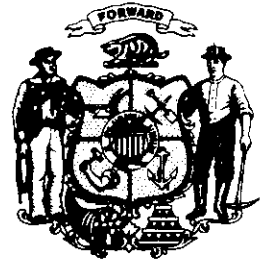


WISCONSIN TAX BULLETIN

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SEPARATE CHECKS FOR 1978 SPECIAL PROPERTY TAX/RENT CREDIT

Persons who file a claim by December 31, 1979 for the 1978 Special Property Tax/Rent Credit either on their 1978 income tax return, (Form 1 or 1A), homestead credit claim (Schedule H) or Schedule PC, will automatically receive a separate check equal to the amount of the credit. If the amount of credit claimed was adjusted by the Department of Revenue, the separate check will be for the adjusted amount.

For persons who claim the 1978 Special Property Tax/Rent Credit on Form 1 or 1A, or on a Schedule H or PC, no additional form or filing is necessary to receive this check. The mailing of checks will begin approximately July 6, 1979 and will continue until all original 1978 Special Property Tax/Rent Credit claims are processed. Most taxpayers who claimed the credit on Form 1 or 1A or on Schedule H or PC which was filed on or before April 16, 1979 (the due date of income tax returns for calendar year filers) should receive this separate check in July or August 1979.

As an example, if a taxpayer claimed a 1978 Special Property Tax/Rent Credit of \$100 on his or her 1978 Wisconsin income tax return, the taxpayer will receive, in addition to the \$100 credit on the 1978 tax return, a separate check for \$100 sometime after July 6, 1979.

Any questions regarding the separate check for the 1978 Special Property Tax/Rent Credit should be addressed to Wisconsin Department of Revenue, P. O. Box 8903, Madison, WI 53708 or call (608) 266-8100.

NEW FORM TO REDUCE WITHHOLDING

If the Wisconsin income tax withheld from an employee's wages will exceed his or her estimated Wisconsin tax liability for 1979, the employee may file Form WT-4A with the employer to reduce the withheld amount. The employer will then withhold the amount indicated on Form WT-4A.

IN THIS ISSUE

	Page
Separate Checks for 1978 Special Property Tax/Rent Credit	1
New Form to Reduce Withholding	1
New Deadline for IRA Contributions	1
New Sales Tax Exemption for Fuel and Electricity	2
New Inheritance Tax Laws Effective July 1, 1979	2
How to Obtain a Refund of Gas Tax	2
Do You Have Suggestions for Articles?	3
Report on Litigation	3
Tax Releases	
Sales Tax	4
Index to Wis. Tax Bulletins, Issues 1 to 14	Suppl.

(A copy of this form is included with this Bulletin.) Employees with unusually large itemized deductions or those who receive Homestead credit are situations which might result in withholding exceeding the employee's estimated tax liability.

The provision to have a lesser amount withheld was authorized in a recently enacted Wisconsin law (Chapter 1, Laws of 1979), which became effective April 1, 1979.

Before an employee files Form WT-4A with the employer, the employee should first determine if withholding can be reduced a sufficient amount by claiming the maximum number of exemptions allowed on Form WT-4A, "Employee's Wisconsin Withholding Exemption Certificate" (or on Federal Form W-4, "Employee's Withholding Allowance Certificate") which the employee completed when he or she started employment. However, if an employee is claiming the maximum number of exemptions allowed and withholding is still more than the estimated tax liability for 1979, a Form WT-4A should then be filed.

One copy of Form WT-4A must be filed with the employer and within ten

days thereafter, a copy of the form must be filed with the Department of Revenue. There is a \$10 penalty if it is not filed with the Department within the required ten days. Any employee who willfully supplies an employer with false or fraudulent information on a Form WT-4A with intent to defeat or evade the proper withholding of tax may be imprisoned or fined, or both.

Form WT-4A must be renewed each year with the employer; for 1979 calendar year taxpayers, it expires on April 30, 1980.

Additional copies of Form WT-4A may be obtained from any Department of Revenue office or by writing to: Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

NEW DEADLINE FOR IRA CONTRIBUTIONS

A new Wisconsin law enacted in March, 1979 (Chapter 5, Laws of 1979) provides that contributions to individual retirement accounts (IRA's) are deductible for Wisconsin income tax purposes if the contributions are made no later than the due date (including extensions thereof) of the taxpayer's Wisconsin income tax return for the taxable year. Since the new law applies to the 1978 taxable year and thereafter, an IRA contribution may be deducted on a 1978 calendar year Wisconsin income tax return if the contribution is made by April 16, 1979 or by the extended due date if an extension was received.

Prior to this law change, contributions to IRA's were deductible for Wisconsin purposes for the 1978 taxable year only if the contributions were made no later than 45 days after the end of the taxable year (e.g., by February 14, 1979 in order to be deductible on a 1978 calendar year Wisconsin income tax return).

Persons who filed a 1978 Wisconsin tax return without claiming an IRA contribution because it was made more than 45 days after the end of the taxable year but within the time period under the new law, may file an amended 1978 return claiming the

IRA contribution for 1978. For example, if an IRA contribution was not claimed on a 1978 calendar year Wisconsin income tax return because the contribution was made after February 14, 1979 (but by April 16, 1979 or the extended due date), an amended 1978 tax return may be filed claiming the contribution.

NEW SALES TAX EXEMPTION FOR FUEL AND ELECTRICITY

Chapter 1, Laws of 1979, enacted a statute (s. 77.54 (30), Wis. Stats.) providing sales tax exemptions for sales of residential fuels and electricity, and for electricity used in farming. Fuel used directly in farming has been exempt for many years.

The new law provides sales tax exemptions for the gross receipts from the sale of the following:

1. Coal, fuel oil, propane, steam and wood used for fuel sold for residential use (effective July 1, 1979).
2. Electricity and natural gas sold for residential use during the months of November, December, January, February, March and April (effective November 1, 1979).
3. Electricity sold for use in farming, including agriculture, dairy farming, floriculture and horticulture, during the months of November, December, January, February, March and April (effective November 1, 1979).

For purposes of the exemption, electricity or natural gas is considered sold at the time of billing. If the billing is by mail, the time of billing is the day on which the bill is mailed. Fuel oil, propane, coal, steam and wood used for fuel are considered sold at the time possession of this fuel is transferred from the seller to the purchaser.

Fuel or electricity may be sold to a person partly for an exempt use and partly for a use which is not exempt. In this situation, no tax should be collected on the fuel or electricity which is used for an exempt use.

"Residential use" means use in a structure or portion of a structure which is a person's permanent residence. It does not include use in motor homes, travel trailers, other recreational vehicles or transient accommodations. Transient accommodations means rooms or lodging

available to the public for a fee for a continuous period of less than one month in a building such as a hotel, motel, inn, tourist home, tourist house or court, lodging house, summer camp, apartment hotel, resort lodge or cabin. Transient accommodations excludes accommodations furnished by a sanatorium, nursing home or by a corporation or association organized and operated exclusively for religious, charitable or educational purposes if no earnings benefit any private shareholder or individual.

"Residential use" does *not* include any use in conducting a trade, business or profession, whether the trade, business or profession is carried on by the owner of the premises or some other person.

Where a building is used for both residential quarters and commercial purposes and fuel is supplied to the building by a single source (ex., through one electric meter or from a single fuel oil tank), it is necessary to determine the portion of the fuel sold which qualifies for the "residential use" exemption. If fuel is used evenly throughout the building, the percentage of exempt fuel may be computed by dividing the number of square feet used for residential purposes by the total number of square feet used for both residential and other purposes. If fuel is not used evenly throughout the building, any other reasonable method of estimating may be used.

NEW INHERITANCE TAX LAWS EFFECTIVE JULY 1, 1979

Chapter 1, Laws of 1979 enacted several changes to inheritance tax laws which became effective for deaths occurring on or after July 1, 1979. The old law applies to deaths occurring prior to July 1, 1979 regardless of when the estate is transferred or when an inheritance tax return is filed. The changes in law are summarized below.

A. Interspousal exemption increased. The exemption for transfers between spouses is increased from \$50,000 to \$250,000.

B. Increased exemption for class A distributees. The exemption for transfers to class A distributees, except surviving spouses, is increased from \$4,000 to \$10,000. Class A distributees include lineal issue (e.g., children and grandchildren), lineal ancestors (e.g., parents and

grandparents), sons-in-law, daughters-in-law, adopted and mutually acknowledged children, and adoptive and mutually acknowledged parents.

C. Life insurance exemption repealed. The inheritance tax \$10,000 life insurance exemption to named beneficiaries was repealed. All such insurance is now subject to the tax.

D. Simplify federal estate tax deduction. A deduction for the federal estate tax paid is generally allowed in full under the new law. This eliminates the need for inheritance tax computation form, Schedule L. An adjustment to the full amount of estate taxes continues to be required, however, for estates located both in Wisconsin and outside Wisconsin.

E. Increase household goods exemption. The exemption of household furniture, furnishings and appliances is increased from \$2,500 to \$10,000. The exemption is also broadened to cover other tangible personal property of a decedent, except money.

F. Delayed payments of tax allowed. Persons with an inheritance or estate tax liability arising from an estate consisting largely of an interest in a closely held business (including farming) may be allowed up to 15 years to pay the tax. The election must be made by the original due date of the tax return to pay the tax in an equal payment schedule over a period of up to 15 years from decedent's date of death.

If the instalment payment method is selected, security must be provided to the Department of Revenue to guarantee tax payment (a recorded lien to secure the taxes on real estate and a surety bond to secure the taxes on personal property). Interest is charged on delayed tax payments from the date of death until paid at the rate of 9% per year.

HOW TO OBTAIN A REFUND OF GAS TAX

You may claim a refund of the Wisconsin 7¢ per gallon gasoline (motor fuel) tax for any gasoline purchased in Wisconsin which is not used in a motor vehicle on the highway. Examples of non-highway gasoline use which qualify for the gasoline tax refund are use in airplanes, snowmobiles, trail bikes, motor boats, lawn mowers, power saws, farm tractors and other non-highway farm and road construction machinery.

To receive a refund, a claim must be filed within 12 months after the date of purchasing the gasoline. For example, if gasoline is purchased for use in a motor boat on June 15, 1979, the refund claim must be filed with the Department of Revenue on or before June 15, 1980. No extensions of time to file are allowed.

A person may file more than one claim in a year. For example, a person may use gasoline in a motor boat, trail bike, and lawn mower during the spring and summer months and file in the autumn for a refund of the gasoline tax paid for gasoline used in these non-highway uses. The same person may use gasoline in a power saw and a snowmobile during the fall and winter months and file during the spring for a refund of the gasoline tax paid for gasoline used in these non-highway uses.

The refund claim must be filed on Form 3 entitled "Claim for Motor Fuel Tax Refund". The form may be obtained at any Department of Revenue office, in each county clerk's office, or by requesting a copy by writing: Wisconsin Department of Revenue, Excise Tax Bureau, P.O. Box 8900, Madison, WI 53708.

The claim form is easy to complete. It requires a statement of the total number of gallons of gasoline purchased and a description of how the gasoline was used. In addition, the claim must be accompanied by the original invoice showing the purchase of the gasoline and indicating that the gasoline tax was paid.

DO YOU HAVE SUGGESTIONS FOR ARTICLES?

The Wisconsin Tax Bulletin is designed to provide current and accurate information on topics of general interest to taxpayers and tax practitioners. Articles pertain primarily to income, franchise, sales and use, inheritance, gift, motor fuel, cigarette, and beer and liquor taxes.

To make this bulletin more useful and informative to its readers, the Department is seeking suggestions for topics and areas of reader interest for articles in future issues. Send your suggestions to: Wisconsin Tax Bulletin, Technical Services Staff, P.O. Box 8910, Madison, WI 53708.

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it is noted whether or not the Department acquiesces or will appeal.)

W. A. Krueger Co. vs. Department of Revenue (Wisconsin Tax Appeals Commission, February 27, 1978.) Taxpayer was a Wisconsin corporation in the business of printing. Taxpayer manufactured tangible personal property for sale, consisting of printed products such as magazines, books and commercial catalogues and brochures.

The Commission stated that taxpayer's printing process consists of 3 general stages: (a) the preparatory or "prep-work", in which a customer's copy is processed through various stages to produce plate-ready film; (b) the press work in which the image is transferred to the final printed page; and (c) the bindery work.

The issue before the Commission was the taxability of certain tangible personal property purchased by taxpayer for use in its printing business. This property included one piece of finished art work and plate-ready film, color separations, positives, negatives and similar items produced by "prep houses" for the taxpayer and purchased by the taxpayer.

The items of property involved in the proceeding all fell within the "prep-work" stage. "Prep-work" precedes the actual printing stage and includes initial typesetting or composition, paste-up including photographs from customers and combining these with words, making page mark-ups and taking pictures of them, making proofs and paper a customer can edit and change, producing negatives which go to the stripping department for assembly of an 8 or 16 page flat and taking a picture (either positive or negative) of the flat which after it is finally proofed is known as plate-ready film. Plate-ready film is used to transfer the final image to metal plates (called lithographic plates) which are attached to the printing press and used in transferring the printing image to a printed product.

The Commission found that none of the items in question, except the

one piece of finished art work, were finished or final in the sense that they had value in themselves as the final stage of a process. They were in the preparatory stages of taxpayer's printing process. All the items involved in this proceeding were cut, cropped, pasted, taped, partially deleted, marked up, written upon and had no further use or function once they had been processed by the taxpayer, wrote the Commission.

The Department assessed the sales and use tax against taxpayer on the tangible personal property involved because no sales or use tax had been paid at the time of their purchase. Taxpayer contended that these items were not subject to the tax.

The Commission concluded that the "prep-work" involved was part of taxpayer's manufacturing process. The Commission held that the items contested were, therefore, exempt from the sales and use tax under s. 77.54(2), Wis. Stats., for 2 reasons: first, they were consumed or destroyed in the manufacture of tangible personal property destined for sale; and secondly, they became an ingredient or component part of printed material destined for sale.

The Department did not appeal this decision.

Horne Directory, Inc. vs. Department of Revenue (Circuit Court of Dane County, March 5, 1979.) Taxpayer is a Wisconsin corporation doing business in Wisconsin with its principal place of business in Madison. During the period involved, taxpayer was engaged in the business of soliciting telephone directory advertising and the publication of telephone directories.

Taxpayer contracted with an Illinois corporation to print the directories it solicited. All the directories involved were printed outside of Wisconsin. The printer delivered most of the directories to the U.S. Post Office, U.P.S. or common carriers outside Wisconsin for delivery directly to telephone subscribers, without any charge to the telephone companies. The decision as to the mode of delivery was made by the printer, not the taxpayer. Except for a small number of directories sent directly to taxpayer, taxpayer never had physical possession of the directories in Wisconsin.

The Department contended that taxpayer owed Wisconsin use tax based on the charges by the printer to the taxpayer for labor, materials, postage and transportation of the directories. The Department's position was that the telephone directories were purchased for storage, use or other consumption in Wisconsin by the taxpayer in providing its service and are subject to the use tax under s. 77.53(1) and (2), Wis. Stats.

The Court held for the taxpayer. It stated that the directories were sold to the telephone companies for resale, and therefore, not subject to the sales or use tax.

The Department has appealed this decision.

Jones Dairy Farm, Inc. vs. Department of Revenue (Circuit Court of Dane County, Case No. 163-206, April 16, 1979.) The taxpayer manufactured sausage and other meat products. To prevent or minimize contamination of the meat products by bacteria from an employee or an employee's clothes, taxpayer purchased and required its employees, during the manufacturing process, to wear 10 categories of wearing apparel. These were cotton gloves, rubber gloves, plastic gloves, plastic pants, plastic shop coats, plastic aprons, cotton pants, cotton aprons, cotton shop coats and hair nets. After these items were used, they were either laundered for re-use or thrown away if no longer usable.

The Court held that these 10 categories of wearing apparel were directly used and consumed in the process of the manufacture of tangible personal property destined for sale. As such, they were exempt from the sales and use tax under s. 77.54(2), Wis. Stats.

The Court also found that about 5% of the cotton shop coats were used by executives and visitors who visited the manufacturing areas. There was no evidence that these coats were used directly in manufacturing nor that the executives and visitors had any direct contact with the meat or meat products. The Court concluded that these coats were used for the protection of their wearers, rather than the protection of the products. For this reason, these 5% of the coats were subject to the sales and use tax.

The Court distinguished between 2 types of apparel: (1) apparel which is

directly used and consumed in manufacturing and which is exempt; and (2) apparel supplied for the comfort or welfare of the employees and which is taxable. Examples of the latter (taxable) type cited by the Court are fur-lined or galosh type boots for employees that work in refrigerated areas, freezer coats and jackets, and safety equipment such as helmets and hard hats.

The Department has not appealed this decision.

Superior Industrial, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, April 26, 1979.) Section 71.043, Wis. Stats., provides that sales and use taxes paid by a corporation on fuel and electricity consumed in manufacturing may be used to reduce income/franchise taxes payable for the year. This section indicates that "manufacturing" has the meaning designated in s. 77.51(27) (i.e., the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing). The department disallowed a reduction of the income/franchise taxes payable by the taxpayer on the grounds that taxpayer was not engaged in manufacturing.

The taxpayer owned 2 plants in Racine and was engaged in the business of coating component parts for various manufacturers. Taxpayer used heavy machinery in a variety of mechanical operations. The most common operation involved rinsing and rerinsing the product in a chemical solution, blowing it dry, coating it, then baking and curing it in an oven. The Commission stated that after the coating processes are completed the products have different properties, uses and names than they did prior to going through the taxpayer's processes.

The Tax Appeals Commission found that the taxpayer was engaged in manufacturing as that term is defined in s. 77.51(27). As a result taxpayer could use sales taxes it paid during the year on fuel and electricity consumed in manufacturing to offset income/franchise taxes payable for the year.

The Department has appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax

questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

SALES TAX

I. Purchases by tourists

With the tourist season occurring, retailers are reminded that sales of taxable goods or services to out-of-state tourists are taxable, if delivery is made in Wisconsin. A mere statement that the item purchased is to be removed from this state is not an acceptable reason for making the sale exempt. Retailers are liable for the sales tax on transactions even if they do not charge tax to the customer.

However, if a retailer ships tangible personal property outside Wisconsin for a customer before the customer obtains possession, the Wisconsin sales or use tax does not apply to the sale.

II. Garage sales

The gross receipts of a person conducting one or more garage, lawn or rummage sales at the person's private residence are not subject to the sales tax if 3 conditions are met: (1) the gross receipts must be less than \$500 during the calendar year; (2) the person does not hold a seller's permit to conduct the sales; and (3) the person does not sell property at the garage, lawn or rummage sale which is used in another business activity. The gross receipts are taxable, however, if the person regularly holds such sales, or if the gross receipts from the sales are \$500 or more during the calendar year, or if the person holds a seller's permit to conduct the sales.

III. Flea markets, rummage sales and swap meets

Persons who regularly sell new or used items at flea markets, rummage sales or swap meets have gross receipts from a business or part-time business which are subject to the sales tax. Such persons are required to have a seller's permit and pay the sales tax on their gross receipts.