

# Wisconsin TAX BULLETIN

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

Number 141

January 2005

## Federal Law Relating to the Deduction for Charitable Contributions for Tsunami Victims Does Not Apply for Wisconsin

Recent federal legislation (Public Law 109-1, enacted January 7, 2005) provides that a taxpayer may treat any cash contribution made in January 2005 for the relief of victims in areas affected by the December 26, 2004, Indian Ocean tsunami as if such contribution was made on December 31, 2004. This applies only to amounts for which a charitable contribution deduction is allowable under the Internal Revenue Code.

As of January 22, 2005, the option to treat such contributions as made on December 31, 2004, does not apply for Wisconsin. However, a bill has been introduced in the Wisconsin Legislature that would adopt the federal law as it relates to charitable contributions for tsunami relief.

*(continued on page 3)*



## Electronic Filing Free and On-Line

The Wisconsin Department of Revenue is committed to serving taxpayers in the most efficient manner possible. The department strives to continually use technology to streamline the methods for filing individual income tax returns. Two years ago the result was the introduction of a new way to file, Wisconsin Free-File. Over 81,000 2003 Wisconsin income tax returns were filed using this program, and it will be available again this year for filing 2004 returns.

Wisconsin Free-File is an on-line, fill-in-the-blank personal income tax return that can be filed with the Department of Revenue at the click of a computer mouse. No charge! It is a no-charge electronic tax filing option available for taxpayers of every income category. It works for anyone filing Form WI-Z, Form 1A, Form 1 with federal 1040 (but Free-File does not file your federal return with the Internal Revenue Service), and a

homestead credit claim (Schedule H or H-EZ). Also, this year the number of schedules supported by Free-File has been expanded. "Abbreviated" versions of federal Schedules C-EZ and D, and Wisconsin Schedule WD have been made available to certain filers.


*(continued on page 3)*

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

When taxpayers filed their Wisconsin personal income taxes in 2004, 1,439,000, or 54%, chose to file electronically – either through a professional tax preparer, via TeleFile, or on-line from their personal computer through the [www.wisconsin.gov](http://www.wisconsin.gov) web site.

*(continued on page 3)*

## Did You Know the Department of Revenue...

- ◆ provides free taxpayer assistance all around Wisconsin (see article on page 5), and via the Internet ([www.dor.state.wi.us](http://www.dor.state.wi.us), then click on "FAQS" – frequently asked questions)
- ◆ has free publications on a wide variety of tax subjects (see article on page 6)
- ◆ has indexes to make your research easier (see articles on pages 8 and 19)
- ◆ provides old and new tax forms via the Internet ([www.dor.state.wi.us](http://www.dor.state.wi.us)) and via Fax-A-Form (phone 608-261-6229 from a fax telephone) (see article on page 13)
- ◆ offers recorded refund information 24 hours a day, seven days a week (phone 608-266-8100, Madison, or 414-227-4907, Milwaukee)
- ◆ provides an Internet site for inquiring about your refund ([www.dor.state.wi.us](http://www.dor.state.wi.us)) 

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## Electronic Filing is Available for Wage Statements and Information Returns

Persons that file Forms W-2, W-2G, 1099-MISC, and 1099-R on magnetic media with the Wisconsin Department of Revenue have the option of electronically transferring data through the department's web site, rather than submitting physical media. Using this file transfer option requires no additional computer programming, as the file format is the same as files transferred using magnetic media. The only change from magnetic media is that files transferred via the Internet must be in ASCII format. The file transfer site is available by accessing the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Click on "Business," then on "Electronic Filing," and then on "W-2 & 1099 File Transmission."

For those who prefer to continue to file using magnetic media, the department will accept cartridges (IBM 3480/3490 compatible), diskettes, or CD-ROM. **The department no longer accepts 9-track magnetic reel tape.**

Wage statements and information returns may be, and are encouraged to be, filed with the department using magnetic media or the file transfer site even though that format is not required. The files submitted must be in the Social Security Administration's MMREF-1 file format.

Additional information is available in Publication 509, *Filing Wage Statements and Information Returns on Magnetic Media or by Electronic Transmission*, and Publication CO-001, *Annual W-2, 1099-R, 1099-MISC and W-2G Reporting*. See the article titled "Tax

Publications Available" on page 6 of this Bulletin, for methods of obtaining Publications 509 and CO-001. Additional information is also available by contacting the department at:

ATTN: Magnetic Media Coordinator  
Audit Bureau  
Wisconsin Department of Revenue  
2135 Rimrock Rd. Room 232B  
Madison, WI 53708-8906  
608-267-3327  
[w2data@dor.state.wi.us](mailto:w2data@dor.state.wi.us)



### Wisconsin Tax Bulletin

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## Federal Law Relating to the Deduction for Charitable Contributions for Tsunami Victims Does Not Apply for Wisconsin

*(Continued from page 1)*

Until this bill is enacted into law, individuals who file their 2004 Wisconsin income tax return and claim the Wisconsin itemized deduction credit may only include charitable contributions made in 2004 in the computation of the 2004 credit. If this bill is later enacted into law, the individual may then file an amended return (Form 1X) to claim any tsunami relief

contributions made in January 2005 in the computation of the 2004 Wisconsin itemized deduction credit.

Corporations that file a calendar-year 2004 Wisconsin franchise or income tax return may only include charitable contributions made in 2004 in the computation of net income. If this bill is later enacted into law, the corporation may then file an amended return to claim any tsunami relief contributions made in January 2005 in the computation of the 2004 Wisconsin charitable contributions deduction. [✎](#)

## Electronic Filing Free and On-Line

*(Continued from page 1)*

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

Wisconsin Free-File is available on-line by accessing the Wisconsin state government portal at [www.Wisconsin.gov](http://www.Wisconsin.gov) using the "State Tax Information" link, or at [www.dor.state.wi.us](http://www.dor.state.wi.us). Click on "Individual," then select the Free-File link to access the application. The application can be used by taxpayers as well as tax professionals. It works with a standard modem and web

browsers Netscape 3.0 or Internet Explorer 3.0 or higher.

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

Wisconsin Free-File is not available for first-time filers or for those claiming certain credits (such as development zones, historic rehabilitation, technology zone, and taxes paid to other states). Nor is it available for federal schedules C, E, or F, or Wisconsin Schedules FC, MS, MT, RS, T, or Form I-804. It cannot accept Schedule H or H-EZ with more than 4 rent certificates, more than 4 separate rental amounts on lines 11a and 11b of the rent certificate, or tax bills for adjoining property where the owner name and type are different than what is on the home tax bill OR where taxes are greater than \$1450. [✎](#)

## It's an Electronic World Out There

*(Continued from page 1)*

On-line filing has these advantages:

- Taxpayers can e-file both state and federal income taxes at the same time from one location.
- The computer software does the math and walks taxpayers through the process.
- Taxpayers get immediate confirmation that their return has been received.
- Taxpayers can get their refunds in 5 business days, no matter when they file (if they choose direct deposit and the return needs no additional review), even if they file right on the April 15 deadline.


(Paper returns filed on the deadline typically require up to 12 weeks.)

- E-filers can choose to electronically deposit their refunds.
- Electronically filed returns are more accurate (a 1% error rate compared to 10% for paper forms).
- The IRS Free File Alliance allows low-income taxpayers to e-file for free! In the past, that meant earning \$25,000 or less annually, but the new alliance may allow for other income levels and situations to file for free, as well. Check it out at [www.irs.gov](http://www.irs.gov). (Also see the article on page 1 of this Bulletin, regarding e-filing Wisconsin returns for free through Wisconsin Free-File.)

- Applicants for homestead credit can file Schedule H or H-EZ electronically when they file their income tax returns using the fed/state e-file program, as well as using the Wisconsin Free-File program (see the related article regarding Wisconsin Free-File, on page 1 of this Bulletin).
- Wisconsin TeleFile is included in the Wisconsin Form 1A and WI-Z booklet. The 4-digit TeleFile PIN is located on the mailing label on the front cover of the booklet. Taxpayers who did not receive the booklet and are eligible to TeleFile can contact the department at (608) 264-6886 or by e-mail at

[telefile@dor.state.wi.us](mailto:telefile@dor.state.wi.us) to obtain a PIN number. For more information about Wisconsin TeleFile, visit the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us).

- Taxpayers can pay by credit card. This year, filers using the fed/state e-file program also have the option of including an electronic payment along with their return.

In these and other ways, the Wisconsin Department of Revenue is committed to making the tax filing experience easier and less stressful. 

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

Partnerships with 100 or more partners may file their Wisconsin Schedule 3K-1s, *Partner's Share of Income, Deductions, etc.*, on magnetic/electronic media. The types of magnetic/electronic media allowed include magnetic tape, cartridge, CD, and diskette. The Department of Revenue no longer accepts 9-track magnetic reel tape.

If your Schedules 3K-1 are prepared by software, ask your software company if they can provide these documents on magnetic/electronic media rather than on paper. Filing on magnetic/electronic media will save both preparers and the department valuable resources,

such as paper, shipping costs, and processing time. It's another way the department is streamlining the process of filing tax returns.

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

Don Lark  
Wisconsin Department of Revenue  
Mail Stop 5-257  
P.O. Box 8906  
Madison, WI 53708-8906

Phone: (608) 267-3327

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



## Attaching Copy of Federal Return

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


### Federal TeleFile Filers

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

### Taxpayers Not Required to File With the IRS

Some taxpayers who are required to file a Wisconsin income tax return are not required to file a federal income tax return with the IRS. For example, a person filing as head of household who is age 65 or over, with gross income of at least \$11,220 but less than \$11,450 for 2004, must file a 2004 Wisconsin return but is not required to file a 2004 federal return.

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

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

## Department Offers Taxpayer Assistance



Department personnel will be available through April 15, 2005, to provide taxpayer telephone and walk-in assistance. Assistance is provided Monday through Friday in many of the larger offices, and Mondays only in other offices (except as noted in the chart below).

### *Offices Providing Daily Assistance (Monday through Friday)*

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

### *Offices Providing Assistance on Mondays Only (unless otherwise noted)*

Location	Address	Telephone No.	Hours
Baraboo	1000 Log Lodge Ct.	(608) 356-3472	7:45-1:00
Beaver Dam	220 Seippel Blvd.	(920) 356-6090	7:45-1:00
Elkhorn	715 W. Walworth St.	(262) 723-4098	7:45-1:00
Fond du Lac	845 S. Main, Ste. 150	(920) 929-3985	7:45-1:00
Grafton	1930 Wisconsin Ave.	(262) 375-7948	7:45-1:00
Green Bay	200 N. Jefferson St., Rm. 526	(920) 448-5179	7:45-4:30 *
Hayward	100 Ranch Rd.	(715) 634-8478	7:45-1:00
Hudson	2100 O'Neil Rd., Ste. 200	(715) 381-5060	7:45-1:00
Janesville	2524 Morse St.	(608) 758-6190	7:45-4:30 †
Kenosha	4911 88th Ave., Ste. B	(262) 653-7088	7:45-4:30 **
La Crosse	620 Main St., Rm. 213	(608) 785-9720	7:45-4:30
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-1:00
Marinette	Courthouse, 1926 Hall Ave.	(715) 732-7565	9:00-1:00
Oshkosh	515 S. Washburn, Ste. 105	(920) 424-2100	7:45-4:30
Rhineland	203 Schiek Plaza	(715) 365-2666	7:45-1:00
Sheboygan	807 Center Ave.	(920) 459-3101	7:45-1:00
Superior	1225 Tower Ave., Ste. 315	(715) 392-7985	7:45-1:00
Tomah	203 E. Clifton St.	(608) 372-3256	7:45-1:00
Wausau	710 Third St.	(715) 842-8665	7:45-1:00
Wisconsin Rapids	1681 2nd Ave. S.	(715) 421-0500	7:45-1:00

\* Open Monday, Tuesday, Wednesday, and Thursday

\*\* Open Monday, Tuesday, and Wednesday

† Open Monday and Tuesday



## 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 5-77, P.O. Box 8949, Madison, WI 53708-8949; call (608) 266-1961; or fax a request to (608) 267-1030.

### *By E-Mail*

You may e-mail your request to [forms@dor.state.wi.us](mailto:forms@dor.state.wi.us).

### *Via Your Fax Machine*

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

### *Via the Internet*

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

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

### Income and Franchise Taxes

- 102\* Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (11/04)
- 103\* Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/04)
- 104 Wisconsin Taxation of Military Personnel (5/04)
- 106\* Wisconsin Tax Information for Retirees (11/04)
- 109\* Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2004 (11/04)
- 112 Wisconsin Estimated Tax and Estimated Surcharge for Individuals, Estates, Trusts, Corporations, Partnerships (11/02)
- 113\* Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (12/04)
- 116 Income Tax Payments are Due Throughout the Year (11/02)
- 119\* Limited Liability Companies (LLCs) (12/04)
- 120\* Net Operating Losses for Individuals, Estates, and Trusts (11/04)
- 121 Reciprocity (11/03)
- 122\* Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2004 (11/04)
- 123\* Business Tax Credits for 2004 (12/04)
- 125\* Credit for Tax Paid to Another State (11/04)
- 126\* How Your Retirement Benefits Are Taxed (11/04)
- 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 (11/04)
- 207 Sales and Use Tax Information for Contractors (9/04)
- 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 (12/04)

### Other Taxes and Credits

- 127\* Wisconsin Homestead Credit Situations and Solutions (11/04)
- 400\* Wisconsin's Recycling Surcharge (12/04)
- 403 Premier Resort Area Tax (2/03)
- 410 Local Exposition Taxes (2/03)
- 503\* Wisconsin Farmland Preservation Credit (11/04)

- 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 (12/04)
- 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 2005 Handbook for Federal/State Electronic Filing (10/04)
- 117\* Guide to Wisconsin Information Returns (11/04)
- 124 Petition for Compromise of Delinquent Taxes (11/03)
- 130\* Fax A Form (1/05)
- 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 (11/04)
- 700 Speakers Bureau presenting . . . (6/00) [🔗](#)

## Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division and the Processing and Customer Services Division. A comprehensive listing of telephone numbers and addresses appears in *Wisconsin Tax Bulletin* 138 (April 2004), pages 34 to 37.

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


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

### District Offices

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


## Withholding Tax Update Sent to Employers

The annual Withholding Tax Update was sent in December 2004, along with Forms WT-7, *Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update appears on pages 38 and 39 of this Bulletin. It is also available on the department's web site at [www.dor.state.wi.us/ise/wit/index.html](http://www.dor.state.wi.us/ise/wit/index.html). 




## Wisconsin Tax Bulletin Annual Index Included

This issue of the Wisconsin Tax Bulletin includes (on pages 42 to 75) the annual index of articles, tax releases, court case summaries, private letter rulings, and other materials that have appeared in past Bulletins. The index includes information for issues 42 to 75 (through October 2004). 

## Clearance Certificates and Successor Liability

A purchaser of a business should be aware that if the seller has a liability for Wisconsin sales or use tax, and a sufficient amount of the purchase price is not withheld to pay the liability, they become personally liable for the payment of the tax. This is known as “successor liability.” To ensure that the seller has filed all sales and use tax returns and paid all sales and use taxes due, the purchaser may request a “clearance certificate” from the Wisconsin Department of Revenue.

A copy of frequently asked questions (FAQs) and answers concerning clearance certificates and successor liability appears on pages 40 and 41 of this Bulletin. These questions and answers can also be found on the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Click on “FAQs” and then “Business,” and then see “Clearance Certificates & Successor Liability” under the heading “Sales and Use Tax.” 





## Federal Forms 1099-G, 1099-INT Mailed to Taxpayers

The Department of Revenue mailed over 800,000 federal Forms 1099-G and Forms 1099-INT in January 2005. Federal law provides that the department must furnish 2004 Forms 1099-G to persons who received or received benefit of a Wisconsin income tax refund in 2004. Forms 1099-INT must be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue in 2004.

Regardless of whether a taxpayer receives a Form 1099-INT, all interest received from the department in 2004 must be reported as income on the taxpayer's 2004 federal and Wisconsin tax returns. In addition, all or a portion of a state income tax refund

from Form 1099-G may be includable in federal taxable income if state income tax payments were claimed as an itemized deduction on the federal tax return for the year to which the refund applies.

Form 1099-G includes an explanation as to how the refund reported to the Internal Revenue Service (IRS) was determined. The refund reported to the IRS may not be the same amount as the actual income tax refund check received. Many donations, refundable credits, and penalties that are included in the computation of a refund check may or may not be included in the computation of the income tax refund reported to the IRS. See Form 1099-G for complete instructions. For Wisconsin purposes, the state income tax refund should not be included in taxable income. [\[Link\]](#)



## Don't Forget Due Dates for Information Returns

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

Information returns due January 31, 2005 include Form W-2 to report wages, tips, and other compensation, and Form W-2G to report gambling winnings.

Information returns due February 28, 2005 include Wisconsin Form 9b (or federal Form 1099-R or 1099-MISC) to report retirement plan distributions and other nonwage compensation, and for payers other than corporations to report rents or royalties.

Information returns due March 15, 2005 by **corporations** include Form 9b or federal Form 1099-MISC to report rents or royalties, and Form 8 to report capital stock transfers.

Regardless of the due date for filing the information returns with the department, copies of the information returns (except Form 8) must be given to the recipients of the payments by January 31, 2005. Copies of Form 8 are not required to be given to individuals who transfer capital stock.

Additional information is available in Wisconsin Publication 117, *Guide to Wisconsin Information Returns*. See the article titled "Tax Publications Available" on page 6 of this Bulletin for information about how to obtain a copy of this publication. [\[Link\]](#)



## File Error-Free Tax Returns and Credit Claims

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

In the 2004 processing season (2003 returns and claims), the department sent back thousands of tax returns and credit claims. Processing was delayed on thousands of other forms, to obtain additional information from taxpayers or claimants. Tax returns and credit claims that were adjusted during processing numbered in the hundreds of thousands.

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

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

- Read and follow instructions.
- Fill in the social security number or employer identification number.

- Make sure all required line entries have been made, and that they are on the proper lines.
- Check and recheck math.
- Sign the return or claim.
- Attach required documents:
  - copies of federal return and schedules.
  - (individual returns) wage and tax statements, page 4 of Form 1 (when the itemized deduction credit or married couple credit is claimed).
  - (1NPR) residence questionnaire, other state's tax return copy.
  - (corporation returns) manufacturer's sales tax, research, development zone, farmland tax relief schedules.
  - (homestead) copy of separately filed tax return (including federal return and wage statements), rent certificate (completed, signed, and unaltered), property tax bill, ownership verification if applicable.
  - (farmland preservation) property tax bills, farmland preservation agreement or zoning certificate if appropriate, ownership verification if applicable.
  - (partnerships) Schedule 3K-1.
  - (fiduciaries) as listed on page 2 of Form 2.
  - (estate tax returns) copies of federal Form 706 and schedules, list of assets, will, trust instruments, approved federal extension if appropriate.
- Individual returns:
  - Fill in correct amounts and all information for the standard deduction, exemption deduction, school property tax/rent credit, married couple credit, itemized deduction credit, and Wisconsin withholding.
  - Correctly calculate the earned income credit, farmland tax relief, underpayment interest, retirement plan deductions, and federal/Wisconsin income differences.
- Include all taxable income, such as S corporation and partnership income, IRA distributions, interest and dividends, income earned in another state, and gambling winnings.
- Homestead credit:
  - Prorate rent for joint occupancy, if appropriate – see bottom of rent certificate.
  - Correctly prorate property taxes for part business use, more than one acre, or co-owned property.
  - Reduce property taxes/rent for months Wisconsin Works (W2) received.
  - Do not claim more than 12 months of property taxes/rent.
  - Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation (including standard mileage depreciation and partners, limited liability company (LLC) members, and tax-option (S) corporation shareholders distributive share of depreciation), IRA/deferred compensation deductions, Wisconsin Works (W2) payments, child support payments, and caretaker supplement payments.
- Farmland preservation credit:
  - Prorate property taxes for co-owned property.
  - Do not claim special assessments or property taxes for land not in a farmland preservation agreement or zoning certificate.
  - Claim the correct percentage of credit.
  - Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation, capital loss carryover, and deferred compensation.
- Fiduciaries:
  - Mail to the correct Post Office box, as indicated on the bottom of page 1.
  - On page one, check one "type of trust" box if applicable, answer questions, fill in fiscal year dates if applicable, request a closing certificate if needed.

- Follow special procedures if an ESBT (electing small business trust) or a QFT (qualified funeral trust).
- Report all income, expenses, and credits as distributable income on a final Form 2.
- Estate tax returns:
  - File if the gross estate (including nonprobate assets) plus adjusted taxable gifts exceeds \$675,000, even if no tax is due.
  - File Form W4768 if an extension is needed for an estate that is filing only a Wisconsin estate tax return.
  - File and pay tax timely – use Form 401T for payment, not Form 1-ES or 4-ES.
  - Request a closing certificate for both the fiduciary and estate returns at the same time, if possible. [✎](#)

## How to Obtain Copies of Your Tax Returns

### What Is Available

Upon request, the Department of Revenue will provide taxpayers with copies of their previously filed tax returns (or information regarding them). Copies of returns or information are generally mailed within 10-14 business days after the department receives the request. When a copy of a state return is requested, a copy of the federal return will automatically be provided if it is a part of the Wisconsin return. Wage statement copies are not always available with Forms 1A and WI-Z. Tax returns are generally available for copying within four months after the returns are filed.

### Who May Request Copies

Taxpayers, partners in a partnership, or corporation officers may request copies of their own tax returns. Other persons may also request copies, if they provide a power of attorney form or other written authorization which is signed by the taxpayer, partner, or corporation officer, and specifies the type of tax return and periods requested. Requests for copies of a deceased taxpayer's tax returns must include a certified domiciliary letter and be signed by the personal representative of the estate. If there is no estate, a certified copy of the death certificate and a statement of the reason for the request are required.

### Fees

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

### How to Request

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

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

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

## Where to Direct Requests

*Written Requests:* Mail your request to

Wisconsin Department of Revenue  
Mail Stop 232B  
P.O. Box 8903  
Madison, WI 53708-8903

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

## Questions

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

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

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



## Reminder: New EFT Payment Options for Corporations

There are two new Electronic Funds Transfer (EFT) payment options for corporation franchise and income tax. For the last several years, paying estimated tax by EFT has been the only option for corporation tax. Corporations registered to pay by EFT may now pay **tax due** with the return and **bills** by EFT. Simply choose the appropriate tax type code:

- Corporation Estimated Payment 02100
- Corporation Tax Due with Return 02200
- Corporation Bill 02540

Paying by EFT also gives you confirmation of receipt of your payment. To learn more about paying by EFT or registering to pay by EFT visit [www.dor.state.wi.us/eserv/eftgen.html](http://www.dor.state.wi.us/eserv/eftgen.html).



## Tips to Speed Processing of Income Tax Refunds

If you have a refund coming on your 2004 Wisconsin individual income tax return, you want your return processed quickly. You can help by following the tips listed below.



### File Electronically

There are many good reasons to file your Wisconsin return electronically (e-file). It's fast, safe, documented, easy, and accurate. For more information, see the article relating to Wisconsin Free-File, on page 1 of this Bulletin.



### File Early

The time it takes to issue a refund varies greatly, depending on when the return is received. Refunds for

returns that are not adjusted are issued in an average of three weeks for returns received in January and February, four weeks for returns received in March, and eight weeks for returns received in April and after.



### Use Your Label

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

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

- Be sure the label is yours, not another taxpayer's.



### File an Accurate and Complete Return

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

- Check your arithmetic.
- Make entries legible and on the correct lines.
- Attach the correct withholding statements.
- Claim only Wisconsin tax withheld, not federal tax, social security, or tax withheld for another state.
- Attach **all** necessary supporting schedules.
- Attach a **complete** copy of your federal return and schedules if you file on Form 1 or 1NPR.
- Attach a completed rent certificate or a copy of your 2004 property tax bill if you are claiming homestead credit.
- Assemble your return in the proper order (see page 27 of the Form 1 instruction booklet or page 31 of the Form 1NPR booklet).



### More Tips

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

## How to Obtain Wisconsin Tax Forms

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

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

Some libraries have forms during the filing season. Most libraries have a copy of Wisconsin Package WI-X, from which most Wisconsin tax forms can be photocopied. New for this year, Package WI-X will also be offered on a CD-ROM.



### To Pick Up Forms at a Department of Revenue Office

If you want to pick up forms at a department office, you may visit any of the department's local offices. The office locations and hours of service are listed in the article titled "Department Offers Taxpayer Assistance" on page 5 of this Bulletin (assistance is also available at these offices).



### To Receive Forms in the Mail

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

- Writing to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949;
- Calling the department in Madison at (608) 266-1961;
- Faxing your request to the department at (608) 267-1030; or
- E-mailing your request to [forms@dor.state.wi.us](mailto:forms@dor.state.wi.us).



### To Receive Forms Via Your Fax Machine

You can receive forms via your fax machine by using the department's Fax-A-Form system. Individual income tax, homestead credit, farmland preservation credit, corporation franchise and income tax, estate tax, fiduciary income tax, and partnership forms and instructions for 1998 through 2004 are available via Fax-A-Form. For sales/use, withholding, and alcohol beverage taxes, only 2004 forms and instructions are available. In addition, 1998 through 2004 amended individual income tax forms and instructions are available, as well as publications published by the department (see the article titled "Tax Publications Available" on page 6 of this Bulletin).



**To use Fax-A-Form**, call (608) 261-6229 from the handset of your fax machine or the touch-tone telephone of your fax modem (don't press "start" yet). If your fax machine does not have a handset, use the keypad if tones are transmitted, or connect a touch-tone telephone if tones aren't transmitted. Follow the voice prompts and enter the retrieval codes for the items you want, using the keypad. Press "start," "send," or "copy" (fax modem users click on "manual receive"). You must leave the handset of your telephone or fax machine off the hook the entire time the forms are being faxed to you.


Fax-A-Form is available 24 hours a day, 7 days a week. The department does not charge a fee for this service (though you will have to pay your normal telephone

charges and fax machine operating costs). If you have questions, you may write to: Wisconsin Department of Revenue, Fax-A-Form Coordinator, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949, or call (608) 266-1961.



### To Receive Forms Via the Internet

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

To download forms, access the department's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us), and click on "Forms." 




### IRS Mileage Rates for 2005 Apply for Wisconsin

The optional standard mileage rates provided by the Internal Revenue Service (IRS) for 2005, for computing automobile expenses for business, charitable, medical, and moving expense purposes, also apply for Wisconsin.

For 2005 the IRS has increased the business standard mileage rate from 37.5¢ per mile to 40.5¢ per mile for all business miles driven. The 40.5¢ per mile rate is

allowed without regard to whether the automobile was previously considered fully depreciated.

If the standard mileage rate of 40.5¢ per mile is used, depreciation is considered to be allowed at 17¢ per mile for 2005, an increase from 16¢ per mile for 2004. However, no portion is considered to be depreciation after the adjusted basis of the automobile reaches zero.

For 2005 the allowable standard mileage rate for charitable deduction purposes remains at 14¢ per mile. The rate for medical expense and moving expense deductions has increased from 14¢ per mile to 15¢ per mile. 



### Corporation Extensions

#### Do you know when to file for a Wisconsin extension for your corporation tax return?


Thousands of taxpayers don't. Every year the Department of Revenue receives thousands of Forms IC-830 (Application for Extension of Time to File) unnecessarily.

The Form IC-830 should only be filed if the corporation **does not** obtain a federal extension. If the corporation obtains a federal extension (federal Form 7004) and attaches it to the Wisconsin return, the Department of Revenue automatically grants the taxpayer an additional 30-day extension on top of the federal extension of six months. That's right – corporations have an automatic seven-month extension with the Department of Revenue by obtaining the federal extension and attaching a copy to their Wisconsin return. (**Note:** Make sure you attach a copy of the federal extension to your Wisconsin return. Many returns are assessed late filing fees unnecessarily because the federal extension is not attached.)

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

**What if a corporation does not obtain the federal extension but wants an extension for the Wisconsin return?** The taxpayer should file the Form IC-830 to receive a 30-day extension from Wisconsin.

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

**Questions?** Call (608) 266-0800. 



## Tips to Speed Processing of Corporation Tax Returns

Processing corporation tax returns takes longer when the returns are incomplete or assembled improperly. Avoid errors and delays by following these tips:

1. **File your return using the correct year's form.** If you do not, it may be sent back to you. The year of the return should correspond to the first date of the tax period covered. For example, if you file a return for the period covering November 1, 2003 through October 31, 2004, you would file a 2003 corporation franchise or income tax return because the first date in the period covered is in 2003.
2. **If the address or name of your corporation has changed** in the past year, check the appropriate box indicating there has been a change.
3. Check the appropriate box on the return if you are filing a **first return** or a **final return** for the corporation. This information is important in determining past and future filing requirements.
4. Check the appropriate box on the return if you are filing an **amended return**, or write "Amended" on the top of the return.
5. Enter the correct **Federal Employer Identification Number (FEIN)**. The FEIN should be nine digits long. Some printers/software only print eight digits, so check your return before you mail it in.
6. Fill in the **gross receipts and total company assets** lines on the tax return, even if the amounts are zero.
7. **DO NOT staple checks to the return** or put checks inside or on the back of the return. They may be overlooked, and you could receive a bill. Paperclip all checks to the front page of the return.
8. Better yet, **pay any tax due by Electronic Funds Transfer (EFT)**. If you are not already registered to pay by EFT, contact us at 266-2776 or visit our web site at [www.dor.state.wi.us/eserv/eftgen.htm](http://www.dor.state.wi.us/eserv/eftgen.htm).
9. **Only use one staple** or clip, in the upper left corner of the return. Staples placed in other areas of the return must be removed to key the information from the return.
10. **Attach a federal deconsolidated return and ALL schedules** that apply.
11. **Assemble the return in the correct order:**
  - Wisconsin tax return
  - Federal tax return
  - Any attachments
  - Any extensions (place as the BACK page)

## Negligence Penalties May Be Imposed in Field Audits

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

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

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

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

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

### Field audit negligence penalties imposed:

Fiscal Year Ending June 30...	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>
Number of Negligence Penalties	311	385	489	420
Number of Actions	1581	1631	1978	1758
Percentage	19.7%	23.6%	24.7%	23.9%



## Wisconsin Earned Income Tax Credit

Are your clients eligible for Wisconsin's earned income tax credit (EITC)? The Wisconsin EITC is available to taxpayers that are full year residents of Wisconsin and have at least one qualifying child for purposes of the federal EITC. The Wisconsin EITC is a percentage, determined by the number of qualifying children, of the allowable federal EITC. For one qualifying child, the Wisconsin EITC is 4% of the allowable federal EITC. For two qualifying children, the Wisconsin EITC is 14% of the allowable federal EITC. For three or more qualifying children, the Wisconsin EITC is 43% of the allowable federal EITC.

### Who is a qualifying child?

A qualifying child is a child who meets the relationship, age and residency tests.

### **Relationship test:**

The child must be a biological child, grandchild, adopted child, stepchild or eligible foster child. An eligible foster child is a child placed by an authorized placement agency. Siblings, stepsiblings or descendants thereof may be qualifying children if they are cared for by the taxpayer as their own children.

### **Age test:**

The child must be under the age of 19 at the end of the tax year or under age 24 if a full time student for at least five months of the tax year. If the child is permanently and totally disabled at any time during the year, the age test does not apply.

### **Residency test:**


The child must live with the taxpayer in the United States for more than six months of the tax year.

### What other qualifications are there for claiming the EITC?

To claim the EITC, the taxpayer must meet certain eligibility rules:

- The taxpayer, spouse (if married) and all children must have a valid social security number.
- The taxpayer must be a U.S. citizen or a resident alien for the full calendar year.
- The correct filing status cannot be "married filing separate."
- The taxpayer's investment income must be less than \$2,600 for tax year 2003 and less than \$2,650 for tax year 2004.
- The taxpayer must have earned income.

Additional information concerning the federal EITC may be obtained from federal Publication 596, *Earned Income Credit (EIC)*, which is available in both English and Spanish versions. Publication 596, as well as other information concerning the federal EITC, is available on the Internal Revenue Service's web site at [www.irs.gov](http://www.irs.gov).

Additional information concerning the Wisconsin EITC may be obtained on the Department of Revenue's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us), or by contacting the department by phone at (608) 266-2772 or by e-mail at [income@dor.state.wi.us](mailto:income@dor.state.wi.us). 

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## File Sales and Use Tax Returns Electronically

The Wisconsin Department of Revenue (DOR) has several different ways for you to join the tens of thousands of people each month who *electronically* file their Wisconsin sales and use tax returns. Filing and paying your taxes electronically makes the filing process easier for you! The electronic systems provide confirmation receipts for your returns and payments, check your math, and ensure that returns have all the required information. These returns are less likely to be adjusted, which reduces interest charges and speeds up processing.

## Electronic Filing and Payment Options Available for Sales and Use Tax Returns

### **Sales TeleFile**

You can file your Wisconsin sales and use tax return with any touch-tone telephone. To use TeleFile, obtain a Sales TeleFile worksheet and payment voucher under the "Business" section of the DOR web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). When you have completed the worksheet, call (608) 261-5340 in Madison or (414) 227-3895 in Milwaukee to actually file your return. You will be given a confirmation number at the end of the call, which assures that DOR has received your return. You will also be provided with information regarding the available methods of payment (Electronic Funds

Transfer (EFT), credit card, check, or money order) if there is a tax due on your return.

### Sales Internet Process

Sales Internet Process (SIP) is a free, Internet-based electronic filing application for sales and use tax. It performs calculations, provides a history of all your electronically filed returns, issues a receipt, and allows you to make your tax payment by EFT, check, or money order. To use SIP you will need to apply for and obtain a logon ID and password when you begin filing your tax returns at [www.salestax.dor.state.wi.us](http://www.salestax.dor.state.wi.us).

### File Transmission

This program is a service for taxpayers using approved private vendors' software or who have the technical expertise to create a file in XML format. File Transmission places return data into a file format that can be directly processed into the DOR system. Using secure transmission over the Internet, you can submit an authorization for an EFT payment within the same file. You will receive an e-mail acknowledgement to confirm receipt of a successful file transmission. File Transmission may be found in the "Business" section of the DOR web site at [www.dor.state.wi.us](http://www.dor.state.wi.us).

### Electronic Payments


Please note that paying by EFT requires a separate registration. DOR accepts EFT for most types of tax payments. It is easy to use and you are issued an acknowledgement that your payment was received, which is a service that cannot be provided for checks and money orders. EFT also enables you to "warehouse" your payment in advance until the actual due date. An EFT on-line registration form is provided in the "Business" section of the DOR web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Complete the form and register by telephone at (608) 264-9918. Payments may be made either on-line or by telephone.

### Questions?

More information on all of the above services may be found under the "Business" or "E-Services" sections of the DOR web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). You may also contact DOR by any of the following methods:

Phone – (608) 266-2776


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

Write – Technical Assistance Unit, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949. 



### Corporation Tax Returns – Receipt Please

Many taxpayers or tax professionals include a letter and a self-addressed stamped envelope with their or their client's corporation franchise or tax return, requesting that the letter be date stamped and returned as proof of receipt. Because of budgetary constraints, the Department of Revenue does **not** return acknowledgements of tax returns.

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

### Delinquent Tax Compromises

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

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

- age of the petitioners;

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

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



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

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

Publication 124, *Petition for Compromise of Delinquent Taxes*, offers more information on this topic. Both the Form A-212 Publication 124 are available on the department's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us). See the article titled "Tax Publications Available," on page 6 of this Bulletin, for other methods of obtaining Publication 124. [↗](#)

## A Message to Persons Preparing Form WT-7



### What's New

- ❑ **Form WT-7, Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages, may now be filed electronically.** See our web site for more information at <http://www.dor.state.wi.us/eserv/index.html>. The site will be updated as new information is available.
- ❑ **A check digit will be required on all Form WT-7s.** The check digit is required as the seventh digit of the Wisconsin Employer Identification Number (WEIN). The WEIN is six digits long, followed by a hyphen, and then the check digit (for example: 123456-7). The check digit formula is available at <http://www.dor.state.wi.us/taxpro/ckdigit.html>.
- ❑ **Address changes may now be done on-line.** See our web site for more information at <https://ww2.dor.state.wi.us/GenericFile/application?interview=1086489>.

### General Information

- ❑ Remember to use the 6-digit WEIN on Form WT-7 and all Form W-2s, not the 15-digit ITS number.
- ❑ If you must file on paper, please file with your pre-printed Form WT-7, or use the on-line fill-in Form WT-7 at <http://www.dor.state.wi.us/forms/wit/h/w-107f.pdf>.

- ❑ Remember to verify that all the taxpayer information printed on the Form WT-7 is correct. If there has been a name or address change, check the appropriate box on the Form WT-7 to indicate this.
- ❑ Any business change resulting in the requirement to obtain a new Federal Employer Identification Number (FEIN) may also require a new WEIN be obtained. Call (608) 266-2776 for assistance if you have a new FEIN.
- ❑ For the quickest service on refunds or payments due, be sure to use the appropriate mailing address shown on Form WT-7.
- ❑ If you cannot file Form W-2 electronically, the Department of Revenue (DOR) is requesting that employers NOT use carbon copied Forms W-2, including NCR. Carbon and NCR copied Forms W-2 do not scan well. The preferred format for a Form W-2 is the IRS approved format, which may be viewed on the IRS web page at [www.irs.gov](http://www.irs.gov).
- ❑ For more information on submitting Forms W-2 electronically, see <http://www.dor.state.wi.us/eserv/w-2.html>.

### Amending Form WT-7

- ❑ Amended Forms WT-7 are not reviewed until late in the year. If you file an amended Form WT-7, do not be alarmed if you do not receive a response from DOR until late in the year.
- ❑ If amending a Form W-2, please include a letter explaining the changes made.

**Questions?** Direct questions to Customer Service at (608) 261-6261. [↗](#)



## Reminder: Electronic Filing Required for Certain Practitioners

Administrative rule section Tax 2.08 requires that certain tax practitioners file individual income tax returns electronically.

Beginning January 1, 2004, this requirement applied to practitioners who filed 100 or more 2003 Wisconsin individual income tax returns (Form 1A, and WI-Z) and homestead credit claims in 2004.

The Department of Revenue sent a reminder letter to selected practitioners in October, once again notifying them of this requirement. If you are a practitioner who filed 100 or more Wisconsin individual income tax returns and/or homestead credit claims last year and did not receive this letter, please contact the department.

While the department is committed to advancing electronic filing, the rule allows for a waiver in the case of undue hardship, and in specific cases when the individual taxpayer does not want to file electronically.

A taxpayer who prefers to file a paper return may write “no e-file” before his or her signature on the tax return; this will relieve the practitioner of the e-filing requirement for that return.

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

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

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

Phone: (608) 264-6886

Fax: (608) 267-1030

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



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

## Criminal Charges Filed Against Former Insurance Agent

Former insurance agent Thomas E. Mikunda, 54, of Exeland, Wisconsin was charged in September 2004 with nine felony counts of engaging in unfair trade practices, two felony counts of filing a false Wisconsin income tax return, two felony counts of theft, one misdemeanor count of theft, and two misdemeanor counts of obstructing an officer. The charges were filed by the Rusk County District Attorney’s office following

an investigation by the Rusk County Sheriff’s Department and the Wisconsin Department of Revenue’s Criminal Investigation Section. Mikunda faces up to 87 years and 9 months in prison and \$115,000 in fines if convicted on all counts.

According to the criminal complaint, Mikunda was an insurance agent for Banker’s Life and Casualty Company for approximately 30 years. While acting in this position of trust, the complaint alleges that Mikunda swindled large sums of money from several of his

elderly clients by collecting checks and cash from them under the pretext that this money was for insurance premiums. Banker's Life and Casualty Company policy prohibits agents from collecting insurance premiums from clients in the form of cash or checks.

According to the criminal complaint, Mikunda failed to report income from his illegal activities on his 2001 and 2002 Wisconsin income tax returns. The complaint alleges that Mikunda deposited \$163,451 in cash and checks from several of his elderly clients to his personal checking account, none of which was reported on his Wisconsin income tax returns.

The unfair trade practice charges allege that Mikunda engaged in personal financial transactions with clients, provided false information to clients to sell insurance policies, and submitted life insurance applications containing false or misleading information.

According to the complaint, Mikunda obstructed the investigation by asking witnesses to give false testimony and also asking witnesses to not cooperate with the investigation.

In addition to the criminal charges, Mikunda's license to sell insurance was suspended by the state of Wisconsin in 2003.

Wisconsin law provides for substantial civil penalties on the tax liability in addition to the criminal penalties. Assessment and collection of the taxes, penalties and interest follows a conviction for criminal violations.

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Shaneika S. Battle, 22, of Milwaukee, Wisconsin was charged in October 2004 with filing a fraudulent Wisconsin electronic income tax return. According to the criminal complaint, on March 31, 2004, Ms. Battle went to Jackson Hewitt Tax Service located at 2539 North Martin Luther King Drive to have her 2003 income tax return electronically filed. The tax preparer, unaware the provided wage and tax statement (W-2) form was phony, prepared the return. The W-2 falsely purported that Ms. Battle had worked for International Food Solutions, Inc. in 2003 and had earned \$23,756. The W-2 also listed fictitious amounts of state and federal taxes withheld from these wages. Because of the fictitious withholding tax amounts, the electronically filed tax returns generated refunds of \$4,228 from the IRS and \$844 from the state.

According to the complaint, the payroll team leader for International Food Solutions, Inc., stated that no wages

were paid to Ms. Battle during 2003 and that Battle had never worked there. She also stated that International Food Solutions, Inc. had actually merged into another company in 2003 and that they hadn't given out W-2s to anyone for 2003 under the name of International Food Solutions, Inc.

Although Ms. Battle had already obtained her federal tax refund two weeks earlier, when she went to Jackson Hewitt on April 14, to pick up her state refund, agents from the Wisconsin Department of Revenue's Fraud Unit were waiting to greet her. The Revenue agents asked Ms. Battle to explain how she had received a W-2 from a company that she hadn't worked for. She stated that she had no explanation other than to say it just showed up in her mailbox.

According to the complaint, false refund claims using phony W-2s in the name of International Food Solutions were also filed, or attempted to be filed, by several other persons as part of a larger scheme.

If convicted, Ms. Battle could face up to nine months in jail, \$10,000 in fines, or both.

In addition to the criminal penalties provided by statute, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the additional taxes, penalties and interest due follows a conviction for criminal violations.

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Edward T. Jones, 55, of Sturgeon Bay, Wisconsin was charged in October 2004 by the Dane County District Attorney's Office with two felony counts of filing false Wisconsin income tax returns and one felony count of making a false statement on a motor vehicle title. The criminal charges followed an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

According to the criminal complaint, Jones reported Wisconsin taxable income for 1997 of \$3,624 and for 1998 he reported a loss of \$25,003. An analysis completed by a Department of Revenue special agent revealed that Jones' actual taxable income for 1997 was \$122,729 and for 1998 it was \$102,354. Jones is accused of evading Wisconsin income taxes of \$7,982 for 1997 and \$7,208 for 1998.

The complaint also alleges that Jones purchased a 1999 Jeep Grand Cherokee for \$33,448 and filed a title application on December 19, 1998 stating that no sales tax was due. Jones indicated on the title application that the purchase was exempt from sales tax because Jones

was a lessor of the vehicle and would be paying sales tax on the lease receipts. During the investigation, Jones acknowledged that he did not remit any sales tax for the lease of the vehicle. The investigation revealed that Jones should have paid state and county sales taxes of \$1,839.64 when the vehicle was titled.

If convicted on all counts, Jones faces a maximum of 15 years in prison and up to \$25,000 in fines.

In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, penalties, and interest due follows a conviction for criminal violations.

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Arthur Campbell, 66, of Milwaukee, Wisconsin plead guilty in November 2004 before Milwaukee County Circuit Court Judge Jeffrey A. Conen, to three counts of medical assistance fraud and one count of failure to file timely corporate tax returns. The criminal charges were initiated by the Wisconsin Department of Justice following an investigation by the Medicaid Fraud Control Unit and the Wisconsin Department of Revenue's Fraud Unit.

On September 2, 2003, Mr. Campbell was charged with one count of racketeering, 26 counts of Medicaid assistance fraud, and two counts of failure to file corporate tax returns. Mr. Campbell ran Nina Transport, a company that provided transportation services to Medicaid recipients. Between March of 1996 and April of 2002, Mr. Campbell billed the Medicaid program for transportation services that had not been provided.

Mr. Campbell is to appear before Judge Conen in December 2004 for sentencing. He could face up to 16 years imprisonment and fines up to \$75,000 on the three counts of Medicaid assistance fraud.

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

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Michael T. Nelson, 43, of Rhinelander, Wisconsin was charged in November 2004 in Oneida County with two felony counts and eight misdemeanor counts of sales tax

theft. Nelson was also charged with six misdemeanor counts of operating his Rhinelander business, Hodag Express, after the Department of Revenue revoked his seller's permit. Nelson faces six additional misdemeanor counts of certifying to his vendors that his purchases were exempt from sales tax to evade payment of tax after the revocation.

According to the complaint, Nelson was delinquent in paying the Hodag Express sales tax liability. Nelson defaulted on two installment agreements he entered into with the Department of Revenue in 2003. The second installment agreement, dated December 22, 2003, required Nelson to make payments of \$1,500 a month. Nelson failed to make the initial \$1,500 payment. The complaint further alleges that Nelson submitted an NSF check for \$2,607.65 intended to pay sales tax for November 2003. The sales tax return that was due January 20, 2004, reporting the taxes collected by Hodag Express in December 2003, was not filed on the due date. As a result, Nelson's seller's permit was revoked effective February 29, 2004 by an order served on Nelson February 12, 2004.

Nelson continued to operate the Hodag Express after the revocation. The Department of Revenue notified Nelson on March 12, 2004, that he was operating illegally and that further operation could result in criminal charges. Nelson responded in a letter to the Department that the Hodag Express would be open the following Monday but not selling anything. According to the complaint, Nelson wrote; "Any work we do will be done for free." Subsequent investigation discovered that Nelson was open and charging customers for work and also for the sales tax.

Nelson was charged with theft of sales tax monies when he failed to remit the taxes he owed to the Department of Revenue on ten separate occasions in 2002 and 2003. Six of the returns filed were submitted without payment and four were submitted with checks that were subsequently returned NSF. According to the complaint, Nelson is charged with stealing \$22,702.79 in sales tax monies that he had collected from customers.

If convicted on all counts, Nelson faces up to 14 years in prison and \$106,000 in fines. The charges are the result of an investigation by the Department of Revenue's Criminal Investigation Section and Compliance Bureau.

In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the tax, penalty,

and interest due follows a conviction for criminal tax violations.

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Barbara J. Julson, 47, of Eau Claire, Wisconsin was sentenced in December 2004 by Chippewa County Judge Roderick Cameron for one felony count each of forgery, theft, and filing a fraudulent Wisconsin income tax return. Julson pleaded no contest to the charges in September 2004.

Judge Cameron sentenced Julson to the maximum sentence of seven and one half years on the tax count. Julson is to serve three years initial incarceration in prison and four and one half years of extended supervision. Sentence was withheld on the forgery count and Julson was ordered to serve 15 years probation concurrent with the prison term. Sentence was withheld on the theft count and Julson was ordered to serve 15 years probation consecutive to the forgery count.

Julson embezzled more than one million dollars from her employer, Chippewa Concrete, from 1999 through 2002. Julson also filed a fraudulent Wisconsin income tax return for the year 2000. She failed to report embezzlement income of \$382,024 in that year.

Julson used old blank checks that were no longer in use by Chippewa Concrete to create fraudulent checks. She made the checks payable to various employees, then forged the authorized signature on the face of the check and the employee's endorsement on the back of the check. Julson cashed the checks at Chippewa Concrete's bank, where she was known as an employee of the company. Julson told bank employees that she was cashing the checks as a favor for the employees to whom the checks were made payable.

Julson also wrote checks to herself that were cashed or deposited into her account at Royal Credit Union or into a joint account with her husband at the Bank of Mondovi. Through these various schemes, Julson embezzled \$1,163,464 over four years, \$12,223 in 1999,

\$382,024 in 2000, \$663,467 in 2001 and \$105,750 in 2002.

Julson's nephew, Kevin Patrow, President of Chippewa Concrete, discovered the theft in March 2002. Julson admitted to Patrow that she had written and cashed the checks because of her gambling habit. Julson and her husband reported \$269,835 of gambling winnings and \$262,736 of gambling losses on their 2000 joint income tax return. None of the \$382,024 alleged to have been embezzled by Ms. Julson in 2000 was reported on the return.

Conditions of probation imposed by Judge Cameron include the prohibition of any form of gambling by Barbara Julson. She is not to enter a casino. Julson was ordered to undergo assessment and counseling for her gambling addiction. Judge Cameron ordered restitution of \$1.16 million at the rate of 20% of her income. She is not eligible to vote and has to give a DNA sample. The Judge also ordered that she pay court costs of \$230.

Assistant District Attorney Roy Gay noted that there were a total of 366 checks that were forged and uttered (the crime of passing a false or worthless instrument), charges to be read into the record. In his remarks, Judge Cameron noted that since Wisconsin legalized gambling, these types of crimes (where someone with no prior record embezzles to support a gambling addiction) have happened more frequently.

The charges were the result of a joint investigation by the Lake Hallie Police Department, the Criminal Investigation Section of the Wisconsin Department of Revenue, and the Wisconsin Department of Justice's Division of Criminal Investigation.

In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the tax liability. Assessment and collection of the tax, penalty, and interest due follows a conviction for criminal tax violations. [Ⓜ](#)

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## Administrative Rules in Process

Listed on page 23 are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of January 1, 2005 and at each step where action occurred during the period from October 2, 2004, through January 1, 2005.

The listing includes rule numbers and names, and whether a rule is amended (A), repealed and recreated (R&R), or a new rule (NR).

To order up-to-date administrative rules of the Department of Revenue, you can use the order blank on page 76 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.



**Sent to Legislative Council Rules Clearing House**

2.99 Dairy investment credit – NR

3.04 Subtraction for military pay received by members of a reserve component of the armed forces – NR

**Reviewed by Legislative Council Rules Clearing House**

2.99 Dairy investment credit – NR

3.04 Subtraction for military pay received by members of a reserve component of the armed forces – NR

**Sent to Revisor for Publication of Notice**

2.99 Dairy investment credit – NR (published December 15, 2004)

3.04 Subtraction for military pay received by members of a reserve component of the armed forces – NR (published December 15, 2004)



**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.*

**(Dairy Investment Credit)**

**Note:** Wisconsin law allows a dairy investment credit on 2004 returns. The credit is equal to 10% of the amount paid in the taxable year for dairy farm modernization or expansion related to the operation of the claimant's dairy farm.

**Q** Does the purchase of dairy cows qualify for the credit?

**A** No. The credit applies only to the construction, improvement, or acquisition of building or facilities, or the acquisition of equipment, for dairy animal housing, confinement, animal feeding, milk production, or waste management if used exclusively related to dairy animals.

**Q** Does the cost of a machine shed that will be used to store a tractor and other equipment used in the dairy operation qualify for the credit?

**A** No. The machine shed is not being used exclusively for dairy animal housing, confinement, animal feeding, milk production, or waste management, and therefore does not qualify for the credit.

**Q** A dairy farmer acquires qualifying equipment that has a cost of \$50,000. As part of the purchase, the farmer trades in equipment with a basis of \$10,000. What amount can be used for the credit?

**A** \$40,000. Only the cash (boot) paid for the acquired equipment qualifies for the credit. The carryover basis does not qualify.

**Q** Does the credit affect the basis of property that was used in the computation of the credit?

**A** No. The basis in the property does not have to be reduced by the amount of the credit. Wisconsin law only provides that the amount of the computed credit must be added to income for the year for which the credit is computed. The law does not require a basis reduction.

**Q** How do you determine if property is used exclusively related to dairy animals?

**A** "Used exclusively related to dairy animals" means used on the taxpayer's dairy farm to the exclusion of all other uses except for other use not exceeding 5% of total use. Exclusive use is determined on a case-by-case basis. There is no one method that can be used to determine exclusive use. Whatever method is chosen would have to be reasonable. A dairy farmer may have to use different methods for different items purchased during the year. Appropriate records must be kept to verify exclusive use.



## Sales/Use Tax Can Be Reported on Income Tax Returns

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

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

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

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



## Take Advantage of the Speakers Bureau

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

Department representatives are available to speak on a variety of topics that can be targeted to your group's particular areas of interest, including:

- New sales/use, income, and corporate tax laws.
- How sales tax affects contractors, manufacturers, nonprofit organizations, or businesses in general.
- Homestead credit.

- Audit and appeal procedures.
- Common errors discovered in audits.
- Recordkeeping requirements.
- Tax delinquencies and petitions for compromise.
- Manufacturing property assessment.
- Electronic filing of individual income tax returns.

To arrange for a speaker, you may write to Wisconsin Department of Revenue, Speakers Bureau, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949; fax your request to (608) 266-9829; call (608) 266-1911; or fill out the online request form at the department's web site, [www.dor.state.wi.us](http://www.dor.state.wi.us); click on "Training." [✎](#)



## Wisconsin/Minnesota Sales Tax Seminars

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

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

March 8, 2005 – Duluth, Minnesota  
Minnesota Department of Revenue Office  
2711 West Superior Street

\*\*\*\*\*

March 22, 2005 – Hudson, Wisconsin  
Hudson House  
1616 Crestview Drive

\*\*\*\*\*

March 22, 2005 – Onalaska, Wisconsin  
Onalaska Omni Center  
225 Rider Club Street [✎](#)



## 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:

### Sales and Use Taxes

#### Bad debts

*DaimlerChrysler Services North America LLC* ..... 25


#### Computer software – taxability (canned vs. custom programs)

*Menasha Corporation* ..... 25

#### Gross receipts – discounts reimbursed by manufacturer

*Braeger Chrysler Plymouth Jeep Eagle, Inc.* ..... 26

### SALES AND USE TAXES

 **Bad debts.** *DaimlerChrysler Services North America LLC vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 7, 2004). The issue in this case is whether the taxpayer may claim a refund for bad debts resulting from installment contracts assigned to the taxpayer by motor vehicle dealers and later found to be worthless.

During the years 1997, 1998, and 1999, Wisconsin motor vehicle dealers entered into retail installment contracts with motor vehicle purchasers. The dealer then paid the sales tax to the Department of Revenue. The amount financed under each contract consisted of the purchase price of the motor vehicle and the sales tax that was charged on the vehicle.

The retail installment contracts were then assigned to the taxpayer. The taxpayer did not pay the sales tax due

on each contract to the Department of Revenue. The taxpayer paid the full amount financed, including the sales tax, to the dealer when the contract was assigned to the taxpayer. After the taxpayer purchased the contracts from the dealers, the vehicle purchasers owed the amount financed to the taxpayer.

When a vehicle purchaser went into default on a contract purchased by the taxpayer, the taxpayer repossessed the vehicle and sold it at auction to a third party. The taxpayer then applied the auction proceeds to the amount due from the purchaser, leaving an unpaid balance due. The taxpayer determined the unpaid balances on the default contracts were worthless and bad debts, and charged the unpaid balances off for income tax purposes, including a proportional share of the sales tax paid to the dealer when the contract was assigned to the taxpayer. The taxpayer held a Wisconsin seller's permit because it sold and leased motor vehicles in addition to financing dealer sales of motor vehicles. The taxpayer did not take a bad debt deduction on its sales and use tax return for any of the bad debts resulting from the default contracts.

The Commission concluded that the taxpayer was not entitled to a Wisconsin sales tax bad debt deduction for the default contracts because the taxpayer was not the retailer that previously paid the sales tax to the Department of Revenue as required by secs. 77.51(4)(b)4 and 77.52(6), Wis. Stats. The Commission also held that the taxpayer was not entitled as an assignee under the contracts at issue to claim a deduction that the assignor possessed, had no such assignment occurred.

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

#### **Computer software - taxability (canned vs. custom programs).**

*Menasha Corporation vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, October 26, 2004). This is a judicial review of a Wisconsin Tax Appeals Commission decision dated December 1, 2003. See *Wisconsin Tax Bulletin* 137 (January 2004), page 29, for a summary of the Commission's decision. The issue in this

case is whether computer software purchased by the taxpayer was tangible personal property and subject to sales or use tax.

The taxpayer is a Wisconsin corporation that produces packaging, paperboard, material handling, plastics, promotional materials, and printing in numerous states and in eight countries.

During the period under review, the taxpayer purchased integrated business application computer software as a result of an evaluation of its business and accounting software systems. After approximately two years of evaluation, the taxpayer purchased the software at a cost of \$5.2 million.

The software consisted of the taxpayer's selection from more than 70 software modules, each of which were designed to provide a different aspect of the business and accounting computer software system for a segment of the taxpayer's business. The basic modules required customization using a specific programming language in order for the software system to serve the taxpayer's business and accounting needs.

The software was delivered to the taxpayer on multiple CD-ROM disks, which were installed over a two day period onto the taxpayer's computer hardware by a former employee of the software vendor. The customization and testing of the software was done by an implementation team and a programming team consisting of employees of the taxpayer as well as employees of the software vendor and third party consultants. The total cost of customizing and implementing the new software added approximately \$17.8 million to the initial cost of the software.

The customization and testing of the software, and training of the taxpayer's employees in its use took approximately nine months. The software vendor continues to provide technical support, upgrades, new releases, and patches to the software.

Using six of the seven factors for determining whether a program is a custom program listed under sec. Tax

11.71(1)(e), Wis. Adm. Code, the Commission concluded the software was custom software, because there had been: (1) significant presale consultation, (2) installation by a former employee of the vendor and extensive testing, (3) substantial training and written documentation, (4) enhancement and maintenance support, (5) a cost greater than \$10,000, and (6) the software was not "prewritten" software because of the significant efforts required to bring it on-line for the taxpayer under factors 1-4. The Commission determined that factor seven—pre-existing programs which need to be significantly modified by the vendor to be usable—was not applicable as the Commission already had concluded that the software was custom.

Giving "due weight" to the Commission's decision, the Circuit Court found that the Commission's omission of the seventh factor was in error. The Circuit Court also found that: (a) the installation by a former employee of the vendor did not mean the software was installed *by the vendor* under factor two; (b) the fact the software's cost was in excess of \$10,000 did not mean it was custom software under factor five; (c) the software is "prewritten" software under factor six as defined in sec. Tax 11.71(1)(k), Wis. Adm. Code; and (d) the vendor's involvement in the customization of the software was minor in relation to that of the consultants and the taxpayer's own employees such that the pre-existing programs were not considered significantly modified *by the vendor* under factor seven. Because the software was not custom, but prewritten, its sale was subject to sales tax.

The taxpayer has appealed this decision to the Court of Appeals. [🔗](#)



### **Gross receipts – discounts reimbursed by manufacturer.**

*Braeger Chrysler Plymouth Jeep Eagle, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 12, 2004). The issues in this case are:

1. Were payments received by the taxpayer from the manufacturer of the vehicles under an employee/retiree new vehicle purchase/lease program required to be included in the taxpayer's gross receipts from the sale or lease of the vehicle to the purchaser/lessee?
2. Was the taxpayer deprived of due process by a letter written by the Department of Revenue to a motor

vehicle dealership association subsequent to the period under review confirming that the payments received by the taxpayer from the manufacturer were subject to tax?

The taxpayer is a Wisconsin corporation and holds a Wisconsin seller's permit for the purpose of selling motor vehicles as an authorized dealer for a vehicle manufacturer (the "manufacturer"). The taxpayer participates in the manufacturer's program ("program") of selling or leasing vehicles to employees of the manufacturer, retirees, and their family members ("participants").

When selling or leasing a vehicle to a program participant, the taxpayer reduces the price of the vehicle by an amount agreed to in a program agreement the taxpayer has with the manufacturer. Subsequent to a sale or lease transaction with a participant, the manufacturer sent a program payment to the taxpayer of six percent of the employee purchase price plus \$75.

In a letter to the motor vehicle dealership association subsequent to the period under review the department confirmed that the program payments received by the taxpayer from the manufacturer were subject to tax.

The Commission concluded that the payments received by the taxpayer from the manufacturer of the vehicles under the program were required to be included in the taxpayer's gross receipts from the sale or lease of the vehicle to the participant. The payments were not reductions of the purchase price, "holdbacks" (amounts a manufacturer includes in dealer invoices but returned to the dealer as a credit), or wholesale incentives (amounts a manufacturer pays to dealers for selling a certain number of vehicles). It did not matter how the payments by the manufacturer were labeled. They were still credits paid to the taxpayer in the same manner as the payments to the dealer in the case of *Schenker vs. Wisconsin De-*

*partment of Revenue* (Dane County Circuit Court, September 1998). A summary of the Commission decision in *Schenker*, affirmed by the Court, appeared in *Wisconsin Tax Bulletin* 110 (July 1998), page 22. The Commission concluded that the program payments were more analogous to rebates and coupon discounts reimbursed by a manufacturer, which are subject to tax.

The Commission also concluded that the taxpayer was not deprived of due process by a letter written by the Department of Revenue to a motor vehicle dealership association subsequent to the period under review confirming that the payments received by the taxpayer from the manufacturer were subject to tax. The letter written by the department did not convey a new policy, but merely restated the existing taxability of the program payments which were taxable as provided in the Wisconsin Statutes, Wisconsin Administrative Code, *Wisconsin Tax Bulletins*, and the *Schenker* case, all of which existed during the period under review.

The taxpayer has appealed this decision to the Circuit Court. [!\[\]\(ec9132f1d27c8919987d92907322654d\_img.jpg\)](#)



## 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:

### Sales and Use Taxes

- |  |    |
|--|----|
| 1. Voice Over Internet Protocol (VoIP) Service.....                            | 28 |
| 2. Voluntary Collection of County and Special District Taxes by Retailer ..... | 30 |
| 3. Temporary Services Furnished by a Seller's Employees.....                   | 31 |

## SALES AND USE TAXES

### 1 Voice Over Internet Protocol (VoIP) Service

**Statutes:** Sections 77.51(17m) and (21m), and 77.52(2)(a)5.a., Wis. Stats. (2003-04).

**Wis. Adm. Code:** Section Tax 11.66(1)(e) and (4)(a)15., Wis. Adm. Code (November 2002 Register).

**Background:** Section 77.52(2)(a)5.a., Wis. Stats. (2003-04), imposes a Wisconsin sales tax on the sale of telecommunications services that either originate or terminate in Wisconsin and are charged to a service address in Wisconsin. Section 77.51(21m), Wis. Stats. (2003-04), provides, in part, that "telecommunications services" means:

“...sending messages and information transmitted through the use of local, toll and wide-area telephone service...or any other transmission of messages or information by electronic or similar means between or among points by wire, cable, fi-

ber optics, laser, microwave, radio, satellite or similar facilities....”

Section 77.51(17m), Wis. Stats. (2003-04), provides that:

“‘Service address’ means the location of the telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a buyer. If this is not a defined location; as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like; ‘service address’ means the location where a buyer makes primary use of the telecommunications equipment as defined by telephone number, authorization code or location where bills are sent.”

Some telecommunications and cable television service providers have begun to offer a new telecommunications service, called Voice over Internet Protocol (VoIP), as an alternative to more traditional, circuit-based telephone services. While the Internet is already used as a transmission pipeline by traditional telephony carriers for segments of their business (which use is transparent to the customer), VoIP is designed to allow the user to place telephone calls over the Internet, at times without the use of any telephony circuits dedicated to the call. VoIP requires the user to have a broadband or high speed Internet connection, such as a cable television modem or a digital subscriber line (DSL). Some VoIP services only allow the user to call other users with the same service, while other VoIP services allow users to call anyone with a telephone number, including local, long distance, mobile, and international numbers.

Depending on the provider of the VoIP service, the user may be able to make calls using their regular telephone with an adapter, a telephone connected to their computer, or a microphone connected to their computer. VoIP works by converting a vocal audio signal into a digital signal, which can be transmitted over the Internet in the same manner as e-mail, data, or digital photographic images, and then converting the digital signal back to an audio voice signal.

Some VoIP services are sold at a fixed monthly rate for unlimited local or long distance calls. Other VoIP services are sold at a certain cents-per-minute rate.



**Note:** The Questions and Answers below assume that VoIP service is not either of the following:

- Telecommunications service obtained by making a payment on a call-by-call basis either through the use of a credit card or payment mechanism such as a bank card, travel card, credit card, or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service (e.g., the customer makes payment on a call-by-call basis using a credit or debit card with no preset number of calling units).
- The right to access exclusively telecommunications services, which must be paid for in advance and which enables the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that is sold in predetermined units or dollars of which the number declines with the use in a known amount (e.g., the customer pays in advance for a preset number of calling units, such as a typical "phone card," enabling the customer to use an access or authorization code to originate calls until the units are exhausted).

**Question 1:** Are Voice over Internet Protocol services subject to Wisconsin sales and use tax?

**Answer 1:** Yes, if the service originates or terminates in Wisconsin and is charged to a service address in Wisconsin. The VoIP services are telecommunications services, as provided in sec. 77.51(21m), Wis. Stats. (2003-04).

**Note:** Whether the provider has sufficient nexus with Wisconsin such that Wisconsin can require the provider to report sales or use taxes depends on facts not dealt with in this Release. Regardless of whether the provider has sufficient nexus to be required to report tax to Wisconsin, the Wisconsin customer will remain liable for use taxes on the service charges. In this Release, sufficient nexus to require the provider to report tax to Wisconsin will be assumed.

**Question 2:** If the VoIP service provider knows a VoIP call originates or terminates in Wisconsin, should the VoIP service provider charge Wisconsin sales or use tax?

**Answer 2:** As provided in sec. 77.51(17m), Wis. Stats. (2003-04), if the seller of the VoIP telecommunications service knows that the location of the telecommunications equipment at which the customer originates or receives the call is in Wisconsin (i.e., Wisconsin "serv-

ice address"), the seller should charge Wisconsin sales or use tax.

**Question 3:** In the event the VoIP service provider does not know where the VoIP service originates or terminates, where is the service considered furnished for purposes of determining whether the call is subject to Wisconsin sales or use tax?

**Answer 3:** If the seller of the VoIP telecommunications service does not know the location of the telecommunications equipment at which the customer originates or receives the call, the seller should charge sales or use tax based on the location of the customer's place of primary use, as provided in sec. 77.51(17m), Wis. Stats. (2003-04). The customer's place of primary use is the street address where the customer's use of the VoIP service primarily occurs (i.e., the residential street address or the primary business street address of the customer).

**Example 1:** Customer A subscribes to a broadband Internet service. Customer A accesses the Internet through a computer with cable television modem in Customer A's home. Customer A also subscribes to the cable television company's VoIP telephone service, which enables Customer A to place unlimited local and long distance telephone calls from Customer A's home for a charge of \$40.00 per month. A telephone is connected to Customer A's computer in order to make VoIP calls. All calls originate from Customer A's home in Wisconsin.

The \$40.00 charge for Customer A's VoIP telephone service is subject to Wisconsin sales or use tax because it is a telecommunications service that originates in Wisconsin and is charged to a service address in Wisconsin.

**Example 2:** Customer B subscribes to a DSL Internet service. Customer B accesses the Internet through a computer in Customer B's home in Wisconsin. Customer B also subscribes to the Internet service provider's VoIP telephone service, which enables Customer B to place unlimited local and long distance telephone calls each month from anywhere in the United States for a charge of \$40.00 per month. Customer B uses a telephone and special adapter to make VoIP calls. The VoIP service provider does not know where the individual VoIP calls made by Customer B originate or terminate.

The \$40.00 monthly charge for Customer B's VoIP telephone service is subject to Wisconsin sales or use tax because it is a telecommunications service and Cus-

customer B's place of primary use is in Wisconsin (Customer B's home).

**Example 3:** Customer C subscribes to a DSL Internet service. Customer C accesses the Internet through a computer in Customer C's office in Wisconsin. Customer C also subscribes to a separate VoIP telephone service, which enables Customer C to place 500 minutes of local and long distance telephone calls each month from anywhere in the United States for a charge of \$15.00 per month. Customer C uses a telephone and special adapter to make VoIP calls. The VoIP service provider does not know where the individual VoIP calls made by Customer C originate or terminate.

The \$15.00 monthly charge for Customer C's VoIP telephone service is subject to Wisconsin sales or use tax because it is a telecommunications service and Customer C's place of primary use is in Wisconsin (Customer C's office).

**Note:** Examples 2 and 3 highlight the use of the "service address" to determine where the VoIP service is furnished, when the VoIP provider does not know where the individual VoIP calls originate or terminate. Refer to Question and Answer 3 above.

**Example 4:** Customer D subscribes to a DSL Internet service. Customer D accesses the Internet through a computer in Customer D's office in Wisconsin. Customer D also subscribes to a separate VoIP telephone service, which enables Customer D to place local and long distance telephone calls from anywhere in the United States for a charge of six cents per minute. All of Customer D's VoIP calls are charged to Customer D's Wisconsin telephone number. Customer D uses a telephone and special adapter to make VoIP calls. The VoIP service provider knows where the individual VoIP calls made by Customer D originate and terminate.

Wisconsin sales tax applies to the six cents per minute charge for Customer D's VoIP telephone calls that originate in Wisconsin or terminate on Customer D's telecommunications equipment in Wisconsin. Customer D's VoIP calls that originate in another state and terminate either in another state or on telecommunications equipment in Wisconsin of a person other than Customer D (not Customer D's service address) are not subject to Wisconsin sales or use tax.


**Note:** In this example, if the VoIP service provider knows where the VoIP calls originate, but does not know where the calls terminate, Customer D owes Wisconsin use tax on VoIP calls that originate outside Wisconsin

and terminate on Customer D's telecommunications equipment in Wisconsin, but would be allowed credit for sales tax paid to the state where the call originated.

**Example 5:** Customer E subscribes to a DSL Internet service. Customer E accesses the Internet through a computer in Customer E's Wisconsin home for a charge of \$50.00 per month. The DSL Internet service includes a VoIP telephone service at no separate charge. The VoIP telephone service enables Customer E to place unlimited local and long distance telephone calls each month from anywhere in the United States for no charge, as long as Customer E uses a special adapter supplied by the Internet service provider. The Internet service provider charges \$10.00 per month for the adapter. Customer E must use the adapter furnished by the Internet service provider in order to obtain the VoIP service (i.e., the adapter may not be leased or purchased from another party). The VoIP service provider does not know where the individual VoIP calls made by Customer E originate or terminate.

The entire \$60.00 monthly charge for Customer E's Internet service and adapter is subject to Wisconsin sales tax because it is a telecommunications service and Customer E's place of primary use is in Wisconsin (Customer E's home). The Internet service provider's purchase of the adapter is subject to Wisconsin sales or use tax because the adapter is transferred incidentally in providing the Internet service.

**Example 6:** Assume the same facts as in Example 5, except Customer E may lease or purchase the VoIP adapter from a person other than the Internet service provider (i.e., the adapter is not transferred incidentally in providing the Internet service).

The entire \$60.00 monthly charge for Customer E's Internet service and adapter is subject to Wisconsin sales tax. The Internet service provider is selling a taxable telecommunications service and Customer E's place of primary use is in Wisconsin (Customer E's home). The Internet service provider is also leasing tangible personal property (the adapter) to Customer E. The Internet service provider may purchase the adapter without tax for resale because the adapter is transferred separate from the Internet service. 

## 2 Voluntary Collection of County and Special District Taxes by Retailer

**Statutes:** Sections 77.53(9m), 77.71(2), 77.73(1), and 77.79, Wis. Stats. (2003-04).

**Wis. Adm. Code:** Section Tax 11.97(3), (4), (7), and (8), Wis. Adm. Code (October 1997 Register), titled “‘Engaged in business’ in Wisconsin.”

**Background:** Section 77.53(9m), Wis. Stats. (2003-04), provides that any person who is not otherwise required to collect the Wisconsin sales or use tax and who makes sales to persons within Wisconsin of tangible personal property or taxable services, the use of which is subject to tax may, if the person so elects, register with the department, under the terms and conditions that the department imposes, and shall obtain a valid business tax registration certificate, and thereby be authorized and required to collect, report, and remit to the department the Wisconsin use tax.

Section 77.79, Wis. Stats. (2003-04), provides that the provisions of subch. III of ch. 77, Wis. Stats. (i.e., general sales and use taxes), including those related to exemptions, exclusions, and the retailers’ discount, that are consistent with subch. V (i.e., county and special district sales and use taxes) apply to the county and special district taxes.

**Facts and Question 1:** A retailer has a furniture store located in a county that has not adopted the county or special district sales and use tax (i.e., a nontaxable county). The retailer is not engaged in business outside the nontaxable county. The retailer hires a common carrier for all furniture deliveries.

On sales of furniture that are transported by common carrier to a customer in a taxable county, may the retailer voluntarily collect the 0.5% county, the 0.5% football stadium district, and/or the 0.1% baseball stadium district taxes from the customer and report such tax(es) on its sales and use tax return (including remitting the tax to the Department of Revenue)?

**Answer 1:** Yes, a retailer who is not engaged in business in a taxable county may voluntarily collect, report, and remit the county and special district taxes on its sale in a taxable county.

**Facts and Question 2:** Assume the same facts as in *Facts and Question 1*, and that the furniture store is located in Rock County, which has not adopted a county or special district tax. The furniture store voluntarily collects, reports, and remits Milwaukee County tax and the baseball stadium district tax on sales made in Milwaukee County. Is the retailer required to collect the county tax and baseball stadium tax on sales it makes in other taxable counties?

**Answer 2:** Yes, a retailer who voluntarily collects county or special district tax on sales in one county in which it is *not* engaged in business must collect the applicable tax on *all* sales subject to county and/or special district taxes. In this case, the retailer must continue to collect such taxes on *all* sales subject to county and/or special district taxes, unless it *completely* stops voluntarily collecting county and special district taxes for *all* of its sales in counties in which it is not engaged in business. [☞](#)

### 3 Temporary Services Furnished by a Seller’s Employees

**Statutes:** Section 77.52(2), Wis. Stats. (2003-04).

**Wis. Adm. Code:** Sections Tax 11.67(2) (April 2000 Register), Tax 11.68(2) (June 1999 Register), Tax 11.71(2) (April 1993 Register), and Tax 11.86(6) (May 1999 Register).

**Background:** Section 77.52(2), Wis. Stats. (2003-04), provides that, for the privilege of selling, performing, or furnishing certain services at retail in Wisconsin to consumers or users, a tax is imposed upon all persons selling, performing, or furnishing the services at the rate of 5% of the gross receipts from the sale, performance, or furnishing of the services.

Services subject to Wisconsin sales tax include the following (this list is not all-inclusive):

- Recording telecommunications messages and transmitting them to the purchaser of the service or at that purchaser’s direction, but not including those services if they are merely an incidental, as defined in sec. 77.51(5), Wis. Stats. (2003-04), element of another service that is sold to that purchaser and is not taxable under the sales and use tax law. Sec. 77.52(2)(a)5m, Wis. Stats. (2003-04).
- The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of all items of tangible personal property unless:
  - When installed or applied, the installation or application of the tangible personal property will constitute an addition or capital improvement of real property.
  - At the time of such repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, or maintenance, a sale in Wisconsin of the type of

property repaired, serviced, altered, fitted, cleaned, painted, coated, towed, inspected, or maintained would have been exempt to the customer from sales taxation, other than the exempt sale of a motor vehicle or truck body to a nonresident under sec. 77.54(5)(a), Wis. Stats. (2003-04), and other than nontaxable sales under sec. 77.51(14r), Wis. Stats. (2003-04).

Sec. 77.52(2)(a)10, Wis. Stats. (2003-04), and secs. Tax 11.68(2) (June 1999 Register) and Tax 11.71(2) (April 1993 Register), Wis. Adm. Code.

- Landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying, and fertilizing, and shrub and tree services. Sec. 77.52(2)(a)20, Wis. Stats. (2003-04), and sec. Tax 11.86(6) (May 1999 Register), Wis. Adm. Code.

Section Tax 11.67(2)(c), Wis. Adm. Code (April 2000 Register), provides that if there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

**Facts and Question 1:** Company A is a building management company. Company A hires Individual B to mow lawns at the properties that Company A owns. Company A provides Individual B with training and tools to perform his services, has the right to fire Individual B, and provides general direction and control over the mowing services furnished by Individual B. Company A is required to withhold income taxes and pay employment taxes on amounts paid to Individual B, and to furnish unemployment insurance and workers compensation benefits for Individual B.

Are wages paid by Company A to Individual B subject to Wisconsin sales tax when the services being performed by Individual B for Company A are those that are subject to tax under sec. 77.52(2)(a), Wis. Stats. (2003-04)?

**Answer 1:** No. There is no sale of taxable services when an employee furnishes or performs services for an employer and the employee is paid wages by the employer as compensation for those services.

Although Individual B is performing lawn maintenance services, because Individual B is an employee of Company A, amounts paid by Company A to Individual B (wages) are not subject to Wisconsin sales tax.

**Facts and Question 2:** Company C enters into a contract with Company Z under which Company Z specifies services to be provided and the fee to be paid to Company C for supplying Company C's employees to perform the services. That fee may be a lump sum or may be an amount per hour per employee supplied. Under Company Z's contract with Company C, Company Z has some control over Company C's employees in setting hours, assigning tasks that are to be performed by Company C's employees, and determining where tasks will be performed. Company C retains the right to control and direct its employees, including the right to discharge or reassign an employee. Company C hires the employees, controls the payment of their wages, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.

Are charges by Company C to Company Z for the services performed by Company C's employees subject to Wisconsin sales tax?

**Answer 2:** If the services being performed by Company C's employees for Company Z are services subject to tax under sec. 77.52(2)(a), Wis. Stats. (2003-04), the charges by Company C to Company Z for furnishing such services are subject to Wisconsin sales tax, unless an exemption applies.

The persons performing the services for Company Z are employees of Company C, not Company Z. As such, Answer 1 above does not apply to the charges by Company C to Company Z for services furnished under the contract. The employees furnishing services to Company Z are not employees of Company Z.

**Example 1:** Company D enters into a contract to provide on-site facility operations services at an office complex owned by Company X. Services include:

- Ensuring proper operation of building mechanical systems (i.e., furnaces, boilers, central air conditioning, water heaters, and water softeners). The services include monitoring temperature, program-



ming changes to the mechanical system, and inspection, maintenance, and repair of the mechanical system.

- Changing light bulbs and tubes.
- Moving furniture.
- Clearing clogged plumbing pipes.
- Routine and repetitive janitorial services.
- Lawn and garden services, such as mowing, fertilizing, and trimming.
- Snowplowing, sanding, and salting parking lots and sidewalks.

Company D, under its contract with Company X, will supply the following employees for 40 hours each week for a period of one year, to furnish the services to Company X:

- One maintenance engineer at \$50 per hour.
- Two general laborers at \$25 per hour each, one to perform indoor activities, and one to perform outdoor activities.
- One heating, cooling, and plumbing professional at \$75 per hour.

Company X will set the schedule the employees will work, not to exceed 40 hours per week, and determine where the work will be performed. Company X will pay Company D on a monthly basis. Company X will prioritize and assign the tasks that must be performed as outlined in its contract with Company D. Company X will also supply tools, parts, and supplies necessary to perform the services. Company X may ask for replacement employees if it is not satisfied with the performance of the employees supplied. However, Company D will hire/fire the employees, control the payment of their wages, provide them with unemployment insurance and other benefits, and be the employer for employment tax purposes.

The portion of the monthly charge by Company D to Company X for the following services is subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2003-04):

- Inspection, maintenance, and repair of furnaces, boilers, central air conditioning, water heaters, and water softeners.
- Lawn and garden services, such as mowing, fertilizing, and trimming.
- Changing light bulbs and tubes.

The portion of the monthly charge for the following services is not subject to tax under sec. 77.52(2)(a), Wis. Stats. (2003-04):

- Monitoring building temperature for purposes of making programming changes to the mechanical system that adjust temperature and air flow.
- Moving furniture.
- Clearing clogged plumbing pipes.
- Routine and repetitive janitorial services.
- Snowplowing, sanding, and salting parking lots and sidewalks.

Company D may determine the portion of a lump sum charge to Company X that is subject to tax based on time spent by its employees doing the various activities as evidenced by time reports. Other reasonable methods of allocation are also acceptable. For example:

- Alternative 1 – Primary Nature of Services Performed for Job Description

When Company D assigns employees to perform services for its customer, the employees do not keep detailed records of the activities furnished to the customer or the time spent doing specific activities. However, Company D does know that:

- Its maintenance engineer is responsible for monitoring building temperature and programming changes to the mechanical system, which are non-taxable services. The maintenance engineer may perform some of the taxable activities that would normally be performed by the heating, cooling and plumbing professionals, but the amount of that type of work is small and would not be known by Company D.
- Its outdoor general laborer will furnish lawn and garden services in the spring, summer, and fall, which are taxable services, and snowplowing,



sanding, and salting services in the winter, which are nontaxable services. This general laborer may perform other incidental activities for Company D, which may be taxable or not taxable and, which are not known to Company D.

- Its indoor general laborer will perform routine and repetitive janitorial services, move furniture, and change light bulbs and tubes.
- Its heating, cooling, and plumbing professional will inspect, maintain, and repair furnaces, boilers, central air conditioning systems, water heaters, and water softeners and occasionally unclog plumbing pipes. The professional may also be asked in very limited instances to assist contractors who have been hired by Company X to install or replace heating and cooling equipment.

Since Company D does not maintain any detail that would allow it to allocate its charges for services furnished to Company X based on the time spent doing each of the services furnished, it is acceptable for Company D to collect and remit sales tax on the charge for services performed by employees based on the primary nature of the services performed by the employees as properly indicated in their job descriptions. Therefore, charges for services furnished by the outdoor laborer (during the winter months), maintenance engineer, and indoor laborer are not subject to Wisconsin sales or use tax because the services the employees furnish are primarily nontaxable services. Charges for the outdoor laborer during the spring, summer, and fall months and the heating, cooling, and plumbing professional are taxable because the services these employees furnish are primarily taxable services.

- **Alternative 2 – Time Spent on Specific Activities**

When Company D assigns employees, it requires that its employees keep a log or time sheet that indicates specific activities they were directed by Company X to complete and the time spent doing the specific activities. This documentation may be used by Company D for purposes of monthly billings to Company X, performance measurements, etc. Company D may allocate its charge to Company X between taxable and nontaxable services based on the logs or time sheets completed by the employees that indicate the time spent by each employee performing the specific activities. If the heating, cooling, and plumbing professional spent 150 hours of a 184-hour month repairing furnaces, boilers, air conditioning systems, and water heaters and softeners and the remaining 34 hours helping contractors install heating

and cooling equipment in making real property improvements, the portion of the charge subject to tax for the heating, cooling, and plumbing professional for the month would be determined as follows:

Hours worked during the month	184
Price per hour	<u>X 75</u>
Monthly charge	13,800
Percentage of time performing taxable services (150 hours ÷ 184 hours)	<u>X 82%</u>
Amount subject to tax	<u>\$11,316</u>

- **Alternative 3 – No Documentation for Allocation**

If Company D maintains no documentation (time sheets or logs, position descriptions, etc.) that it could use to make a reasonable allocation of lump sum charges for both taxable and nontaxable services furnished to its customer, the entire charge is subject to Wisconsin sales or use tax.

**Example 2:** Company J is a temporary service agency that provides personnel to various business clients to perform duties as described below:

- **Accountant** – Compiles and analyzes financial information to prepare entries to accounts, such as general ledger accounts; documents business transactions; and analyzes financial information detailing assets, liabilities, and capital and prepares balance sheet, profit and loss statement, and other reports to summarize current and projected company financial position.
- **Accounting Clerk** – Compiles and sorts documents, such as invoices and checks, substantiating business transactions; verifies and posts details of business transactions; and computes and records charges, refunds, cost of lost or damaged goods, freight charges, rentals, and similar items.
- **Administrative Assistant** – Aids executive in staff capacity by coordinating office services, such as personnel, budget preparation and control, house-keeping, records control, and special management studies; coordinates collection and preparation of reports; and reviews and answers or forwards correspondence.
- **Architect** – Researches, plans, designs, and administers building projects for clients, not including landscape planning and counseling.

- **Computer Programmer** – Converts data from project specifications and statements of problems and procedures to create computer programs; enters program code created by programmer into computer system; inputs test data into computer; writes instructions to guide operating personnel during production runs; analyzes, reviews, and rewrites programs to increase operating efficiency or to adapt program to new requirements; and compiles and writes documentation of program development and subsequent revisions.
  - **Data Entry Operator** – Operates keyboard or other data entry devices to enter data into a computer or onto magnetic tapes or disks; and compares data entered with source.
  - **Drafter** – Prepares detailed drawings of architectural designs and plans for buildings according to specifications, sketches, and rough drafts provided by an architect.
  - **File Clerk** – Reads, sorts, and files records in alphabetical or numerical order, or according to subject matter or other system; and locates and removes files upon request and keeps records of material removed.
  - **Customer Service Representative** – Receives and enters orders from customers and handles customer inquiries.
  - **Legal Secretary** – Aids in preparation of legal papers and correspondence of a legal nature, such as summonses, complaints, motions, and subpoenas.
  - **Mail Clerk** – Sorts incoming mail for distribution, distributes incoming mail, and dispatches outgoing mail.
  - **Mechanical Engineer** – Researches, plans, and designs mechanical and electromechanical products and systems.
  - **Nurse** – Provides general nursing care to patients in a hospital, nursing home, infirmary, or similar health care facility, including administering medications and treatments; prepares equipment and aids physician during treatments and examinations of patients; and observes and records condition of patient.
  - **Nurse Assistant** – Performs any combination of the following duties in care of patients in a hospital, nursing home, or other medical facility, under direction of nursing and medical staff; answers signal lights, bells, or intercom system to determine patients' needs; bathes, dresses, and undresses patients; serves and collects food trays and feeds patients requiring help; transports patients, using wheelchair or wheeled cart, or assists patients to walk; and changes bed linens, runs errands, directs visitors, and answers the telephone.
  - **Office Manager** – Coordinates activities of clerical personnel and analyzes and organizes office operations and procedures.
  - **Personnel Manager** – Conducts programs concerning employee recruitment, selection, training, development, retention, promotion, compensation, benefits, labor relations, and occupational safety.
  - **Shipping and Receiving Clerk** – Verifies and keeps records of incoming and outgoing shipments and prepares items for shipment.
  - **Word Processing Operator** – Operates word processing equipment to compile, type, revise, combine, edit, print, and store documents; and proofreads and edits documents for grammar, spelling, punctuation, and format.
- Company J's clients provide training and supervision and set the hours Company J's employees must work. Company J controls the payment of its employees' wages, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.
- Company J charges clients a set hourly rate determined by job classification for the services performed by its employees.
- Hourly rates charged by Company J to its clients for services performed as described in the job classifications above are not subject to Wisconsin sales or use tax. Such services are not subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2003-04).
- Example 3:** Company Y had a staff of ten employees that provided information technology services, including installation of computer hardware and software, maintenance of computer hardware and software, and programming services to all company employees. For financial and technological reasons, Company Y eliminated the jobs of those ten employees.

Company Y enters into a contract with Company E for information technology services for a period of three years. Company E employees will work at Company Y's site installing hardware and software, inspecting and maintaining software and hardware and providing custom programming, training, and help-desk support to Company Y's remaining employees. Help desk support consists of answering questions from Company Y employees about the operation of their computer hardware and software. Any maintenance that may be required as a result of a question to the help desk is done by other Company E employees.

On a daily basis, Company Y assigns tasks, sets deadlines, and monitors the work being performed by Company E employees.

Company E retains the right to substitute its employees as needed with the approval of Company Y. Company E controls the payment of wages to its employees, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.

Company E charges Company Y \$150,000 per month for the services it provides. The portion of the \$150,000 charge subject to Wisconsin sales tax for furnishing taxable services (installation of hardware and software, except custom software, and inspection and maintenance of hardware and software, except custom software) may be determined using the alternatives described in Example 1 or any other reasonable alternative.

**Example 4:** Company F is a retail supermarket chain. Company F is contemplating selling its business. It must make an itemization of all inventory on hand as of the end of its fiscal year. Company F does not have the staff available to itemize the inventory. It contacts Company K, an employment agency, who will provide two people (Individuals X and Y) at a charge of \$25 per hour per person to itemize the inventory.

Company F requires that Individuals X and Y itemize the inventory during the hours the store is closed to the general public, within a two-week time frame. Company F's owner determines the order in which categories of inventory will be itemized, and the reporting format. The owner will supervise the work done by Individuals X and Y. However, Company K controls the payment of their wages, provides them with unemployment insurance and other benefits, and is the employer for employment tax purposes.

It takes 80 hours each for Individuals X and Y to complete the inventory itemization. The employment agency charges Company F \$4,000 for the services performed by Individuals X and Y.

The \$4,000 charge by the employment agency to Company F is not subject to Wisconsin sales tax. Taking inventory is not a service that is subject to Wisconsin sales tax under sec. 77.52(2)(a), Wis. Stats. (2003-04).

**Example 5:** Company G contracts with a temporary service agency to provide a person to perform various office functions while its employee is on maternity leave. Office functions include answering the telephone and taking messages for sales staff, data entry, filing, and word processing. Company G provides training and supervision and sets the hours the person must work. The temporary service agency controls the payment of its employee's wages, provides him or her with unemployment insurance and other benefits, and is the employer for employment tax purposes.

The temporary service agency charges Company G \$500 per week for the services performed by the person.

The \$500 weekly charge is not subject to Wisconsin sales tax. Data entry, filing, and word processing are not services subject to Wisconsin sales tax. The taking of telephone messages for sales staff, by itself, is a service subject to tax under sec. 77.52(2)(a)5m, Wis. Stats. (2003-04). However, when it is provided incidentally with nontaxable office services, it is not subject to Wisconsin sales tax.

**Example 6:** Assume the same facts as in Example 5, except that the temporary service agency person is provided only to act as a telephone receptionist (i.e., answer telephones and take messages for staff that is not available).

The \$500 weekly charge is subject to Wisconsin sales tax. The taking of telephone messages is a service subject to tax under sec. 77.52(2)(a)5m, Wis. Stats. (2003-04), when not provided incidentally with other nontaxable services.

**Example 7:** Company H is an LLC that is disregarded as a separate entity for income tax purposes but not for Wisconsin sales and use tax purposes. Company V is the owner of Company H. Company H owns trucks that are used to haul tangible personal property for Company V. Company H does not have any employees. Company H contracts with Company V to obtain drivers to drive Company H's trucks.

The charge by Company V to Company H is not subject to Wisconsin sales or use tax. The service of driving trucks is not a service that is subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats. (2003-04).

**Example 8:** Company I is a landscaping company. Company I does not have enough employees to perform landscaping services it has contracted to provide for customers during the months of May through September. Company I contracts with a temporary service agency to provide four people to perform various landscaping services, including mowing and fertilizing lawns, planting grass, flowers, shrubs, and trees, and installing retaining walls, patios, and decorative lighting. The temporary service agency controls the payment of its employees' wages, provides them with unemploy-

ment insurance and other benefits, and is the employer for employment tax purposes.

The temporary service agency charges Company I \$1,200 per week for the services performed by its employees.

The \$1,200 weekly charge is not subject to Wisconsin sales tax because the services are for resale. Although mowing and fertilizing lawns and planting grass, flowers, shrubs, and trees are landscaping services subject to Wisconsin sales tax under sec. 77.52(20), Wis. Stats. (2003-04), Company I is reselling those services to its customers. Company I should provide the temporary service agency an exemption certificate (Form S-220) claiming resale.