events may also be referred to the department’s Temporary Events Coordinator, Tom Beyer, at (608) 266-7183 or tbeyer@dor.state.wi.us. [☎](#)

Tax Publications Available

Listed below are 74 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) 264-7776.

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 (12/03) | 119 | Limited Liability Companies (LLCs) (12/02) |
| 103 | Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/03) | 120 | Net Operating Losses for Individuals, Estates, and Trusts (11/03) |
| 104 | Wisconsin Taxation of Military Personnel (10/03) | 121 | Reciprocity (11/03) |
| 106 | Wisconsin Tax Information for Retirees (11/03) | 122 | Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2003 (11/03) |
| 109 | Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2003 (11/03) | 123 | Business Tax Credits for 2003 (12/03) |
| 112 | Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (11/02) | 125 | Credit for Tax Paid to Another State (11/03) |
| 113 | Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/03) | 126 | How Your Retirement Benefits Are Taxed (11/03) |
| 116 | Income Tax Payments are Due Throughout the Year (11/02) | 600 | Wisconsin Taxation of Lottery Winnings (12/03) |
| | | 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) |
| | | 204 | Sales and Use Tax Information for Colleges, Universities and Technical Colleges (3/01) |
| | | 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 (11/03) |
| | | 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? (4/04)

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)

Excise Tax

AB-103 Alcohol Beverage Tax Information (3/03)

MF-106* Alternate Fuel Tax Information (4/04)

MF-107* Motor Vehicle Fuel Tax Information (4/04)

MF-108* General Aviation Fuel Tax Information (4/04)

302 Wisconsin Alcohol Beverage and Tobacco Laws for Retailers (4/03)

Other Taxes and Credits

127 Wisconsin Homestead Credit Situations and Solutions (11/03)

400 Wisconsin's Recycling Surcharge (12/03)

403 Premier Resort Area Tax (2/03)

410 Local Exposition Taxes (2/03)

503 Wisconsin Farmland Preservation Credit (11/03)

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

W-166* Wisconsin Employer's Withholding Tax Guide (2/04)

Audits and Appeals

501* Field Audit of Wisconsin Tax Returns (2/04)

505 Taxpayers' Appeal Rights of Office Audit Adjustments (2/02)

506 Taxpayers' Appeal Rights of Field Audit Adjustments (10/03)

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 2004 Handbook for Federal/State Electronic Filing (11/03)

117 Guide to Wisconsin Information Returns (11/03)

124 Petition for Compromise of Delinquent Taxes (11/03)

130 Fax A Form (12/03)

140 A Tax Practitioner's Guide to Electronic Filing (6/03)

401 Extensions of Time to File (12/03)

405 Wisconsin Taxation of Native Americans (12/01)

500 Tax Guide for Wisconsin Political Organizations and Candidates (12/03)

502 Directory of Wisconsin Tax Publications (11/03)

504 Directory for Wisconsin Department of Revenue (5/03)

509 Filing Wage Statements and Information Returns on Magnetic Media or by Electronic Transmission (11/03)

700 Speakers Bureau presenting . . . (6/00) [☞](#)

Filing Wisconsin Fiduciary Income Tax Returns (Form 2) - Estates and 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 which is received in the form of money, property, or services. It does not include items which 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:

- Real or tangible personal property located in Wisconsin.
- A business, trade, profession, or occupation carried on within Wisconsin, including a corporation taxed under Subchapter S of the Internal Revenue Code.
- Personal or professional services performed in Wisconsin either as an individual or as a member of a partnership or limited liability company.
- 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:

- 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.
- 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.
- 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, 2003, she made an irrevocable gift to the trust of \$2 million of her company stock. The value of the assets in the trust are \$1.5 million before the gift, and \$3.5 million after. All income from the \$2 million that was placed in the trust on December 15, 2003, 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 2003, 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.

Law change effective on October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2003, 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, 2003, 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, 2003, 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, 2003, and James was a Wisconsin resident at the

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 following information should be attached to the certificate request:

- Payment of any tax due.
- A copy of the trust instrument and any amendments.

- Copies of the annual court accountings for the last three years. If annual accountings have not been filed with the court, verification that the court requires the certificate to close a proceeding.
- A detailed statement of why the trust is closing.
- A completed Schedule E, lines 1 through 8 and the Summary of Assets, lines 1 through 8 on page 4 of Form 2.

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. [✎](#)

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 2003 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 \$10,760 or more.
- (2) Age 65 or over - gross income of \$11,010 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 2003 and the taxpayer did not remarry in 2003, a joint return may be filed. A

joint return for 2003 may also be filed if a taxpayer's spouse died in 2004 before filing a 2003 return. A joint return should show the deceased spouse's 2003 income before death and the surviving spouse's income for all of 2003. "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 or limited liability company.
- 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. A completed Schedule D, lines 1 through 10 and the Summary of Assets and Deductions, lines 1 through 20 on page 3 of Form 2 should also be provided with the request.

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

NEW: If the gross estate, plus adjusted taxable gifts and specific exemption, exceeds \$675,000 or if the estate files a federal estate tax return, Form 706, a Wisconsin Estate Tax Return, Form W706, must be filed. The W706 must be filed whether or not estate tax is due. The Closing Certificate for Fiduciaries will not be issued until the W706 is filed.

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 and will.
- 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>Filing Requirement*</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 filing requirement is based on the gross estate, plus adjusted taxable gifts and specific exemption.

****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, is 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, differ from the federal filing requirements for those years. For example, the federal filing requirement is \$1,500,000 in 2004 and 2005 and goes up in later years. Therefore, there may be a Wisconsin filing requirement for those years, even though no federal estate tax return is 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 may be requested 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, 2003. 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, 2004, 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, 2003, 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, 2004, and showed no tax due. This estate owes the minimum penalty of \$25.

Copies of Form W706, instructions, Schedule TC, Form W4768, and Form 401T, 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 and click on “Estate, Inheritance and Gift Tax.”

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.

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 and click on “Estate, Inheritance and Gift Tax.” [↗](#)

Reminder: Personal Representative Fees Taxable to the Recipient

Every year, the Department of Revenue discovers many instances in which the personal representative (executor or administrator) of an estate does not report on their individual income tax return the fees that they receive for the performance of their duties.

All personal representatives must include in their gross income fees paid to them from an estate. If paid to a professional executor or administrator, self-employment tax also applies to such fees. For a nonprofessional executor or administrator (a person serving in such

capacity in an isolated instance, such as a friend or relative of the decedent), self-employment tax only applies if a trade or business is included in the estate’s assets, the executor actively participates in the business, and the fees are related to operation of the business.

For more information on the taxability of personal representative fees, please contact the department at (608) 266-2772 or via e-mail at income@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.

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 tax returns 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-end.
- 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.

Note: If applying for voluntary disclosure for more than one tax type, **each tax type must be specified** in the written request. For example, a request for voluntary disclosure for income tax does not cover sales tax.

Taxpayer Responsibilities

- File all returns for the periods agreed upon (usually 4 prior years) within ninety days.
- Pay all tax, late filing fees, and interest according to the agreement.
- File the current and any subsequent returns in a timely manner 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.
- Void the agreement if the taxpayer fails to comply with any of its terms.

Confidential Inquiries About Voluntary Disclosure

Information regarding Wisconsin's Voluntary Disclosure Program can be found on the department's 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
Wisconsin Department of Revenue
2135 Rimrock Road
P.O. Box 8906
Madison WI 53708-8906

Woman Sentenced for Theft and Fraud

Terri L. Messer of Columbus, Wisconsin, was sentenced in March 2004 to two years in prison on one count of felony theft and two counts of filing a fraudulent income tax return. She previously plead no contest to these charges and was found guilty in October 2003. Dane County Circuit Court Judge Gerald Nichol also imposed an additional thirteen years of extended supervision on Messer, upon completing her prison sentence.

According to the original criminal complaint, Messer was an 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. Because of her position with the organization, she had access to four of their bank accounts. Between November 1999 and March 2002, she embezzled money from the organization by writing out unauthorized

checks to herself and her credit card and phone companies. She evaded approximately \$9,000 in income taxes for 1999 to 2001, based on unreported embezzlement income of \$136,429.

Messer's scheme ended 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. She 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.

Judge Nichol also ordered Messer to repay the money she had not returned. The Department of Revenue has asked the Dane County District Attorney's Office to request the judge to also order restitution for the state income tax evaded. [!\[\]\(003082e50e3009141f59bd5df831749f_img.jpg\)](#)

Computing a Corporation's Wisconsin Deductions Due to Differences Between Wisconsin and Federal Law

Although the Wisconsin corporate franchise and income tax is based on the Internal Revenue Code, several provisions of federal law do not apply for Wisconsin purposes. Federal provisions that do not apply for Wisconsin include the following:

- The 30% additional depreciation deduction for qualified property acquired after September 10, 2001.
- The 50% additional depreciation deduction for 50% bonus property acquired after May 5, 2003.
- The increase in the section 179 expense deduction from \$25,000 to \$100,000.
- The increase in the section 179 investment limitation from \$200,000 to \$400,000.
- The availability of the section 179 expense deduction for certain computer software.

Some effects of these differences are illustrated below.

Section 179 expense deduction

Facts: As a result of claiming the federal 30% and 50% bonus depreciation, Corporation A's federal income is zero. For Wisconsin purposes, Corporation A must make a modification to its federal income to add back

the federal bonus depreciation and to subtract the depreciation allowable under the Internal Revenue Code as amended to December 31, 2000. Corporation A determines that its Wisconsin income is \$200,000. Corporation A has a section 179 expense deduction carryover that it cannot use on its federal return.

Question: May Corporation A elect to use its section 179 expense deduction carryover to offset the additional income that it is reporting for Wisconsin?

Answer: No. The depreciation difference is a modification to federal taxable income required by section 71.26(3)(y), Wis. Stats. Wisconsin law does not provide a modification to recompute the section 179 expense deduction in this situation. Therefore, Corporation A's Wisconsin section 179 expense deduction is limited to the amount allowable in computing its federal taxable income. If a corporation does not claim a section 179 expense deduction for federal purposes, it cannot elect to claim a section 179 expense deduction for Wisconsin.

Charitable contribution deduction

Facts: Since Wisconsin does not allow the deduction for the federal 30% or 50% bonus depreciation, Corporation B's Wisconsin income is \$500,000 higher than its federal income. Corporation B's federal deduction for charitable contributions is limited to 10% of its federal net income before the deduction for contributions.

Question: May Corporation B recompute its deduction for charitable contributions on its Wisconsin return?

Answer: No. The depreciation difference is a modification to federal taxable income required by section 71.26(3)(y), Wis. Stats. Wisconsin law does not provide a modification to recompute the deduction for charitable contributions in this situation. Therefore, Corporation B's Wisconsin deduction for charitable contributions is limited to the amount allowable in computing its federal taxable income.

MACRS depreciation deduction

Facts: Corporation C places two assets in service in 2003. One is a \$61,000 asset placed in service on October 15, 2003, and the other is a \$2,500 asset placed in service on June 30, 2003. Corporation C's taxable income before its section 179 expense deduction is \$63,000. All but \$500 is claimed as a section 179 expense deduction for federal purposes due to the taxable income limitation. For federal income tax purposes, the half-year convention is used to compute the allowable MACRS deduction. For Wisconsin purposes, only \$25,000 is allowed as a section 179 expense deduction. Corporation C must depreciate the remaining \$36,000 of the October 15 asset and all \$2,500 of the June 30 asset for Wisconsin tax purposes.

Question: For Wisconsin purposes, is Corporation C required to use the mid-quarter convention, rather than

the half-year convention, to compute its allowable MACRS deduction?

Answer: Yes. Corporation C is required to use the mid-quarter convention to compute its allowable MACRS deduction for Wisconsin purposes. Section 71.26(3)(y), Wis. Stats., provides that a corporation shall compute amortization and depreciation under the federal Internal Revenue Code as amended to December 31, 2000.

Under the Internal Revenue Code, the half-year convention is used for all MACRS property except that to which the mid-month or mid-quarter convention applies. If the mid-quarter test is met, the mid-quarter convention generally applies to all MACRS property to which the half-year convention would otherwise apply. The mid-quarter test is met if, during any taxable year, the aggregate bases of MACRS property placed in service during the last three months of the taxable year exceed 40% of the aggregate bases of MACRS property placed in service during the taxable year. Nonresidential real property and residential rental property are not taken into account for purposes of the mid-quarter test.

Since the basis of MACRS property placed in service in October exceeds 40% of the aggregate bases of MACRS property placed in service during the taxable year, Corporation C must deduct the remaining \$36,000 basis of the October 15 asset and all \$2,500 of the June 30 asset using the MACRS mid-quarter convention. [↗](#)

Sales and Use Tax Report Mailed

The March 2004 *Sales and Use Tax Report (1-04)* was sent in late March and early April to all persons registered for Wisconsin sales and use tax purposes. The *Sales and Use Tax Report* contains summaries of the recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the March 2004 Report include:

- filing sales and use tax returns electronically;

- expansion of the use of Electronic Funds Transfer (EFT);
- new tax laws; and
- sales and installations of compact satellite dish systems.

A copy of the Report appears on pages 49 to 52 of this Bulletin. It is also available on the Department of Revenue's web site at www.dor.state.wi.us/ise/sales/04-1.pdf. [↗](#)



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* 137 (January 2004), pages 39 to 72. It includes information for issues 1 to 136 (through October 2003). [↗](#)

Hiring a Speaker? You May Be Required To Withhold Wisconsin Taxes

If your organization will be hiring a public speaker for an upcoming meeting, conference, or other event, they should be aware that they may be considered the speaker's "employer" for purposes of withholding Wisconsin taxes.

An "employer" is any Wisconsin resident person or firm that contracts for the services of a "nonresident entertainer." In the absence of such resident contracting person or firm, the employer is the last resident person or firm to have receipt, custody, or control of the proceeds of the event. If there is neither a resident contracting person or firm, nor a resident with control of the proceeds, the employer is any nonresident person or firm who contracts for or has control of the proceeds of the event.

A "nonresident entertainer" is a nonresident person who furnishes amusement, entertainment or **public speaking services**, or performs in one or more sporting events, and includes a foreign corporation (one not organized under the laws of Wisconsin) not regularly engaged in business in Wisconsin which derives income from any of these activities or from these services performed by a nonresident person.

Wisconsin law requires nonresident entertainers to file a surety bond or cash deposit if the total contract price for a performance in Wisconsin exceeds \$3,200. This bond or deposit must be filed to guarantee payment of income or franchise taxes, sales and use taxes, and any penalties and interest. The surety bond or cash deposit, along with a Form WT-11 (this is the application and receipt for the surety bond or cash deposit), must be filed with the Wisconsin Department of Revenue at least seven days before the performance.

If the nonresident entertainer does not file the required bond or deposit, and the total contract price for a Wisconsin performance exceeds \$3,200, the employer is required to withhold payment from the entertainer in an amount for which a bond or deposit should have been filed. If the employer fails to withhold the required amount, they will be held liable for the amount that should have been withheld.

Additional information is available in Publication 508, *Wisconsin Tax Requirements Relating to Nonresident Entertainers*. See the article titled "Tax Publications Available" on page 5 of this Bulletin, for methods of obtaining Publication 508. Additional information is also available by contacting the department by any of the methods listed below.

Using U.S. Postal Service:


Wisconsin Department of Revenue
Nonresident Entertainer Program
Mail Stop 5-144
P.O. Box 8906
Madison, WI 53708-8906

Using another service:

Wisconsin Department of Revenue
Nonresident Entertainer Program
Mail Stop 5-144
2135 Rimrock Road
Madison, WI 53713

By telephone: (608) 266-3645

By fax: (608) 267-0834 (write "Attention Nonresident Entertainer Program" at the top of the cover page of the faxed document)

By e-mail: income@dor.state.wi.us (enter "Nonresident Entertainer Program" on the subject line) 

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).

*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 may 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 may 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 may be found on the Department of Revenue's web site at www.dor.state.wi.us. 


New Internet Page for Delinquent Tax Help

The Department of Revenue (“DOR”) Compliance Section has launched a new web page, www.dor.state.wi.us/html/delhelp, to assist taxpayers in resolving their past due tax accounts. The site provides useful information regarding the delinquent tax process, the ability to submit on-line installment agreement requests, and answers to frequently asked questions. Some of the topics covered include:

- bank levies;
- tax liens;
- collection agencies;

- informal hearings;
- wage certifications;
- divorce decrees; and
- credit card payments.

There are also links to frequently used forms, which may be filled in on-line, printed, and mailed or faxed to DOR.

For any additional questions you may have after visiting the web page, please contact the Central Collection Section at (608) 266-7879 or delnqtax@dor.state.wi.us. 

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.

(Sales and Use Tax)

Q I was charged tax on my purchase of a magazine at the grocery store. I liked the magazine and ordered an annual subscription, but I was not charged tax on the subscription of the same magazine. Is my purchase of the magazine subscription subject to tax?

A No. Sales of magazines that are sold by subscription and regularly issued at average intervals not exceeding 3 months are exempt from Wisconsin sales and use tax. However, magazines that are not sold by subscription (for example, sold at the newsstand or grocery store) are taxable.

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, 2004 and at each step where action occurred during the period from January 2, 2004, through April 1, 2004.

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


Q Is there a list of Wisconsin cities or zip codes by county that can be used to determine the proper rate to apply for sales tax purposes?

A The Department of Revenue currently has no list available for distribution that accurately gives the county for a particular municipality or zip code. This is because many municipalities and 5-digit zip codes cross county boundaries.

To accurately determine the county in which a sale takes place, a seller should ask the customer for the name of the county where the sale takes place. If that is not possible, there is a U.S. Postal Service web site (http://www.usps.gov/ncsc/lookups/lookup_zip+4.html) that allows you to enter a street address, city, and state and it will give you the 9-digit zip code and county for that street address. Note that the department cannot attest to the accuracy of the data on that web site. 

page 53 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Sent to Legislative Council Rules Clearinghouse

- 2.49 Apportionment of net business incomes of interstate finance companies – R&R
- 2.495 Apportionment of net business incomes of interstate brokers-dealers, investment advisers, investment companies, and underwriters – NR 



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

Assessments - authority of Internal Revenue Service determinations over	
Assessments - correctness	
Assessments - interest imposed on	
Assessments - timeliness	
Assessments - validity of defense to	
<i>La Verne I. Iverson</i>	19

Sales and Use Tax

Aircraft - taxable use	
<i>G & G Trucking, Inc.</i>	21
Exemptions - manufacturing machinery and equipment	
<i>Wissota Sand and Gravel Company</i>	22
Exemptions - printed advertising materials	
<i>Plaza Publications, Inc.</i>	23

INDIVIDUAL INCOME TAXES

Assessments – authority of Internal Revenue Service determinations over; Assessments – correctness; Assessments – interest imposed on; Assessments – timeliness; Assessments – validity of defense to.
La Verne I. Iverson vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 12, 2003). The issues in this case are:

- Whether the department's assessment was made in a timely manner.
- Whether the department's alleged motivation to generate revenues to cover the state's budget deficit is a valid defense to the assessment.
- Whether the department properly assessed interest at a rate of 12%.

- Whether the department is bound by a previous Internal Revenue Service determination concerning some of the same issues as in the assessment.
- Whether the department properly disallowed capital gain treatment on Termination Payments received by the taxpayer.
- Whether the department properly assessed the taxpayer for unreported gambling winnings.
- Whether the department properly disallowed the deduction for health insurance premiums claimed by the taxpayer.
- Whether the department properly included in the taxpayer's income the face value of a promissory note portion of a settlement distribution.

From October 16, 1965 until November 1, 1967, the taxpayer was a salaried employee of one of the State Farm insurance companies, with the title of Trainee Agent. From November 1, 1967, until his retirement on October 31, 1995, he was an independent insurance agent for several affiliated State Farm insurance companies. At no time prior to or during his service for State Farm, either as an employee or an independent insurance agent, did the taxpayer purchase from State Farm an agency or policies then or previously in effect.

As of the date the taxpayer became an independent insurance agent for State Farm, he entered into a State Farm Agent's Agreement ("Initial Agent's Agreement"). The Initial Agent's Agreement provided that the taxpayer would be an independent contractor and responsible for most of his own expenses. It also provided that the agreement between State Farm and the taxpayer could be terminated by State Farm at will, simply by providing notice to the taxpayer. Upon termination of the Agreement, either by the taxpayer or State Farm, the Agreement provided for Termination Payments to be paid to the taxpayer based upon a formula. Under the formula, the taxpayer was entitled to Termination Payments based on various percentages of premiums collected or commissions that would have been due had the Agreement not been terminated.

Prior to his retirement in 1995, the taxpayer entered into at least one subsequent Agent's Agreement ("Subse-

quent Agent's Agreement") that superceded all prior agreements between himself and State Farm. The Subsequent Agent's Agreement does not materially differ from the Initial Agent's Agreement in any respect pertinent to this matter. When he retired, the taxpayer did not execute any separate agreement with State Farm with respect to or obtain any valuation of the value of his agency, any of its assets, or the Termination Payments. The taxpayer received Termination Payments based on the Subsequent Agent's Agreement in the following amounts: \$17,370.57 in 1997, \$16,594.04 in 1998, \$14,836.18 in 1999, and \$15,536.76 in 2000.

When he filed his Wisconsin income tax returns for the years 1997 through 2000, the taxpayer characterized the Termination Payments he received as capital gain income and excluded 60% of the payments from Wisconsin taxable income. In each of these years, on his federal Schedule D, he reported a zero basis in the Termination Payments. On each of these same schedules, he did not include a sales price for the Termination Payments, but instead inserted a notation referring to agency premium renewal service compensation.

On April 5, 1998, the taxpayer was playing dollar slot machines at a casino in Marquette, Iowa, when he hit the jackpot, winning \$1,350. The casino withheld \$67.50 in Iowa state income tax and issued a federal Form W-2G reflecting the amount of the gross winnings and the tax withheld. The taxpayer did not report the winnings on his 1998 Wisconsin income tax return, and filed no 1998 Iowa income tax return.

The taxpayer and his ex-wife were plaintiffs in a class action suit against certain corporations venued in the U.S. District Court for the Southern District of Florida. In December of 1998, they received a settlement distribution consisting of a check in the amount of \$1,511.68 and a promissory note in the amount of \$2,318.21. The law firm transmitting the settlement distribution advised them that "under most circumstances the distribution represents income that you must report on your tax return." The law firm also filed a 1099-MISC that listed \$3,829.89 as other income paid to the taxpayer and his ex-wife.

On his 1998 Wisconsin income tax return, the taxpayer reported \$1,511.68 of the settlement proceeds as a long-term capital gain, excluding 60% of this amount from Wisconsin taxable income. He did not report any portion of the promissory note on his 1998 Wisconsin income tax return.

On his 1998 through 2000 Wisconsin income tax returns, the taxpayer claimed a deduction for self-employed health insurance premiums in the amounts of \$1,164.35, \$1,762.63, and \$1,934.85, respectively. During these years, he was not self-employed and did not file a federal Schedule SE.

Under the date of February 18, 2002, the department issued an income tax assessment against the taxpayer consisting of additional tax of \$3,445.38 plus 12% interest of \$1,262.61, for the years 1997 through 2000. The department's assessment included the following elements:

1. Disallowance of capital gains treatment of the Termination Payments for all four years.
2. Inclusion of gambling winnings in income for 1998.
3. Disallowance of capital gains treatment of the settlement proceeds for 1998.
4. Inclusion of the amount of the promissory note in income for 1998.
5. Disallowance of the deduction for self-employed health insurance premiums for 1998, 1999 and 2000.

The taxpayer filed a timely petition for redetermination with the department, the department denied it, and the taxpayer filed a timely petition for review with the Commission.

The arguments raised by the taxpayer were as follows:

- The department took too long to issue the assessment.
- The department targeted him because of the state's ongoing budget crunch.
- The 12% interest rate is excessive.
- With respect to a number of issues, the Internal Revenue Service has accepted his position.
- When he retired, he sold to State Farm his right to continue to receive "service fee compensation," i.e., compensation on policies he sold or maintained. Therefore, the Termination Payments he received should be allowed capital gain treatment.
- The department should contact the State of Iowa to retrieve the amount withheld from his gambling

winnings, and he actually lost more money gambling than he won.

- It is unfair for the department to disallow his deductions for health insurance premiums, when employers may pay health insurance premiums for their employees without tax consequence to those employees.
- The cash portion of the settlement distribution he received should be treated as capital gain, and he should not have to realize any income upon receipt of the note until he is actually paid on the note.

The commission concluded as follows:


- A. The assessment was issued in a timely manner, within the statute of limitations. The department was completely within its authority to issue the assessment when it did. If the taxpayer believes that assessments should be issued in a timelier manner, his only recourse is to the legislature.
- B. The department's alleged motivation to generate revenues to cover the state's budget deficit is not a valid defense to the assessment.
- C. The department is required by law to impose interest on assessments at the specified rates. Sec. 71.82(1) Wis. Stats. (2001-2002) sets the rate at 12%. Complaints about the statutorily mandated interest rate are better directed to the legislature.
- D. The record contains no substantiation of any issues raised by the Internal Revenue Service, or the resolution of any such issues. But even if the taxpayer had offered such substantiation, it would be immaterial. The definition of "federal taxable income" and "federal adjusted gross income" allows that such

amounts may be determined by the department or on appeal from the department (Sec. 71.01(4) Wis. Stats. (2001-2002)). Therefore, neither the department nor the Commission is bound by any determination of the Internal Revenue Service.

- E. The Termination Payments are not entitled to capital gain treatment. The record indicates that the taxpayer never owned the right to service fee compensation, and nothing in the Agent's Agreements indicates that State Farm is buying the taxpayer's right to service fee compensation with Termination Payments.
- F. The taxpayer is liable for Wisconsin income tax on his gambling winnings, and he has failed to substantiate any potentially offsetting gambling losses. It is the taxpayer's, not the department's, obligation to claim a refund from the State of Iowa, if he is indeed entitled to a refund.
- G. The taxpayer is not entitled to a deduction for health insurance premiums because he is not self-employed. Fair or not, it is the law.
- H. The taxpayer is liable for the face value of the promissory note portion of his settlement distribution. The taxpayer offered no substantiation that the claim the settlement is based on involved replacement of capital destroyed or lost, so capital gain treatment is not allowed. Also, the taxpayer offered no evidence that the maker of the note is other than responsible or solvent or that the fair market value of the note is anything other than its face value. Thus, the value of the note is included in the taxpayer's income in the year that it is received.

The taxpayer has not appealed this decision. [!\[\]\(3e2231b1ad3ca8da8658228c00dd08e0_img.jpg\)](#)

SALES AND USE TAXES

 **Aircraft - taxable use.** *G & G Trucking, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Supreme Court, February 24, 2004). The issue in this case is whether the taxpayer made taxable use of aircraft purchased for the purpose of lease or rental.

On November 10, 2003, the taxpayer appealed to the Wisconsin Supreme Court a Court of Appeals decision

that held the taxpayer's use of aircraft was subject to Wisconsin sales or use tax. On February 24, 2004, the Supreme Court denied the petition for review. Therefore, the Court of Appeals decision is final.

See *Wisconsin Tax Bulletin* 137 (January 2004), page 28, *Wisconsin Tax Bulletin* 132 (October 2002), page 25, and *Wisconsin Tax Bulletin* 129 (April 2002), page 23, for summaries of the Court of Appeals, Circuit Court, and Commission decisions. [!\[\]\(b792654f2cef9719eabeb6c5be00811e_img.jpg\)](#)



Exemptions - manufacturing machinery and equipment.

Wissota Sand and Gravel Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 24, 2004). The issues in this case are:

- A. Whether the taxpayer's activity of picking up material (bank run) which has fallen from the face of its quarry and conveying it to its primary crusher is part of the taxpayer's manufacturing operation.
- B. Whether the taxpayer's purchases of wheel loaders, skid steers, an excavator and light towers for use in its quarry operations qualify for the exemption for manufacturing machinery and equipment.
- C. Whether the taxpayer was negligent under sec. 77.60(3), Wis. Stats., for failure to report use tax on the purchases of taxable tangible personal property on which no sales or use tax was charged at the time of purchase.

The taxpayer is a Wisconsin corporation engaged in the business of selling sand and gravel. The taxpayer operates three quarries at which it crushed, sorted, and washed aggregate products into approximately ten products.

The taxpayer separates rock from quarry walls by first removing overburden (topsoil) from on top of the rock, then allowing the forces of nature to cause the rock material (bank run) to slough off and fall to the ground.

During the period under review, the taxpayer purchased two 988F wheel loaders, both of which were used exclusively to lift the bank run from the quarry face and carry the bank run to and deposit it in the primary crusher. There are no intermediate steps or storage of bank run between the lifting of the bank run from the base of the face and its deposit into the primary crusher. The primary crusher reduces the size of the largest rocks in the bank run to no larger than three inches in diameter. Once the bank run has gone through the primary crusher, it is called breaker run, and includes sand and rocks up to three inches in diameter. The breaker run moves by conveyor through a series of additional crushers, screens and washers to produce different sizes of sand and gravel which are deposited in drying piles. The taxpayer purchased two skid steer loaders which are used to pick up breaker run that has fallen off conveyors, and replace it back onto the conveyors to be crushed. The taxpayer purchased a 980F II wheel loader which is used to move the sand and gravel from the drying piles to large storage piles where it is ready to be sold to customers.

Water that was used to wash the sand and gravel is pumped to a series of settling ponds where minute particles of sand, called fines, settle to the bottom of the ponds. About once per month, the taxpayer removes the fines from the four upstream settling ponds using a 322BL hydraulic excavator, a device specifically designed for this purpose when purchased by the taxpayer. The 322BL hydraulic excavator has a small bucket at the end of a 65-foot boom. The 322BL hydraulic excavator deposits the fines into a dump truck that transports the fines to a stockpile, where they dry. Once dry, the resulting product is called silt or bedding sand, and is moved to a storage pile where it is ready to be sold.

From time to time, the taxpayer operated one of its plants at night. In order to operate during evening hours, the taxpayer used two light towers, each powered with a self-contained diesel generator. Light towers illuminated the primary crusher and head pulley that drives the conveyor so that the taxpayer's employees could monitor the effective and safe operation of this equipment.

The Commission concluded as follows:

- A. The taxpayer's activity of picking up material (bank run) which has fallen from the face of its quarry and conveying it to its primary crusher is part of the taxpayer's manufacturing operation.
- B. The taxpayer's purchases of two 988F and one 980F II wheel loaders, two skid steers, and 322BL hydraulic excavator for use in its quarry operations qualify for the exemption for manufacturing machinery and equipment. The two 988F wheel loaders were used to convey raw material from plant inventory to the primary crusher. The two skid steers were used entirely within the scope of manufacturing. The 980F II wheel loader is used to convey to the point of first storage. The 322BL hydraulic excavator was used within the scope of manufacturing because it removed fines from the settling ponds so they could be moved to a drying area.

The taxpayer's purchase of light towers for use in its quarry operations do not qualify for the exemption for manufacturing machinery and equipment.

- C. The taxpayer was negligent under sec. 77.60(3), Wis. Stats., for failure to report use tax on the purchases of taxable tangible personal property on which no sales or use tax was charged at the time of purchase.

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

**Exemptions - printed advertising materials.**

Plaza Publications, Inc. vs. Wisconsin Department of Revenue (Circuit Court for Dane County, September 22, 2003). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated January 31, 2003. See *Wisconsin Tax Bulletin* 134 (April 2003), page 25, for a summary of the Commission's decision. The issue in this case is whether purchases of printed advertising materials by Plaza Publications, Inc. (Plaza) during the years 1996 through 1999 (the period under review), that were shipped to locations to Plaza's customer for later shipment outside Wisconsin, qualify for the exemption in sec. 77.54(25), Wis. Stats., for printed advertising materials in Wisconsin.

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.

Plaza had a Wisconsin seller's permit, but did not report any sales during the period under review, and 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 two locations in Wisconsin designated by GMCVB. None of the publications were sold by Plaza. GMCVB gave away and did not sell the publications.

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."

The Court found the Commission's conclusion that Plaza's purchases of printed advertising materials during the years 1996 through 1999, were shipped outside Wisconsin, was not supported by the record. There was no evidence showing that either of the two locations designated by GMCVB was outside Wisconsin. The Commission had no evidence from which to find that Plaza or its agent in fact transported the materials outside of Wisconsin. Therefore, the decision of the Commission finding the materials qualify for the exemption in sec. 77.54(25), Wis. Stats., is reversed.

The taxpayer has not appealed this decision.



Tax Releases

“Tax Releases” are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those in a tax release, the answers may not apply. Unless otherwise indicated, tax releases apply for all periods open to adjustment, and all references to section numbers are to the Wisconsin Statutes. (Caution: Tax releases reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date published in this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations in a tax release.)

The following tax releases are included:

Corporation Franchise and Income Taxes

1. Carryforwards of Wisconsin Tax Credits.....24

Sales and Use Taxes

2. Sales and Installations of Compact Satellite Dish Systems.....30

CORPORATION FRANCHISE AND INCOME TAXES

1 Carryforwards of Wisconsin Tax Credits

Statutes: Sections 71.28, 71.30(3), 71.47, 71.49(1), 71.75, and 71.77, Wis. Stats. (2001-02)

Wis. Adm. Code: Section Tax 2.11, Wis. Adm. Code (February 1990 Register)

Note: This tax release incorporates and updates the information from the tax release titled “Adjustment to Manufacturer’s Sales Tax Credit Carryover” published in *Wisconsin Tax Bulletin* 78 (July 1992), page 14.

Background: Wisconsin has a variety of nonrefundable tax credits, described below, that may be available to corporations and insurance companies. If a credit is not entirely offset against Wisconsin franchise or income taxes due for the current taxable year, the law generally provides that the balance may be carried forward for 15 years. None of the nonrefundable credits may be offset against the recycling surcharge.

The nonrefundable tax credits are listed in the order in which they must be claimed, as provided in secs. 71.30(3) and 71.49(1), Wis. Stats. (2001-02):

- **Manufacturer’s sales tax credit** equals the amount of Wisconsin state, county, and baseball and football stadium sales and use taxes paid on fuel and electricity used in manufacturing tangible personal property in Wisconsin. The carryforward period for credits computed prior to the 1980 taxable year was 5 years. [Sections 71.28(3) and 71.47(3), Wis. Stats. (2001-02).]
- **Research expense credit** provides an incentive for increasing qualified research activities in Wisconsin for the 1984 taxable year and thereafter. [Sections 71.28(4) and 71.47(4), Wis. Stats. (2001-02).]
- **Development zones additional research credit** provides an incentive for increasing qualified research activities in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. [Sections 71.28(4)(am) and 71.47(4)(am), Wis. Stats. (2001-02).]
- **Research facilities credit** is available for 5% of the qualified expenditures to construct and equip new research facilities or expand existing research facilities in Wisconsin for the 1984 taxable year and thereafter. [Sections 71.28(5) and 71.47(5), Wis. Stats. (2001-02).]
- **Community development finance credit** is available on or after July 1, 1982, to corporations that contribute to the Wisconsin Housing and Economic Development Authority and, in the same year, purchase stock in the Wisconsin Community Development Finance Company. The 15-year carryforward period for unused credits applies beginning with credits available in the 1984 taxable year. [Sections 71.28(1) and 71.47(1), Wis. Stats. (2001-02).]
- **Development zones jobs credit** encourages the hiring of certain persons to work in a business in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. The jobs credit was refundable for taxable years begin-

ning before January 1, 1997. [Sections 71.28(1dj) and 71.47(1dj), Wis. Stats. (2001-02).]

- **Development zones sales tax credit** equals the amount of Wisconsin state, county, and stadium sales and use taxes paid for eligible property used in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. The sales tax credit was refundable for taxable years beginning before January 1, 1997. [Sections 71.28(1ds) and 71.47(1ds), Wis. Stats. (2001-02).]
- **Development zones investment credit** encourages the purchase of certain kinds of depreciable, tangible personal property for use in a business in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998, and for use in a business in certain development opportunity zones for taxable years beginning after January 1, 2000. [Sections 71.28(1di) and 71.47(1di), Wis. Stats. (2001-02).]
- **Development zones location credit** encourages investment in real property located in a development zone for the 1988 taxable year through taxable years beginning before January 1, 1998. [Sections 71.28(1dL) and 71.47(1dL), Wis. Stats. (2001-02).]
- **Development zones capital investment credit** provides an incentive to purchase tangible personal property or to acquire, construct, rehabilitate, remodel, or repair real property located in certain development opportunity zones for taxable years beginning on or after January 1, 2002, and in the agricultural development zone for taxable years beginning on or after January 1, 2003. [Sections 71.28(1dm) and 71.47(1dm), Wis. Stats. (2001-02).]
- **Development zones day care credit** encourages the provision of employment-related day care benefits to qualifying individuals employed in a development zone for taxable years beginning on or after January 1, 1995, and before January 1, 1998. [Sections 71.28(1dd) and 71.47(1dd), Wis. Stats. (2001-02).]
- **Development zones environmental remediation credit** encourages the clean-up of environmental pollution in a development zone for taxable years beginning on or after January 1, 1995, and before January 1, 1998. [Sections 71.28(1de) and 71.47(1de), Wis. Stats. (2001-02).]

- **Development zones credit** provides an incentive to clean up environmental pollution and to create or retain jobs in a development zone for taxable years beginning on or after January 1, 1998. [Sections 71.28(1dx) and 71.47(1dx), Wis. Stats. (2001-02).]
- **Technology zones credit** promotes investment in high-technology businesses in a technology zone for taxable years beginning on or after January 1, 2002. [Sections 71.28(3g) and 71.47(3g), Wis. Stats. (2001-02).]
- **Supplement to federal historic rehabilitation credit** equals 5% of the qualifying costs to rehabilitate certified historic structures located in Wisconsin and used for business purposes if the work begins after December 31, 1988, and the rehabilitated property is placed in service after June 30, 1989. [Sections 71.28(6) and 71.47(6), Wis. Stats. (2001-02).]

Although the carryforward period generally is 15 years for each of the tax credits listed above, the statutory language concerning the carryforward of unused credits differs.

Carryforward Provisions

Section 71.28(3), Wis. Stats. (2001-02), relating to the manufacturer's sales tax credit, provides in part:

(b) The tax imposed upon or measured by corporation Wisconsin net income under s. 71.23(1) or (2) ***shall be reduced*** by an amount equal to the sales and use tax under ch. 77 paid by the corporation in such taxable year on fuel and electricity consumed in manufacturing tangible personal property in this state. ...

(c) 1. If the credit computed under par. (b) is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance ***shall be carried forward and credited*** against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years ***to the extent not offset by these taxes otherwise due in all intervening years*** between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

[Emphasis added.]

Prior to the enactment of 1987 Wisconsin Act 27, which became effective August 1, 1987, the manufacturer's

sales tax credit language was found in sec. 71.043, Wis. Stats., which provided in part:

(3) If any corporation in any year is entitled to a credit under this section, such credit, to the extent not offset by the tax liability of the same year **may be offset** against the tax liability of the subsequent year, and if not completely offset by the tax liability of such year, the remainder of such credit may be offset against the tax liability of the following year. A credit under sub. (2) **may be carried forward and offset against tax liability in the next succeeding 15 years.** [Emphasis added.]

Section 71.28(4), Wis. Stats. (2001-02), relating to the research expense credit, provides in part:

(a) *Credit.* Any corporation **may** credit against taxes otherwise due under this chapter an amount equal to 5% of the amount obtained ...

(f) *Carry-over.* If a credit computed under this subsection is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance **may be carried forward and credited** against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years **to the extent not offset by these taxes otherwise due in all intervening years** between the year in which the expense was incurred and the year in which the carry-forward credit is claimed.

(h) *Timely claim.* No credit may be allowed under this subsection unless it is claimed within the period specified in s. 71.75(2).

[Emphasis added.]

Carryforward provisions similar to the research expense credit language in sec. 71.28(4)(f) apply to the rest of the tax credits listed above.

Refund and Assessment Provisions

Under sec. 71.75(2), Wis. Stats. (2001-02), with limited exceptions, refunds may be made if the claim is filed within 4 years of the unextended date on which the tax return was due. The Department of Revenue has 4 years from the date a franchise or income tax return is filed within which to issue a notice of assessment of a tax or an assessment to recover all or part of any tax credit, pursuant to sec. 71.77(2), Wis. Stats. (2001-02). Under certain circumstances, the statute of limitations for issuing a notice of assessment may be extended, as

provided in sec. 71.77(7), Wis. Stats. (2001-02). For purposes of assessments and refunds, a return filed on or before the last day prescribed by law for the filing of the return shall be considered as filed on such last day. A return filed after the last day prescribed by law shall be considered as filed on the date that the return is received by the Department of Revenue. See sec. 71.77(8), Wis. Stats. (2001-02).

Manufacturer's Sales Tax Credit Issues

Facts and Question 1: Corporation A computes a \$25,000 manufacturer's sales tax credit on its 2002 Wisconsin franchise or income tax return based on the sales and use taxes it paid during 2002 on fuel and electricity used in manufacturing tangible personal property. Corporation A's gross franchise tax liability for 2002 is \$1,000. Corporation A does not have any manufacturer's sales tax credit carryforward from prior years.

Does Corporation A have to offset \$1,000 of the manufacturer's sales tax credit against its 2002 franchise tax due, or may the corporation choose to carry forward the entire \$25,000 credit to future years?

Answer 1: Corporation A is required to use its 2002 manufacturer's sales tax credit on its 2002 Wisconsin return to the extent that it has Wisconsin franchise or income tax liability for 2002. As a result, \$1,000 is used to reduce Corporation A's 2002 franchise tax liability to zero, and \$24,000 is carried forward to future years.

Section 71.28(3)(b), Wis. Stats. (2001-02), provides that the franchise or income tax "shall be reduced" by the manufacturer's sales tax credit. In statutes, the word "shall" denotes a mandatory or absolute duty or directive. Thus, the Legislature's use of the word "shall" for the manufacturer's sales tax credit makes it clear that taxpayers cannot choose when to claim the credit.

Facts and Question 2: Corporation B computes a \$50,000 manufacturer's sales tax credit on its 2002 Wisconsin franchise or income tax return based on the sales and use taxes it paid during 2002 on fuel and electricity used in manufacturing tangible personal property. Corporation B's 2002 gross franchise tax liability is \$5,000. The corporation must offset \$5,000 of the credit against its 2002 gross tax, and it has \$45,000 of unused credit to carry forward to 2003. Corporation B does not qualify to compute a manufacturer's sales tax credit for 2003. Corporation B's 2003 gross franchise tax liability is \$500.

Does Corporation B have to claim \$500 of the credit carryforward against its 2003 tax due, or may the corporation choose to carry forward the \$45,000 of unused credit to future years?

Answer 2: Corporation B is required to claim the 2002 manufacturer's sales tax credit carryforward on its 2003 Wisconsin return to the extent that it has Wisconsin franchise or income tax liability for 2003. As a result, \$500 is used to reduce Corporation B's 2003 franchise tax liability to zero, and \$44,500 is carried forward to future years.

Section 71.28(3)(c)1, Wis. Stats. (2001-02), provides that the unused balance "shall be carried forward and credited" against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years "to the extent not offset by these taxes otherwise due in all intervening years" between the year in which the expense was incurred and the year in which the credit carryforward is claimed.

Facts and Question 3: Corporation C computes a \$30,000 manufacturer's sales tax credit on its 2002 Wisconsin franchise or income tax return based on the sales and use taxes it paid during 2002 on fuel and electricity used in manufacturing tangible personal property. Corporation C's 2002 gross franchise tax liability is \$20,000. In addition, Corporation C has a \$5,000 manufacturer's sales tax credit carryforward from 1987 that will expire if it cannot be claimed on the corporation's 2002 return.

May Corporation C choose to use the 1987 credit carryforward before claiming its 2002 manufacturer's sales tax credit?

Answer 3: No, Corporation C cannot choose to use its 1987 credit carryforward first. On its 2002 return, the corporation must use its entire 2002 manufacturer's sales tax credit before it may claim any credit carried forward from prior years. As a result, the corporation must offset \$20,000 of its 2002 credit against its 2002 gross tax, and it has an unused 2002 credit of \$10,000 to carry forward to 2003. The \$5,000 unused credit carryforward from 1987 is lost.

Section Tax 2.11(3)(b), Wis. Adm. Code, states: "The sales tax credit *shall* first be offset against the income or franchise tax liability computed for the tax year before an unused credit from a prior year may be applied." [Emphasis added.]

Facts and Question 4: Corporation D timely filed its 1998 Wisconsin franchise or income tax return and paid Wisconsin franchise tax of \$30,000. After the statute of limitations had expired, Corporation D determines that it would have been eligible for a 1998 manufacturer's sales tax credit of \$47,000.

May Corporation D claim any portion of the unused 1998 manufacturer's sales tax credit in open years?

Answer 4: No, Corporation D cannot go back to a closed year and compute a manufacturer's sales tax credit where one had not previously been claimed. Therefore, Corporation D does not have any unused manufacturer's sales tax credit from 1998 to carry forward to open years.

Facts and Question 5: On July 1, 2003, Corporation E files a late Wisconsin franchise or income tax return for the 1996 calendar year. The return reports gross franchise tax of \$15,000 and a manufacturer's sales tax credit of \$20,000.

May Corporation E carry forward the \$5,000 of unused 1996 manufacturer's sales tax credit to receive a refund of taxes paid for future years?

Answer 5: No, since Corporation E filed its Wisconsin return after the statute of limitations for claiming a refund had expired, it cannot carry forward the \$5,000 of unused manufacturer's sales tax credit shown on its 1996 return.

Facts and Question 6: Corporation F filed a timely 1997 Wisconsin franchise or income tax return. On that return the corporation computed a manufacturer's sales tax credit of \$12,000 based on the sales and use tax it paid on fuel and electricity used in manufacturing in 1997. Corporation F offset \$4,000 of the credit against its 1997 Wisconsin franchise tax liability and carried the \$8,000 balance forward to 1998.

Corporation F filed a timely 1998 Wisconsin franchise or income tax return reporting \$25,000 of gross tax liability. The corporation computed a manufacturer's sales tax credit of \$15,000 based on the sales and use tax it paid on fuel and electricity used in manufacturing in 1998. Corporation F paid net tax of \$2,000 after offsetting its 1998 manufacturer's sales tax credit of \$15,000 and its 1997 credit carryforward of \$8,000. After the statute of limitations for 1997 and 1998 had expired, Corporation F determines that it had understated its 1997 manufacturer's sales tax credit by \$6,500.

May Corporation F carry forward the additional \$6,500 of unused 1997 manufacturer's sales tax credit to receive a refund of taxes paid for future years?

Answer 6: Corporation F may carry forward the additional \$6,500 of unused 1997 manufacturer's sales tax credit. Since Corporation F had claimed a manufacturer's sales tax credit on its timely filed 1997 return, the corporation can correct the amount of credit that it had originally claimed. Of the additional \$6,500 of credit, \$2,000 must be used to offset Corporation F's \$2,000 of net tax liability for 1998. Since 1998 is not open under the statute of limitations, Corporation F may not receive a refund for 1998. The \$4,500 balance may be carried forward to offset Wisconsin franchise tax liability for 1999 and succeeding years during the remainder of the 15-year carryforward period.

Facts and Question 7: Corporation G claimed a \$50,000 manufacturer's sales tax credit on its calendar-year 1998 Wisconsin franchise or income tax return. Its gross tax was \$40,000, resulting in \$10,000 of unused credit. Corporation G carried forward the unused credit to offset its tax liability on its 1999 Wisconsin return. The Department of Revenue conducts an audit of Corporation G's 1998 and 1999 Wisconsin franchise or income tax returns. At the time of the audit, the 1999 return is open to assessment by the department. However, the 1998 return is closed to assessment under sec. 71.77(2), Wis. Stats. (2001-02). The department determines that Corporation G underreported its income on its 1998 return and made an error in computing its 1998 manufacturer's sales tax credit.

May the department adjust both Corporation G's 1998 income and its manufacturer's sales tax credit?

Answer 7: The department may adjust both Corporation G's reported 1998 income and its manufacturer's sales tax credit; however, the department cannot issue an assessment for 1998. The statute of limitations relates only to assessments and does not prevent income or a credit from being recomputed in order to determine the correct amount of credit to carry forward to future years. The department determines that Corporation G's adjusted gross franchise tax liability for 1998 is \$48,000, and its manufacturer's sales tax credit is \$47,500. As a result, Corporation G does not have an unused manufacturer's sales tax credit to carry forward to 1999. The department can issue an assessment to Corporation G for the \$10,000 of manufacturer's sales tax credit carryforward claimed on its 1999 return.

Other Tax Credits

Facts and Question 8: Corporation H computes a \$15,000 research expense credit on its 2002 Wisconsin franchise or income tax return based on its qualified research expenses incurred during 2002. Corporation H's gross franchise tax liability for 2002 is \$500. Corporation H does not have any research expense credit carryforward from prior years.

Does Corporation H have to offset \$500 of the research credit against its 2002 franchise tax due, or may the corporation choose to carry forward the entire \$15,000 credit to future years?

Answer 8: Corporation H may choose whether or not to claim up to \$500 of its 2002 research expense tax credit on its 2002 Wisconsin return. If the corporation does not claim any of the credit on its 2002 return, it may use the entire \$15,000 of 2002 credit in future years within the 15-year carryforward period.

Section 71.28(4)(a), Wis. Stats. (2001-02), provides that a corporation "may" credit against taxes otherwise due under chapter 71 the research expense credit. In statutes, the word "may" denotes an optional or permissive privilege, right, or grant of discretionary authority. Thus, the Legislature's use of the word "may" for the research expense credit indicates that taxpayers have the option to choose whether to claim the credit for the current taxable year or carry it forward to a future year during the 15-year carryforward period when it will be more beneficial.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer's sales tax credit.

Facts and Question 9: Corporation I computes a \$30,000 research expense credit on its 2002 Wisconsin franchise or income tax return based on its qualified research expenses incurred during 2002. Corporation I's 2002 gross franchise tax liability is \$5,000. The corporation does not have any research expense credit carryforward from prior years. Corporation I chooses to offset \$5,000 of the credit against its 2002 gross tax, and it has \$25,000 of unused research credit to carry forward to 2003. Corporation I does not qualify to compute a research expense credit for 2003. Corporation I's 2003 gross franchise tax liability is \$300.

Does Corporation I have to claim \$300 of the research expense credit carryforward against its 2003 tax due, or

may the corporation choose to carry forward the \$25,000 of unused credit to future years?

Answer 9: Corporation I may choose whether or not to claim up to \$300 of its 2002 research expense tax credit on its 2003 Wisconsin return. If the corporation does not claim any of the credit on its 2003 return, it may claim the \$25,000 of unused 2002 research credit in future years during the remainder of the 15-year carryforward period.

Section 71.28(4)(f), Wis. Stats. (2001-02), provides that the unused balance “may be carried forward and credited” against Wisconsin income or franchise taxes otherwise due for the following 15 years “to the extent not offset by these taxes otherwise due in all intervening years” between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer’s sales tax credit.

Facts and Question 10: Corporation J computes a \$40,000 research facilities credit on its 2002 Wisconsin franchise or income tax return based on its 2002 expenditures to construct and equip new facilities in Wisconsin used for qualified research. Corporation J’s 2002 gross franchise tax liability is \$20,000. In addition, Corporation J has a \$5,000 research facilities credit carryforward from 1987 that will expire if it cannot be claimed on the corporation’s 2002 return.

May Corporation J choose to use the 1987 credit carryforward before claiming its 2002 research facilities credit?

Answer 10: Yes, Corporation J may choose to use its 1987 credit carryforward first.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer’s sales tax credit.

Facts and Question 11: Corporation K timely filed its 1998 Wisconsin franchise or income tax return and paid Wisconsin franchise tax of \$30,000. After the statute of limitations had expired, Corporation K determines that it would have been eligible for a 1998 research expense credit of \$47,000.

May Corporation K claim any portion of the unused 1998 research expense credit in open years?

Answer 11: No, Corporation K cannot go back to a closed year and compute a research expense credit where one had not previously been claimed. Therefore, Corporation K does not have any unused research expense credit from 1998 to carry forward to years that are open under the statute of limitations.

Section 71.28(4)(h), Wis. Stats. (2001-02), provides that no credit may be allowed unless it is claimed within the period specified in sec. 71.75(2), Wis. Stats. (2001-02). Section 71.75(2) generally provides that a claim for refund must be filed within 4 years of the unextended due date of the return.

Note: This treatment applies to the rest of the tax credits listed above.

Facts and Question 12: On July 1, 2003, Corporation L files a late Wisconsin franchise or income tax return for the 1996 calendar year. The return reports gross franchise tax of \$18,000 and a research facilities credit of \$27,000.

May Corporation L carry forward the \$9,000 of unused 1996 research facilities credit to receive a refund of taxes paid for future years?

Answer 12: No, since Corporation L filed its Wisconsin return after the statute of limitations for claiming a refund had expired, it cannot carry forward the \$9,000 of unused research facilities credit shown on its 1996 return.

Note: This treatment applies to the rest of the tax credits listed above.

Facts and Question 13: Corporation M filed a timely 1998 Wisconsin franchise or income tax return. On that return the corporation computed a research expense credit of \$19,000 based on its qualified research expenses incurred in 1998. Corporation M offset \$8,000 of the credit against its 1998 Wisconsin franchise tax liability and carried the balance forward to future years. After the statute of limitations for 1998 had expired, Corporation M determines that it had understated its 1998 research expense credit by \$5,000.

May Corporation M carry forward the additional \$5,000 of unused 1998 research expense credit to receive a refund of taxes paid for future years?

Answer 13: No, Corporation M cannot go back to a closed year and increase its research expense credit. Therefore, Corporation M does not have an additional

\$5,000 of research expense credit to carry forward to years that are open under the statute of limitations.


Section 71.28(4)(h), Wis. Stats. (2001-02), provides that no credit may be allowed unless it is claimed within the period specified in sec. 71.75(2), Wis. Stats. (2001-02). Section 71.75(2) generally provides that a claim for refund must be filed within 4 years of the unextended due date of the return.

Note: This treatment applies to the rest of the tax credits listed above, other than the manufacturer's sales tax credit.

Facts and Question 14: Corporation N claimed a \$55,000 research expense credit on its calendar-year 1998 Wisconsin franchise or income tax return. Its gross tax was \$44,000, resulting in \$11,000 of unused credit. Corporation N carried forward the unused credit to offset its tax liability on its 1999 Wisconsin return. The Department of Revenue conducts an audit of Corporation N's 1998 and 1999 Wisconsin franchise or income tax returns. At the time of the audit, the 1999 return is open to assessment by the department. However, the 1998 return is closed to assessment under sec. 71.77(2), Wis. Stats. (2001-02). The department determines that Corporation N underreported its income on its 1998 return and made an error in computing its 1998 research expense credit.

May the department adjust both Corporation N's 1998 income and its research expense credit?

Answer 14: The department may adjust both Corporation N's reported 1998 income and its research expense credit; however, the department cannot issue an assessment for 1998. The statute of limitations relates only to assessments and does not prevent income or a credit from being recomputed in order to determine the correct amount of credit to carry forward to future years. The department determines that Corporation N's adjusted gross franchise tax liability for 1998 is \$49,000, and its research expense credit is \$48,000. As a result, Corporation N does not have an unused research expense credit to carry forward to 1999. The department can issue an assessment to Corporation N for the \$11,000 of research expense credit carryforward claimed on its 1999 return.

Note: This treatment applies to the rest of the tax credits listed above. 

SALES AND USE TAXES

2 Sales and Installations of Compact Satellite Dish Systems

Note: This tax release only applies to the compact satellite dish systems described below. The tax treatment of satellite dish systems, which consist of a satellite dish that is permanently affixed to a substantial concrete foundation and can be 8 to 10 feet in diameter, may be different.

Statutes: Sections 77.51(4) and 77.52(1) and (2)(a)10, Wis. Stats. (2001-02)

Wis. Adm. Code: Section Tax 11.68(7)(a)2 (June 1999 Register)

Background: Section 77.52(1), Wis. Stats. (2001-02), imposes a Wisconsin sales tax on the gross receipts from the sale of tangible personal property at retail in Wisconsin.

Section 77.52(2)(a)10, Wis. Stats. (2001-02), imposes a Wisconsin sales tax on the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property, which includes installation, with certain exceptions.

Section 77.51(4)(a), Wis. Stats. (2001-02), defines gross receipts, in part, to mean total amount of the sale, lease or rental price, as the case may be, from sales at retail of tangible personal property, or taxable services, valued in money, whether received in money or otherwise. Gross receipts include the price received for labor or services used in installing or applying tangible personal property sold, except the price received for installing or applying property which, when installed or applied, will constitute an addition or capital improvement of real property and provided such amount is separately set forth from the amount received for the tangible personal property.

Section 77.51(4)(b)1, Wis. Stats. (2001-02), provides that gross receipts subject to sales tax do not include cash or term discounts allowed and taken on sales. For the discount to reduce a retailer's gross receipts, the retailer must provide the discount (i.e., the retailer may not be reimbursed by a third party for the discount allowed or taken on a sale).

Facts and Question 1: Company A sells and installs satellite dish systems that are used by customers to receive satellite television services from Company B. The satellite dish system consists of a satellite dish (18-20

inch diameter), wiring, one or more receivers, and one or more remote controls. The satellite dish is affixed to a roof, wall, or railing of a building with a simple mounting bracket and screws. A wire is connected to the dish and routed into the building where it connects to a receiver that is located on a shelf or cabinet near a television set. It is likely that if a customer were to move, the satellite dish would be uninstalled and taken by the customer to a new location.

Is the sale and installation of the satellite dish system subject to Wisconsin sales or use tax?

Answer 1: Yes. The satellite dish system is tangible personal property when installed. The sale of tangible personal property is subject to Wisconsin sales tax under sec. 77.52(1), Wis. Stats. (2001-02), unless an exemption applies (e.g., sale to a Wisconsin governmental unit). The gross receipts from the installation of the satellite dish system are subject to Wisconsin sales tax under sec. 77.51(4)(c)4 and 77.52(2)(a)10, Wis. Stats., unless an exemption applies.

Note: Although sec. Tax 11.68(7)(a)2, Wis. Adm. Code (June 1999 Register), provides, in part, that satellite dishes installed in apartment buildings, convalescent homes or other residential buildings are real property when installed, the rule was referring to satellite dishes that were 8 to 10 feet in diameter and installed by permanently affixing the dish to a substantial concrete foundation. Section Tax 11.68(7)(a), Wis. Adm. Code, is currently in the process of being amended to reflect the different character of current satellite dish systems.

Facts and Question 2: Assume the same facts as in Facts and Question 1. Additional facts are as follows:

- Company A enters into an agreement with Company B, a satellite television service provider, to act as a sales agent for Company B.
- If Company A signs up a customer for satellite television service with Company B, Company B will pay Company A a \$300 commission.
- In order to attract customers for Company B's service and receive the \$300 commissions, Company A offers a satellite dish system and installation for a price of \$99.
- Company B does not set the price at which Company A must sell the satellite dish system and installation.

- The \$300 commission is not dependent on Company A's sale of the satellite dish system or installation.
- Company A purchases the satellite dish system from Company C for \$149.

What is the sales and use tax treatment of these transactions?

Answer 2: Company A's sale of the satellite dish system and installation to the customer is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$99. Company A's gross receipts subject to sales tax from the sale of the satellite dish system and installation do not include the \$300 commission paid by Company B to Company A. Company A may purchase the satellite dish system from Company C without tax because it is for resale. Company A should provide Company C with a properly completed exemption certificate claiming resale.

Facts and Question 3: Assume the same facts as Facts and Question 2, except that Company A provides the satellite dish system to the customer for free and charges \$49 for installation because the customer chooses not to self-install the dish system.

What is the sales and use tax treatment of these transactions?

Answer 3: Company A's sale to the customer of the satellite dish system installation is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$49. Company A's gross receipts subject to sales tax from the installation of the satellite dish system do not include the \$300 commission paid by Company B to Company A. Company A is subject to Wisconsin sales or use tax on its \$149 purchase of the satellite dish system it provided to the customer without charge (i.e., did not resell).

Facts and Question 4: Assume the same facts as Facts and Question 1. Additional facts are as follows:

- Company A enters into an agreement with Company B, a satellite television service provider, to act as a sales agent for Company B.
- If Company A signs up a customer for satellite television service with Company B, Company B will pay Company A a \$100 commission. The \$100 commission is not dependent on Company A's sale of the satellite dish system or installation.

- In order to attract customers, Company B offers a promotion that requires Company A to sell a satellite dish system and installation at a price of \$99, which is well below what Company A would charge for the system and installation without the promotion.
- Because of the reduced promotion price Company A must charge its customer, Company B pays Company A \$150.
- Company A purchased the satellite dish system from Company C for \$149.

What is the sales and use tax treatment of these transactions?

Answer 4: Company A's sale of the satellite dish system and installation to the customer is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$249. Company A's gross receipts subject to sales tax from the sale and installation of the satellite dish system and installation include the amount paid by the customer (\$99) plus the \$150 payment by Company B to Company A for reimbursement of the discounted price Company B required Company A give to its customer. Company A's gross receipts subject to sales tax from the sale and installation of satellite dish system and installation do not include the \$100 commission paid by Company B to Company A. Company A may purchase the satellite dish system from Company C without tax because it is for resale. Company A should provide Company C with a properly completed exemption certificate claiming resale.

Facts and Question 5: Assume the same satellite dish system as described in Facts and Question 1. Additional facts are as follows:

- Company A enters into an agreement with Company B, a satellite television service provider, to act as a sales agent for Company B.
- If Company A signs up a customer for satellite television service with Company B, Company B will pay Company A a \$100 commission. The \$100 commission is not dependent on Company A's sale of the satellite dish system or installation.
- In order to attract customers, Company B offers a promotion that requires Company A to provide a satellite dish system without charge to the customer. Under that same promotion, Company A must furnish installation at a price of \$49, which is collected from the customer.
- Company B pays Company A (1) \$200 for the satellite dish system it required Company A to furnish to the customer at no charge, and (2) \$50 for the reduced installation price Company B required Company A to charge the customer.
- Company A purchased the satellite dish system from Company C for \$149.

What is the sales and use tax treatment of these transactions?

Answer 5: Company A's sale of the satellite dish system and installation to the customer is subject to Wisconsin sales tax. Company A's gross receipts subject to sales tax are \$299. Company A's gross receipts subject to sales tax from the sale and installation of the satellite dish system include the amount paid by the customer (\$49) plus the \$250 payment by Company B to Company A for the satellite dish system and reimbursement of the installation discount that Company B required Company A to give its customer. Gross receipts subject to sales tax from the sale and installation of the satellite dish system do not include the \$100 commission paid by Company B to Company A. Company A may purchase the satellite dish system from Company C without tax because it is for resale. Company A should provide Company C with a properly completed exemption certificate claiming resale.

Facts and Question 6: Assume the same facts as Facts and Question 5. The customer discontinues service with Company B during the first year of the service contract. As a result of discontinuing service, the agreements between the parties require that:

- Company A return to Company B \$150 of the \$250 satellite dish system and installation reimbursement made by Company B and the \$100 commission.
- The customer pay Company A \$100, in addition to the original \$49 the customer paid when it purchased the equipment and installation, in order to retain the satellite dish system.

What is the sales and use tax treatment of these transactions?

Answer 6: For the period in which the money is returned to Company B, Company A may claim a deduction on line 4 of its sales and use tax return (Form

ST-12) for \$150 of the \$250 reimbursement it previously reported tax on when selling the satellite dish system and installation, provided the tax on that amount is returned to the customer. Also, the additional \$100 payment by the customer to Company A for the satellite dish system is subject to Wisconsin sales tax. [!\[\]\(2e897e890e69d81eae4503a8342c36b0_img.jpg\)](#)

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 tax, corporation franchise or income tax, sales/use tax, alcohol beverage regulation, dry cleaning facility license and fee, estate tax, and other provisions. These provisions are contained in 2003 Acts 119, 128, 135, 176, 177, 183, 245, 246, 250, 255, 258, 267, 288, 289, 303 and 312.

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

New Tax Laws

	Effective Date	Page
A. Individual and Fiduciary Income Taxes		
1. Subtraction for Costs Related to Organ Donation	Taxable years beginning on or after January 1, 2004	40
2. Dairy Investment Credit Created	Taxable years beginning on or after January 1, 2004, and before January 1, 2010	40
3. Donations to Breast Cancer Research Program	Taxable years beginning on or after January 1, 2004	41
4. Subtraction Created for Certain Military Pay Received by Members of the Reserves	Taxable years beginning on or after January 1, 2004	42
5. Angel Investment Credit Created	Taxable years beginning on or after January 1, 2005	42
6. Early Stage Seed Investment Credit Created	Taxable years beginning on or after January 1, 2005	43
7. Carryover Period for Manufacturer's Sales Tax Credit Increased	Taxable years beginning on or after January 1, 1998	43
8. Subtraction for College Savings Expanded	Taxable years beginning on or after January 1, 2004	43
B. Corporation Franchise or Income Taxes		
1. Dairy Investment Credit Created	Taxable years beginning on or after January 1, 2004, and before January 1, 2010	43
2. Early Stage Seed Investment Credit Created	Taxable years beginning on or after January 1, 2005	43
3. Carryover Period for Manufacturer's Sales Tax Credit Increased	Taxable years beginning on or after January 1, 1988	44
C. Sales and Use Taxes		
1. Exempt Clay Pigeons and Live Game Birds Sold to Hunting Preserves	Sales on or after January 1, 2003	45

D. Alcohol Beverage Regulation

- | | | |
|--|-------------------|----|
| 1. Multiple Advertising by Retail Alcohol Franchisees | February 21, 2004 | 45 |
| 2. Provisional Operators' Licenses | April 28, 2004 | 45 |
| 3. Unaccompanied Underage Persons on Alcohol Beverage Licensed Premises | April 28, 2004 | 45 |
| 4. Transferring Wholesale/Class "A" Beer Licenses to Premises in Another Municipality Within the Same County | April 28, 2004 | 45 |
| 5. Termination of Distribution Rights | May 5, 2004 | 45 |

E. Dry Cleaning Facility License and Fee

- | | | |
|---|-------------|----|
| 1. Dry Cleaning Facility License Separate from Dry Cleaning License Fee | May 7, 2004 | 46 |
| 2. Security Deposit May Be Required | May 7, 2004 | 46 |
| 3. Dry Cleaning Facility License May Be Revoked | May 7, 2004 | 46 |
| 4. Clarify Definition of "Gross Receipts" | May 7, 2004 | 46 |
| 5. Create Definition of "Launder" | May 7, 2004 | 46 |
| 6. Revise Penalties | May 7, 2004 | 46 |
| 7. Clarify Delinquent Date for Assessments | May 7, 2004 | 47 |
| 8. Clarify Collection Remedies for Delinquent Fees | May 7, 2004 | 47 |

F. Estate Taxes

- | | | |
|--|--|----|
| 1. Imposition of the Wisconsin Estate Tax on Nonresident Decedent's Intangible Personal Property Changed | Deaths occurring on or after January 1, 2005 | 47 |
|--|--|----|

G. Other

- | | | |
|--|----------------|----|
| 1. Definition of Debt for Purposes of Setoffs for Municipalities and Counties Expanded | April 21, 2004 | 47 |
| 2. Changes to Tax Warrants and Liens on Property | May 5, 2004 | 48 |

A. Individual and Fiduciary Income Taxes

1. Subtraction for Costs Related to Organ Donation (2003 Act 119, create sec. 71.05(10)(i), effective for taxable years beginning on or after January 1, 2004.)

When computing Wisconsin adjusted gross income, an individual may subtract up to \$10,000 from federal adjusted gross income if he or she (or his or her dependent who is claimed under sec. 151(c), IRC), while living, donates one or more of his or her human organs to another human being for human organ transplantation.

"Human organ" means all or part of a liver, pancreas, kidney, intestine, lung, or bone marrow. It does not mean human whole blood, blood plasma, a blood product or a blood derivative or human semen. "Human organ transplantation" means the medical procedure by which transfer of a human organ is made from the body of a person to the body of another person.

The subtraction may be claimed for only the following unreimbursed expenses that are incurred by the individual and related to the individual's organ donation:

- Travel expenses.
- Lodging expenses.
- Lost wages.

The subtraction may be claimed only once and in the taxable year in which the human organ transplantation occurs. Part-year residents or nonresidents of Wisconsin may not claim the subtraction.

2. Dairy Investment Credit Created (2003 Act 135, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.07(3n), 71.10(4)(gbm), 71.28(3n), 71.30(3)(bm), 71.47(3n), and 71.49(1)(bm), effective for taxable years beginning on or after January 1, 2004, and before January 1, 2010.)

The dairy investment credit is equal to 10% of the amount the claimant paid in the taxable year for dairy farm modernization or expansion related to the operation of the claimant's dairy farm.

"Dairy farm modernization or expansion" means the construction, the improvement, or the acquisition of buildings or facilities, or the acquisition of equipment, for dairy animal housing, confinement, animal feeding, milk production, or waste management, including the following, if used exclusively related to dairy animals:

- a. Freestall barns.
- b. Fences.
- c. Watering facilities.
- d. Feed storage and handling equipment.
- e. Milking parlors.
- f. Robotic equipment.
- g. Scales.
- h. Milk storage and cooling facilities.
- i. Bulk tanks.
- j. Manure pumping and storage facilities.
- k. Digesters.
- L. Equipment used to produce energy.

"Dairy animals" includes heifers raised as replacement dairy animals. "Dairy farm" includes a facility used to raise heifers as replacement dairy animals.

No credit may be allowed for any amount that the claimant paid for expenses that the claimant also claimed as a deduction for trade or business expenses under sec. 162 of the Internal Revenue Code.

The aggregate amount of credits that a claimant may claim is \$50,000. The credit must be claimed within four years of the unextended due date of the tax return.

Partnerships, limited liability companies, and tax-option corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payment of expenses. A partnership, limited liability company, or tax-option corporation shall compute the amount of credit that each of its partners, members, or shareholders may claim and shall provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interest.

The amount of the computed credit must be included in the claimant's income except that credits computed by a partnership and passed through to partners shall be added to the partnership's income, and credits computed by a tax-option corporation and passed through to shareholders shall be added to the tax-option corporation's income.

If a computed credit is not entirely offset against Wisconsin income or franchise taxes otherwise due, the unused balance may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years to the extent not offset by taxes otherwise due in all intervening years between the year in which the expense was incurred and the year in which the carry-forward is claimed.

In the case of a change in ownership or business of a corporation, sec. 383 of the Internal Revenue Code applies to the carry-over of unused credits.

The Department of Revenue has full power to administer the credit and may take any action, conduct any proceeding and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to the credit.

For purposes of the recycling surcharge, the definition of "net business income," with respect to a partnership, is expanded to include the dairy investment credit.

3. Donations to Breast Cancer Research Program (2003 Act 176, create sec. 71.10(5f), effective for taxable years beginning on or after January 1, 2004.)

Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate on the return any amount of additional payment or any amount of a refund due that individual for the breast cancer research program. "Breast cancer research program" means the program under sec. 255.055, Wis. Stats., that provides moneys for breast cancer research to the Medical College of Milwaukee, Inc., and the University of Wisconsin Comprehensive Cancer Center and the payment of administrative expenses.

If the individual owes any tax, the individual shall remit in full the tax due and the amount designated on the return for the breast cancer research program when the individual files a tax return. If an individual who owes taxes fails to remit an amount equal to or in excess of the total actual tax due (after any error correction) and the amount designated on the return as a breast cancer research program donation, the department will reduce the amount designated to reflect the amount remitted in excess of the actual tax due (after any error correction). If the amount remitted with the return does not exceed the tax due (after any error correction), the designation is void.

If the individual still has a refund after applying the refund to any delinquency owing the department and to any offset (pursuant to secs. 71.75(9) and 71.80(3), Wis. Stats.), the department will deduct the amount designated on the return as a breast cancer research program donation from the amount of the refund. If an individual is owed a refund that does not equal or exceed the amount designated on the return as a breast cancer research donation (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the breast cancer research program to reflect the actual amount of refund (after any error correction and deduction for a delinquency or offset).

If an individual places any conditions on a designation for the breast cancer research program donation, the designation is void.

If a designation for the breast cancer research program is void, the department shall disregard the designation and determine amounts due, owed, refunded, and received without regard to the void designation.

A place must be provided on the individual income tax return for designations to the breast cancer research program.

Amounts designation for breast cancer research program donations are not subject to refund unless the taxpayer submits information to the satisfaction of the department within 18 months after the date on which taxes are due or the date on which the return is filed, whichever is later, that the amount designated is clearly in error.

4. Subtraction Created for Certain Military Pay Received by Members of the Reserves (2003 Act 183, create secs. 71.05(6)(b)34 and 71.07(6m)(c)4, effective for taxable years beginning on or after January 1, 2004.)

A person who is a member of a reserve component of the U.S. armed forces may subtract from federal adjusted gross income when computing Wisconsin taxable income, any amount of basic, special, and incentive pay income or compensation that is:

- Received from the federal government,
- Received after being called into active federal service or into special state service authorized by the federal Department of Defense, and
- Paid to the person for a period of time during which the person is on active duty.

A person who claims this subtraction may not claim the armed forces member credit.

5. Angel Investment Credit Created (2003 Act 255, amend secs. 71.05(6)(a)15 and 71.08(1)(intro.) and create secs. 71.07(5d), 71.10(4)(gx), 560.205, and nonstatutory provisions, effective for taxable years beginning on or after January 1, 2005.)

An individual may claim the angel investment credit against income tax, including the alter-

native minimum tax, due in each taxable year for two years, beginning with the taxable year in which the individual's initial investment is made. The credit is equal to 12.5% of the individual's bona fide angel investment made directly in a qualified new business venture, subject to certain limitations. The amount of credit computed must be added to the claimant's income. Unused credits may be carried forward for 15 taxable years.

A "bona fide angel investment" means a purchase of an equity interest, or any other expenditure, as determined under an administrative rule to be promulgated by the Department of Revenue, that is made by an individual, or a network of individuals, who reviews new businesses or proposed new businesses for potential investment of the individual's money.

A "qualified new business venture" means a business that is certified by the Department of Commerce. A business may be certified as provided under rules to be promulgated by the Department of Commerce or if it satisfies all of the following conditions:

- It has its headquarters in Wisconsin.
- At least 51% of the employees employed by the business are employed in Wisconsin.
- It is engaged in, or has committed to engage in, manufacturing, agriculture, or processing or assembling products and conducting research and development or developing a new product or business process.
- It is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction.
- It has less than 100 employees.
- It has been in operation in Wisconsin for not more than 7 consecutive years.

- It has not received more than \$1,000,000 in investments that have qualified for angel investment tax credits.

The following limitations apply to the angel investment credit:

- The maximum amount of angel investment credits that may be claimed is \$30,000,000.
- The aggregate amount of tax credits that may be claimed for investments in certified businesses is \$3,000,000 per taxable year.
- The maximum amount of an individual claimant's investment that may be used as the basis for a tax credit is \$500,000 for each investment made directly in a certified business.
- A claimant who is a nonresident or part-year resident of Wisconsin and who is single or a married person filing a separate return must multiply the credit by a fraction, the numerator of which is the individual's Wisconsin adjusted gross income and the denominator of which is the individual's federal adjusted gross income.
- A claimant who is married and files a joint return, if either the claimant or the claimant's spouse or both are nonresidents or part-year residents of Wisconsin, must multiply the credit by a fraction, the numerator of which is the couple's joint Wisconsin adjusted gross income and the denominator of which is the couple's joint federal adjusted gross income.

If an investment for which the claimant claims the angel investment credit is held by the claimant for less than one year, the claimant shall pay to the Department of Revenue the amount of credit that the claimant received related to the investment.

No credit may be allowed for a taxable year unless it is claimed within four years of the unextended due date of the tax return for that taxable year.

- 6. Early Stage Seed Investment Credit Created** (2003 Act 255, amend secs. 71.05(6)(a)15 and 71.08(1)(intro.) and create secs. 71.07(5b), 71.10(4)(gwb), 560.205, and nonstatutory provisions, effective for taxable years beginning on or after January 1, 2005.)

See Item B.2.

- 7. Carryover Period for Manufacturer's Sales Tax Credit Increased** (2003 Act 267, amend sec. 71.07(3s)(c)1, effective for credits computed for taxable years beginning on or after January 1, 1998.)

The carryover period for unused manufacturer's sales tax credit is increased from 15 to 20 years.

- 8. Subtraction for College Savings Expanded** (2003 Act 289, amend sec. 71.05(6)(b)32.(intro.) and 33.(intro.), effective for taxable years beginning on or after January 1, 2004.)

The subtraction for up to \$3,000 of the amount paid into a Wisconsin college savings account or college tuition and expenses program is expanded to include amounts paid if the beneficiary of the account is the claimant's great-grandchild, niece, or nephew. Under prior law, the subtraction was available only if the beneficiary of the account was the claimant, the claimant's child who was claimed as a dependent for federal income tax purposes, or the claimant's grandchild.

B. Corporation Franchise or Income Taxes

- 1. Dairy Investment Credit Created** (2003 Act 135, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(3n), 71.30(3)(bm), 71.47(3n), and 71.49(1)(bm), effective for taxable years beginning on or after January 1, 2004, and before January 1, 2010.)

See Item A.2.

- 2. Early Stage Seed Investment Credit Created** (2003 Act 255, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10, and 77.92(4) and create secs. 71.28(5b), 71.30(3)(eop), 71.47(5b), 71.49(1)(eop),

560.205, and nonstatutory provisions, effective for taxable years beginning on or after January 1, 2005.)

A taxpayer may claim the early stage seed investment credit against franchise or income tax, including the alternative minimum tax, due. The credit is equal to 25% of the claimant's initial investment paid in the taxable year to a fund manager that the fund manager invests in a business certified by the Department of Commerce, subject to certain limitations. The amount of credit computed must be added to the claimant's income. Unused credits may be carried forward for 15 taxable years.

A fund manager is an investment fund manager certified by the Department of Commerce. In determining whether to certify an investment fund manager, the Department of Commerce shall consider the manager's experience in managing venture capital funds, the past performance of investment funds managed by the applicant, the expected level of investment in the investment fund to be managed by the applicant, and any other relevant factors. The Department of Commerce may certify only investment fund managers that commit to consider placing investments in certified businesses.

A business may be certified as provided under rules to be promulgated by the Department of Commerce or if it satisfies all of the following conditions:

- It has its headquarters in Wisconsin.
- At least 51% of the employees employed by the business are employed in Wisconsin.
- It is engaged in, or has committed to engage in, manufacturing, agriculture, or processing or assembling products and conducting research and development or developing a new product or business process.
- It is not engaged in real estate development, insurance, banking, lending, lobbying, political consulting, professional services provided by attorneys, accountants, business consultants, physicians, or

health care consultants, wholesale or retail trade, leisure, hospitality, transportation, or construction.

- It has less than 100 employees.
- It has been in operation in Wisconsin for not more than 7 consecutive years.
- It has not received more than \$1,000,000 in investments that have qualified for angel investment tax credits.

The following limitations apply to the early stage seed investment credit:

- The maximum amount of early stage seed investment credits that may be claimed for all taxable years combined is \$35,000,000.
- The aggregate amount of tax credits that may be claimed for investments paid to certified fund managers is \$3,500,000 per taxable year.

Partnerships, limited liability companies, and tax-option (S) corporations may not claim the credit, but the eligibility for, and the amount of, the credit are based on their payments. The entity must compute the amount of credit that each of its partners, members, or shareholders may claim and provide that information to each of them. Partners, members of limited liability companies, and shareholders of tax-option (S) corporations may claim the credit in proportion to their ownership interest or as specially allocated in their organizational documents.

No credit may be allowed for a taxable year unless it is claimed within four years of the unextended due date of the tax return for that taxable year.

3. Carryover Period for Manufacturer's Sales Tax Credit Increased (2003 Act 267, amend secs. 71.28(3)(c)1 and 71.47(3)(c)1, effective for credits computed by corporations, other than tax-option (S) corporations, for taxable years beginning on or after January 1, 1988.)

The carryover period for unused manufacturer's sales tax credit is increased from 15 to 20 years.

C. Sales and Use Taxes

- 1. Exempt Clay Pigeons and Live Game Birds Sold to Hunting Preserves** (2003 Act 128, create sec. 77.54(47), effective for sales made on or after January 1, 2003.)

The sale of and the storage, use, or other consumption of clay pigeons and live game birds sold to bird hunting preserves that are licensed under sec. 169.19, Wis. Stats., are exempt from Wisconsin sales or use tax.

Prior to January 1, 2003, the department had administratively provided that sales of game birds to shooting preserves were not taxable if the shooting preserves:

- provided the birds to their customers as part of access to a recreational facility, and
- had seller's permits for the collection and reporting of sales tax on their receipts from charges made for access to a recreational facility for hunting.

D. Alcohol Beverage Regulation

- 1. Multiple Advertising by Retail Alcohol Franchisees** (2003 Act 124, amend sec. 125.51(7), effective February 21, 2004.)

Holders of retail liquor licenses or permits that are franchisees as defined in sec. 553.03(5), Wis. Stats., may advertise separately or together, in the name of the franchisor, as defined in sec. 553.03(6), Wis. Stats.

- 2. Provisional Operators' Licenses** (2003 Act 245, renumber and amend 125.17(5)(a) and 125.17(5)(d); to amend 125.17(5)(e); and to create 125.17(5)(a)2. And 125.17(5)(d)2., effective April 28, 2004.)

A municipal governing body that issues operators' licenses shall issue a provisional operator's license to a person who, at the time of application for an operator's license and payment of the fee, files a certified copy of a valid operator's license issued by another municipality. The provisional operator's license may be revoked by the official who issued the license if the official determines that the operator's license issued by another municipality

is not valid or upon denial of the person's application for an operator's license.

- 3. Unaccompanied Underage Persons on Alcohol Beverage Licensed Premises** (2003 Act 246, create 125.07(3)(a)3r, effective April 28, 2004.)

Underage persons unaccompanied by parent, guardian, or spouse of legal drinking age may enter or be on any premises operating under an alcohol beverage license that also is a privately-owned business that exists to provide recreational fishing opportunities to the public for a fee and that is registered under s.95.60(3m) if the sale of alcohol beverages accounts for less than 30 percent of the business's gross receipts.

- 4. Transferring Wholesale/Class "A" Beer Licenses to Premises in Another Municipality Within the Same County** (2003 Act 250, amend 125.04(12)(a), 125.25(2)(b)3, 125.25(3), 125.28(2)(c)2, 125.28(3); create 125.2(2)(b)4, effective April 28, 2004.)

A person who holds a Class "A" license and a wholesale beer license, both of which licenses were issued before May 5, 1994, may transfer the licenses together to another premises in a different municipality within the same county; the transfers shall be received and the validity of the transferred licenses recognized by the receiving municipality upon approval of the transfer by the receiving municipality and payment to the receiving municipality of an additional fee of \$10 for each transferred license.

- 5. Termination of Distribution Rights** (2003 Act 303, create 125.33(10), effective May 5, 2004.)

A successor beer wholesaler shall compensate a terminated beer wholesaler for the fair market value of the terminated wholesaler's distribution rights to any discontinued brand of fermented malt beverages assumed by the successor wholesaler for the same territory, less any amount paid to the terminated wholesaler by the brewer of the discontinued brand. The statute also provides exceptions to this requirement.

E. Dry Cleaning Facility License and Fee

- Dry Cleaning Facility License Separate from Dry Cleaning License Fee** (2003 Act 312, renumber sec. 77.9961(1) to 77.9961(1)(a) and amend as renumbered, amend sec. 77.9961(title), (2) and (3), and create sec. 77.9961(1)(c) and (1m), effective May 7, 2004.)

The department will issue a dry cleaning facility license to each person who submits an application. The dry cleaning facility license does not have an expiration date.

Under prior law, the department issued a dry cleaning facility license, valid for only one year, to a person who paid the January 25 and three previous dry cleaning license fee installments and submitted a renewal form to the department.

Note: Persons who presently hold a dry cleaning facility license are not required to apply for a new license.

- Security Deposit May Be Required** (2003 Act 312, create sec. 77.9961(1)(b), effective May 7, 2004.)

The department may require a security deposit before or after issuing a dry cleaning facility license, under the same conditions as the security deposit requirement for a seller's permit under sec. 77.61(2), Wis. Stats.

- Dry Cleaning Facility License May Be Revoked** (2003 Act 312, create sec. 77.9961(1)(e), effective May 7, 2004.)

The department may revoke a dry cleaning facility license if the person fails to comply with laws or rules related to the dry cleaning license fee, is delinquent with respect to any taxes, or fails to timely file any returns when requested by the department.

- Clarify Definition of "Gross Receipts"** (2003 Act 312, create sec. 77.996(6), effective for license fee installments due after May 7, 2004.)

For purposes of determining the 1.8% dry cleaning license fee, "gross receipts" has the

same meaning as gross receipts for sales and use tax purposes under sec. 77.51(4), Wis. Stats, with the following exception. "Gross receipts" does not include the dry cleaning license fee that is passed on to customers. Under prior law, "gross receipts" was undefined, although administratively the definition in the sales and use tax law was used.

Example: Dry Cleaner A charges \$10.00 plus the dry cleaning license fee and Wisconsin state and county sales tax to dry clean a suit. Dry Cleaner A is liable for the 1.8% dry cleaning license fee on the \$10.00 because it is part of Dry Cleaner A's gross receipts from dry cleaning. Dry Cleaner A chooses to separately state the 1.8% license fee on its invoice. Assuming that Dry Cleaner A furnishes its dry cleaning services in a county that imposes the 1/2% county sales tax, Dry Cleaner A would charge its customer as follows:

Dry cleaning charge	\$10.00
License fee (\$10.00 X 1.8%)	<u>.18</u>
Subtotal	\$10.18
Sales tax (\$10.18 X 5.5%)	<u>.56</u>
Total charge to customer	\$10.74

- Create Definition of "Launder"** (2003 Act 312, create sec. 77.996(7), effective May 7, 2004.)

For purposes of determining if a process is dry cleaning or a laundry service, "launder" means to use water and detergent as the main process for cleaning apparel or household fabrics. Under prior law, "launder" was undefined.

- Revise Penalties** (2003 Act 312, repeal sec. 77.9961(4), amend sec. 77.9964(2), and create sec. 77.9961(1)(d), effective May 7, 2004.)

Any person who operates a dry cleaning facility without holding a valid dry cleaning facility license is subject to the same penalty as a seller operating without a valid seller's permit under sec. 77.52(12), Wis. Stats., and may be guilty of a misdemeanor. The penalty under prior law was \$5 per day for each day the person operated without a license.

Also under prior law, failure to pay the dry cleaning license fee by the installment due date resulted in a penalty of \$5 per day for

each day the installment was late, *in addition to* a late filing fee, interest and negligence penalty. This \$5 per day penalty has been repealed. However, the late filing fee, interest, and negligence penalty remain in effect as follows:

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

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

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

7. Clarify Delinquent Date for Assessments (2003 Act 312, amend sec. 77.9964(2), effective May 7, 2004.)

An assessment by the department of dry cleaning facility license fees becomes delinquent when not paid on or before the due date stated on a notice provided to the dry cleaner in writing under sec. 71.74(10) to (12), Wis. Stats.

Although prior law provided for assessments under sec. 71.74, Wis. Stats., it was not clearly stated when the assessments became delinquent.

8. Clarify Collection Remedies for Delinquent Fees (2003 Act 312, amend sec. 77.9964(2), effective May 7, 2004.)

The department may use the same remedies for the collection of delinquent dry cleaning

license fees that are available for the collection of delinquent income taxes under sec. 71.91 and 71.92, Wis. Stats.

Although prior law provided for collection remedies under sec. 71.91, Wis. Stats., it was not clearly stated that all of the remedies were available under sec. 71.91 and 71.92, Wis. Stats.

F. Estate Taxes

1. Imposition of the Wisconsin Estate Tax on Nonresident Decedent's Intangible Personal Property Changed (2003 Act 258, amend sec. 72.11(2), effective for deaths occurring on or after January 1, 2005.)

The intangible personal property of nonresident decedents under the jurisdiction of the state of Wisconsin will not be subject to the imposition of the Wisconsin estate tax if:

- The decedent's residence (state, territory or district) does not tax the intangible property of Wisconsin residents under its jurisdiction, or
- The decedent's residence (state, territory or district) does not impose a tax on the transfer of property at death.

G. Other

1. Definition of Debt for Purposes of Setoffs for Municipalities and Counties Expanded (2003 Act 177, amend sec. 71.935(1)(a), effective April 21, 2004.)

Under prior law, "debt" for purposes of setoffs for municipalities and counties was defined as "a parking citation of at least \$20 that is unpaid and for which there has been no court appearance by the date specified in the citation or, if no date is specified, that is unpaid for at least 28 days and an unpaid fine, fee, restitution or forfeiture of at least \$20."

Act 177 expands the definition of "debt" to include any other debt that is at least \$20, except debt related to property taxes, if the debt has been reduced to a judgement or the municipality or county to which the debt is owed has provided the debtor reasonable notice and an

opportunity to be heard with regards to the debt.

2. **Changes to Tax Warrants and Liens on Property** (2003 Act 288, amend sec. 71.91(4), and create sec. 71.91(5)(dm), effective May 5, 2004.)

Liens related to warrants filed on or after May 5, 2004 shall remain in effect for 20 years after the filing date of the warrant. Previously, liens related to warrants filed after July 31, 1981 remained in effect until the assessment was satisfied.

The Department of Revenue may renew a lien that expires after 20 years. To be renewed, a new warrant must be filed no earlier than 180 days prior to the date the lien expires and no later than the date the lien expires. There is no limit to the number of times a lien may be renewed. If a renewal warrant is filed, the priority of the lien relates back to the original warrant filing date, and remains in effect for a period of 20 years beginning on the expiration date of the immediate preceding lien. No fee may be charged by a Clerk of Circuit Court for the filing of a renewal tax warrant.

The lien of a tax warrant filed prior to May 5, 2004 continues to be valid on an indefinite basis until it is satisfied.