

Wisconsin TAX BULLETIN

www.dor.state.wi.us

Number 142

April 2005

Information or Inquiries?

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

The listing appears on pages 20 to 23 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. [✎](#)

Suggestions for Tax Practitioners – Verify Mailing Addresses and Direct Deposit Information

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

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

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

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

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

Voluntary Disclosure Pays

If an individual or a business hasn't filed Wisconsin tax returns for prior years, or realizes that taxes were underpaid on previously filed Wisconsin returns, what should they do? A contact by the Department of Revenue (DOR) could result in costly civil and/or criminal penalties.

Don't wait to be contacted by DOR. A better alternative is to take advantage of the department's Voluntary Disclosure Program. Various penalties are waived and other benefits are obtained by voluntary disclosure.

Both of the department's voluntary disclosure policies are published in this Bulletin, on the following pages:

- Pages 24 to 26, relating to additional taxes or excessive credits on previously filed returns.
- Pages 27 to 29, relating to unfiled returns.

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

Voluntary Disclosure Program
Wisconsin Department of Revenue
2135 Rimrock Road
P.O. Box 8906 Mail Stop 5-144
Madison WI 53708-8906 [✎](#)

Farmers Receive \$27.5 Million in Farmland Credits

Direct benefits of approximately \$27.5 million were distributed to Wisconsin farmers in 2004, primarily for the 2003 tax year, through the farmland preservation credit program and the farmland tax relief credit program.

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The farmland preservation credit and farmland tax relief credit are paid as a reduction in Wisconsin income tax, or as a cash refund if the credits exceed income tax due. The total combined amount of the farmland preservation credit and farmland tax relief credit may not exceed 95% of the farm property taxes.

Farmland Tax Relief Credit Program

It is not necessary for the farmland to be subject to agricultural zoning or a farmland preservation agreement to receive farmland tax relief credit. This program provides direct benefits to any qualifying farmland owner with 35 or more acres of farmland. About 55,000 farmers claimed farmland tax relief credits totaling \$13.1 million in 2004, for an average credit of \$229.

The credit is computed as a percentage of up to \$10,000 of property taxes on farmland (exclusive of improvements), up to a maximum credit of \$1,500. The Department of Revenue calculates the percentage each year, based on the amount appropriated for the program. The credit for 2003 claims equaled 16% of the first \$9,375 of property taxes on farmland. For the 2004 tax year (credits claimed in 2005), the credit is equal to 15% of the first \$10,000 of property taxes.


Farmland Preservation Credit Program

About 19,500 farmers claimed farmland preservation credits totaling \$14.4 million in 2004. The credit averaged \$721 per claimant. About 36% of farm owners with 35 or more acres claimed the credit, which equaled about 21% of claimants' average property tax bills.

The goals of the farmland preservation credit program are twofold –

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

To qualify for the credit, farmland must be 35 acres or more and must either be zoned for exclusive agricultural use, or be subject to a farmland preservation agreement between the farmland owner and the state. In addition, participants must comply with soil and water conservation standards set by the state Land Conservation Board.

More information regarding the farmland preservation credit and farmland tax relief credit programs may be obtained by contacting the Department of Revenue at (608) 266-2772 or income@dor.state.wi.us. 

2005 Estimated Income Tax Requirements for Individuals, Estates, and Trusts

Individuals and fiduciaries that expect to owe \$200 or more of income tax (including recycling surcharge) with their 2005 Wisconsin income tax return are required to pay 2005 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained on the next page. A 2005 Form 1-ES, *Wisconsin Estimated Tax Voucher*, is filed with each estimated tax payment. (**Note:** Only individuals and fiduciaries making estimated **income** tax payments may file a Form 1-ES.)

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Madison, WI 53707-7840

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For calendar year taxpayers, the first estimated income tax payment was due on April 15, 2005. Installment payments are also due on June 15, 2005, September 15, 2005, and January 17, 2006 (January 15 is a Sunday and January 16 is a legal holiday). For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year. (**Note:** If any due date falls on a Saturday, Sunday, or legal holiday, use the next business day.)

Estates and grantor trusts that are funded on account of a decedent's death are only required to make estimated tax payments for taxable years that end two or more years after the decedent's death. For example, an individual died on March 28, 2004. A grantor trust that was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 28, 2006. The first year that

the trust is required to make estimated payments is 2006.

A trust that is subject to tax on unrelated business income is generally required to pay 2005 Wisconsin estimated income tax if it expects to owe \$500 or more (including recycling surcharge) on a 2005 Wisconsin franchise or income tax return (Form 4T). A 2005 Form 4-ES, *Wisconsin Corporation Estimated Tax Voucher*, is filed with each estimated tax payment. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

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

Collecting Sales Tax at Temporary Events

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

Vendors who make taxable sales of \$1,000 or more in a year are required to hold a Wisconsin seller's permit. They need to charge sales tax at a rate ranging from 5% to 5.6%, depending on the county in which the sale takes place. Out-of-state vendors are also required to file a Wisconsin individual income tax return if their gross receipts related to Wisconsin are \$2,000 or more in a year. This includes gross receipts while in Wisconsin and receipts related to orders taken for products while in Wisconsin, but shipped or delivered from a point outside the state.

For those vendors who do not have a seller's permit or who have a delinquent account with the Department of Revenue, department representatives will be meeting

them at the registration table, to get them registered and/or to collect their delinquent account.

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

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

Questions about the responsibilities of operators or vendors at temporary events may also be referred to the department's Temporary Events Coordinator, Cheryl Purath, at (608) 266-7183 or cpurath@dor.state.wi.us. [☞](#)



Wisconsin Tax Bulletin Annual Index Available

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

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

The latest *Wisconsin Tax Bulletin* index available appears in *Wisconsin Tax Bulletin* 141 (January 2005), pages 42 to 75. It includes information for issues 1 to 140 (through October 2004). [☞](#)

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, phone, fax, or the Internet.

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.

Fax a request to (608) 267-1030 or 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.

Access the department's web site at www.dor.state.wi.us, and click on "Publications" and then "Tax Publications" to either download publications or request them using the on-line order form.

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*.

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| 103 | Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/04) |
| 104 | Wisconsin Taxation of Military Personnel (5/04) |
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| 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) |
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| 125 | Credit for Tax Paid to Another State (11/04) |
| 126 | How Your Retirement Benefits Are Taxed (11/04) |
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| 200 | Electrical Contractors – How Do Wisconsin Sales and Use Taxes Affect Your Business? (11/02) |
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| 204 | Sales and Use Tax Information for Colleges, Universities and Technical Colleges (3/01) |
| 205 | Use Tax Information for Individuals (4/03) |
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| 210 | Sales and Use Tax Treatment of Landscaping (11/03) |
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| 212 | Businesses: Do You Owe Use Tax on Imported Goods? (4/03) |
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| 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)
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- 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 (2/05)
- 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 (3/05)
- MF-107* Motor Vehicle Fuel Tax Information (3/05)
- MF-108* General Aviation Fuel Tax Information (3/05)
- 302 Wisconsin Alcohol Beverage and Tobacco Laws for Retailers (12/04)

Other Taxes and Credits

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- 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 (3/05)
- 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 (3/05)
- 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 (2/05)
- 509 Filing Wage Statements and Information Returns on Magnetic Media or by Electronic Transmission (11/04)
- 700 Speakers Bureau presenting . . . (6/00) [!\[\]\(c44db1e92ba1244b2894d325c806ff8a_img.jpg\)](#)

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

(**Note:** The fiduciary income tax return filing requirements for estates are discussed in the article titled “Filing Wisconsin Tax Returns for a Deceased Taxpayer,” on page 8 of this Bulletin. Refer to the section in that article titled “Fiduciary Income Tax Return(s) for an Estate.”)

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

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

Example: A resident trust has \$400 of interest income. It makes no distributions and therefore only has an exemption of \$100, which would result in taxable income of \$300. The trust is required to file a Wisconsin fiduciary return, because it has taxable income.

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

Wisconsin source income includes income or gain from:

- a. Real or tangible personal property located in Wisconsin.
- b. A business, trade, profession, or occupation carried on within Wisconsin, including a corporation taxed under Subchapter S of the Internal Revenue Code.
- c. Personal or professional services performed in Wisconsin either as an individual or as a member of a partnership or limited liability company.
- d. Income received from the Wisconsin State Lottery or a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

Resident Trust

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

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

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

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

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

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

Examples:

Law prior to October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Florida that is to be administered in Florida. The trust will not be taxable to Wisconsin.

- c. Mary Doe, a resident of Florida, set up an irrevocable trust on October 22, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is to be administered in Arkansas. The trust became irrevocable at his death on October 22, 1999. James was a Wisconsin resident at death. This trust will not be subject to Wisconsin income tax.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On October 22, 1999, she made an irrevocable gift to the trust of her company stock. The earnings on the stock, if taxable at the trust level, would not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust administered in Wisconsin in 1997. Martha moved to Florida on October 22, 1999, established Florida residency, and moved her trust to Florida. The trust would no longer be taxable to Wisconsin, as the trust would now be administered in Florida.
- time of death. The trust would be taxable to Wisconsin.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On December 15, 2004, she made an irrevocable gift to the trust of \$2 million of her company stock. The value of the assets in the trust are \$1.5 million before the gift, and \$3.5 million after. All income from the \$2 million that was placed in the trust on December 15, 2004, will be taxable to Wisconsin. The assets put into the trust prior to October 29, 1999, will not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust in Wisconsin on December 15, 1999. In March 2004, Martha moved to Florida and became a Florida resident. The trust would remain taxable to Wisconsin since Martha Doe was a resident of Wisconsin at the time the trust became irrevocable.

Law change effective on October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2004, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2004, in Florida that is to be administered in Florida. The trust will be taxable to Wisconsin. The trust will continue to be taxable to Wisconsin even if Jack Doe changes his domicile to another state.
- c. Mary Doe, a resident of Florida, set up an irrevocable trust on December 15, 2004, in Wisconsin to be administered in Wisconsin. The trust would not be taxable to Wisconsin since Mary Doe was not a Wisconsin resident at the time the trust became irrevocable.
- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable trust) in Arkansas that is administered in Arkansas. The trust became irrevocable on James's death on December 15, 2004, and James was a Wisconsin resident at the

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

Qualified Funeral Trust (QFT)

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

Electing Small Business Trust (ESBT)

For taxable years beginning on or after January 1, 1997, electing small business trusts (ESBTs) may be S corporation shareholders. The portion of an ESBT that consists of stock of one or more S corporations is treated as a separate trust. The net income for that S portion is determined under federal law as adjusted for the additions and subtractions listed in Schedule A of Form 2. The separate trust is taxed on its Wisconsin taxable income at the highest rate for fiduciaries.

Obtaining a Closing Certificate for a Trust

Per sec. 71.13(2), Wis. Stats., the department will issue the Closing Certificate for Fiduciaries only in cases where a Wisconsin court has required it to close a proceeding. A trust may request a Closing Certificate for Fiduciaries from the Wisconsin Department of Revenue on the Form 2 that is filed for the year prior to the final year.

The following information should be attached to the certificate request:

- Payment of any tax due.
- A copy of the trust instrument and any amendments.
- Copies of the annual court accountings for the last three years. If annual accountings have not been filed with the court, verification that the court requires the certificate to close a proceeding.

- Copies of the annual accountings prepared for income tax filing or other purposes.
- A detailed statement of why the trust is closing.
- A completed Schedule E, lines 1 through 8, and the Summary of Assets, lines 1 through 7, on page 4 of Form 2.

The certificate request should be mailed to:

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

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return. [!\[\]\(5361750c22c4e047a52f4eac1ec2d4cc_img.jpg\)](#)

Filing Wisconsin Tax Returns for a Deceased Taxpayer

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

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

Individual Income Tax Return

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

The filing requirements for tax years beginning in 2004 are as follows:

- a. Single person - gross income of \$9,000 or more.
- b. Married persons filing jointly - gross income of \$18,000 or more.
- c. Married person filing separately - gross income of \$9,000 or more (each spouse).
- d. Head of household:

1. Under age 65 - gross income of \$10,970 or more.
2. Age 65 or over - gross income of \$11,220 or more.
- e. Part-year resident or nonresident - gross Wisconsin income of \$2,000 or more.

If there is no estate to probate, a surviving heir may file a return for the person who died. If there is an estate, the personal representative for the estate must file the return. The person filing the return should sign it and indicate his or her relationship to the person who died (for example, “surviving heir” or “personal representative”).

The person who files the return should write “deceased,” the deceased taxpayer’s name, and the date of death across the top of the return.

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

If a surviving heir files a return claiming a refund on behalf of a deceased person and is unable to cash or deposit the refund check, the check, along with Form I-804, *Claim for Decedent’s Wisconsin Income Tax Refund*, should be sent to: Wisconsin Department of Revenue, P.O. Box 8903, Mail Stop 3-138, Madison, WI 53708-8903.

If a taxpayer's spouse died during 2004 and the taxpayer did not remarry in 2004, a joint return may be filed. A joint return for 2004 may also be filed if a taxpayer's spouse died in 2005 before filing a 2004 return. A joint return should show the deceased spouse's 2004 income before death and the surviving spouse's income for all of 2004. "Filing as surviving spouse" should be written in the area where the return is signed. If someone else is the personal representative, he or she must also sign.

If a surviving spouse files a joint return with a deceased spouse, any refund check will be issued in both spouses' names. If the surviving spouse is unable to cash or deposit the check, the check, along with Form I-804, *Claim for Decedent's Wisconsin Income Tax Refund*, should be sent to the address indicated above.

Fiduciary Income Tax Return(s) for an Estate

Resident Estate

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

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

Nonresident Estate

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

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

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

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

Obtaining a Closing Certificate for an Estate

Per sec. 71.13(2), Wis. Stats., the department will issue the Closing Certificate for Fiduciaries only in cases where a Wisconsin court has required it to close a proceeding. An estate may request a Closing Certificate for Fiduciaries from the Wisconsin Department of Revenue on the Form 2 that is filed for the year prior to the final year.

Copies of the inventory and will including any codicils should be attached with the request. If these documents were previously submitted with a Wisconsin estate tax return, it is not necessary to submit them again. A completed Schedule D, lines 1 through 10, and the Summary of Assets and Deductions, lines 1 through 20, on page 3 of Form 2 should also be provided with the request.

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

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

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

- a. Complete the top third of the Form 2, page 1.

- b. Insert the appropriate statement at line 1:
- (1) "Gross income is less than \$600 and no federal Form 1041 is required," or
 - (2) "A first and final return will be filed upon closing the estate."
- c. Complete the appropriate "Information Required" section of Schedule D, on page 3 of Form 2.
- d. Sign and date the Form 2.
- e. Attach copies of the inventory and will.
- f. Mail the certificate request to:
- Wisconsin Department of Revenue
Mail Stop 5-144
P.O. Box 8904
Madison, WI 53708-8904

Estate Tax Return

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

Wisconsin Estate Tax Basis

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

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

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

Wisconsin Estate Tax Filing Requirements

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

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

***Note:** The filing requirement is based on the gross estate, plus adjusted taxable gifts and specific exemption.

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

Since the Wisconsin estate tax for deaths occurring from October 1, 2002, through December 31, 2007, is based on the federal estate tax law in effect on December 31, 2000, the filing requirements for filing a *Wisconsin Estate Tax Return*, Form W706, differ from the federal filing requirements for those years. For example, the federal filing requirement is \$1,500,000 in 2004 and 2005 and goes up in later years. Therefore, there may be a Wisconsin filing requirement for those years, even though no federal estate tax return is required.

Wisconsin Estate Tax Forms

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

The Form W706 is due nine months after the date of death or when the federal estate tax return is required to be filed, as extended, whichever is later. For federal estate tax returns filed after July 25, 2001, the Internal Revenue Service (IRS) provides an automatic six-month extension of time to file the return. A request for a federal extension must be made on federal Form 4768 and filed with the IRS on or before the due date of the return. Wisconsin will accept the federal extension; a copy of the approved Form 4768 must be filed with the Wisconsin Form W706. If no federal estate tax return is required, a Wisconsin-only extension may be requested using Wisconsin Form W4768, *Application for Extension of Time to File a Wisconsin Estate Tax Return (W706)*.

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

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

Examples:

1. Decedent A died April 15, 2004. An extension of time to file the federal estate tax return was obtained from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on January 31, 2005, which was within the extension period. Tax of

\$1,200 was due. The total amount due is \$1,314, computed as follows:

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

2. Decedent B died April 15, 2004, and did not obtain an extension to file from the IRS or from the Wisconsin Department of Revenue. The Wisconsin estate tax return was filed January 31, 2005, and showed no tax due. This estate owes the minimum penalty of \$25.

Copies of Form W706, instructions, Schedule TC, Form W4768, and Form 401T, as well as earlier versions of the forms, are available by accessing the department's web site, www.dor.state.wi.us. Click on "Forms," then scroll to and click on "Estate, Inheritance and Gift Tax."

Certificate Determining Estate Tax

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

Inheritance Tax Return

Although Wisconsin continues to have an estate tax (see the previous section of this article titled "Estate Tax Return"), there is no Wisconsin inheritance tax for decedents dying on or after January 1, 1992. If death occurred prior to January 1, 1992, you may obtain information and the appropriate forms by calling (608) 266-2772, or by accessing the department's web site, www.dor.state.wi.us. Click on "Forms," then scroll to and click on "Estate, Inheritance and Gift Tax." [↗](#)

Reminder: Personal Representative Fees Taxable to the Recipient

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

All personal representatives must include in their gross income fees paid to them from an estate. If paid to a professional executor or administrator, self-employment

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

For more information on the taxability of personal representative fees, please contact the department at (608) 266-2772 or via e-mail at income@dor.state.wi.us. [↗](#)



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

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

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

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

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

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

Additional information is available in Publication 508, *Wisconsin Tax Requirements Relating to Nonresident Entertainers*. See the article titled "Tax Publications Available" on page 4 of this Bulletin, for methods of obtaining Publication 508. Additional information is also available by contacting the department by any of the methods listed below.

Using U.S. Postal Service:


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

Using another service:

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

By telephone: (608) 266-3645

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

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

To File or Not to File – Corporation Tax Returns

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

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

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

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

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

Questions regarding incorporation or dissolution can be directed to:


Wisconsin Department of Financial Institutions
Division of Corporate and Consumer Services
Corporate Section
P.O. Box 7846
Madison, WI 53707

Phone (608) 261-7577
Fax (608) 267-6813

Questions regarding corporation tax filing requirements can be directed to:

Wisconsin Department of Revenue
Corporation Review & Adjustment Unit
Mail Stop 3-14
P.O. Box 8908
Madison, WI 53708-8908

Phone (608) 266-0800
Fax (608) 264-6884
Email: corptax@dor.state.wi.us

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

Question and Answer ?


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

(Sales and Use Tax)

QIs fuel and electricity consumed in manufacturing exempt from sales and use tax?

ABeginning January 1, 2006, fuel and electricity consumed in manufacturing tangible personal property in Wisconsin is exempt from Wisconsin sales or use tax.

Prior to January 1, 2006, sales of fuel and electricity consumed, destroyed, or losing its identity in the manufacture of tangible personal property are not exempt from sales or use tax, except for:

- Fuel or electricity consumed, destroyed, or losing its identity in manufacturing shopper’s guides, newspapers, or periodicals.
- Fuel converted to electric energy, gas, or steam by utilities and that portion of the amount of fuel converted to steam for purposes of resale by persons other than utilities.
- Any residue that is used as a fuel in a business activity and that results from the harvesting of timber or the production of wood products, including slash, sawdust shavings, edgings, slabs, leaves, wood chips, bark, and wood pellets manufactured primarily from wood or primarily from wood residue. 

Internet Page for Delinquent Tax Help

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

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

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

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

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



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

Woman Sentenced in Dane County

An Endeavor woman, who embezzled money from her employer and filed four fraudulent Wisconsin income tax returns, was ordered in December 2004 to serve one year in the county jail.

Kimberly K. Heisz, 32, is the former office manager of the DeForest Veterinary Clinic, Inc. Between January 2000 and September 2003, Heisz took over \$100,000 from the DeForest Veterinary Clinic, Inc. and did not report any of the stolen money on her Wisconsin income tax returns.

Heisz was found guilty of theft and filing a false income tax return on July 8, 2004. Dane County Circuit Court Judge Richard G. Niess, Branch 9, withheld sentence on those two charges and placed Heisz on probation for ten years with several conditions. Among the conditions

ordered by Judge Niess are that Heisz spend one year in either the Dane or Marquette County Jail. Heisz was also ordered to make regular restitution payments to the Wisconsin Department of Revenue and to the DeForest Veterinary Clinic, Inc. at 15% of her gross income, to have no contact with the clinic’s owner, Thomas Cameron, to maintain full-time employment, and to file annual income tax returns.

Robert A. Spangler, 53, of Elkhorn, Wisconsin, was arrested in December 2004 for failure to file state income tax returns. According to the criminal complaint, Spangler has not filed state or federal income tax returns since 1995. He was scheduled to appear in Walworth County Circuit Court the day after his arrest to answer to the charges.

The complaint alleges that the Wisconsin Department of Revenue had been in contact with Spangler as far back as 1996, requesting him to file tax returns. Spangler, however, refused, and responded to the department's correspondence with standard tax protestor language.

In December 1998, Spangler sent the Department of Revenue what was purported to be a promissory note for \$18,936.22 to pay off an assessment issued by the department, but the note was not drawn on any bank and was worthless.

The complaint further alleges that, during the years 2001 through 2003, Spangler did carpentry work either as an independent contractor or as an employee for various companies, which included the Nippersink Golf Club, Stepanek Enterprises, and Ricchio, Inc. Spangler told Ricchio, Inc., not to withhold any income taxes from his earnings.

According to the complaint, Spangler received gross income of \$149,249.27 during the years 2001 through 2003 for which he paid no income taxes. Spangler kept his payments in two accounts at Associated Bank, one of which was in his name and the other under the name of "Elkhorn General." Spangler moved money between the accounts and paid for what appeared to be personal expenses.

The Walworth County District Attorney's Office brought criminal charges against Spangler following an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section. If convicted, Spangler could receive up to 27 months in jail and be fined up to \$30,000.

Michael T. Nelson, 43, of Rhinelander, Wisconsin, pled not guilty in December 2004 to two felony counts and eight misdemeanor counts of sales tax theft. Nelson also entered not guilty pleas to six misdemeanor counts of operating his Rhinelander business, Hodag Express, after the Department of Revenue revoked his seller's permit. In addition, not guilty pleas were entered for the six misdemeanor counts of certifying to his vendors that his purchases were exempt from sales tax, to evade payment of the tax, after the revocation of his seller's permit.

Nelson was scheduled to appear before Judge Robert Kinney for his preliminary hearing on the matter. Nelson waived the preliminary hearing and entered the not guilty pleas through his attorney, Gary Cirilli.

According to the criminal 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 a check with insufficient funds (NSF) 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 to Nelson on February 12, 2004.

Nelson continued to operate the Hodag Express after the revocation. The Department of Revenue notified Nelson on Friday, 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.

The court scheduled a pre-trial conference for January 18, 2005, at 3:00 p.m. The trial date was set for February 18.

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 the conviction for criminal tax violations.

Cleveland Lee, Sr., 54, of Houston, Texas, the former treasurer, business manager, and chief financial officer of the Harambee Community School in Milwaukee, Wisconsin, was arrested on January 11, 2005 in Houston after being charged in Milwaukee County Circuit Court for theft, forgery, and filing fraudulent Wisconsin income tax returns.

According to the criminal complaint filed on January 7, 2005, Lee is alleged to have embezzled at least \$467,749 from the Harambee Community School between January 2000 and March 2002. In addition, he was charged with evading \$34,366 in state income taxes by filing fraudulent income tax returns for the 1999 through 2001 years. The complaint alleges that an ongoing audit has shown that Lee's embezzlement goes back to 1998 and 1999, and the entire embezzlement may approach \$750,000.

Also according to the complaint, Lee is alleged to have diverted school revenue streams for his personal benefit. This consisted of childcare payments from the Wisconsin Shares Child Care Subsidy Program; fees paid to the school for adult computer classes and computer consulting services; privately paid childcare payments; and \$7,350 in stolen charitable contributions, including contributions from the Steve Miller Foundation and the Albert & Flora Ellinger Foundation, Inc.

The complaint alleges that Lee first deposited these funds into two Harambee school accounts at US Bank, the Child Care Account and the Hot Lunch Account. Lee maintained secretive and exclusive control over these accounts and kept them off the financial books of the school. Lee then routinely forged the signature of the school's assistant business manager, Doreen Cotton-Wood, on checks drawn on these two accounts. Lee embezzled virtually all the money that was deposited into these two accounts between January 2000 and March 2002, at which time he was fired from his position with the school.

The majority of the forged checks were made payable to "Harambee Child Care, Inc." This was a sham corporation having no real existence other than a bank account at US Bank. Lee set up the bogus corporation in late 1997. From this account, Lee further disbursed money to himself or to two other businesses that he operated, Metroserv, Inc. and P.T. Publication, Inc. Most of the embezzled money was used to pay Lee's personal expenses or for operating his businesses.

The Harambee Community School is a private elementary school operated by the Harambee Community School, Inc. The school is funded through both public and private sources, including charitable grants and donations. The complaint states that Lee began serving as treasurer of the school in the mid-1980's. He subsequently assumed the position of business manager, from which he ran the financial affairs of the school. This included the review of incoming bills, collection of accounts payable, oversight of business contracting, and arrangement of monthly financial reports. In 1986 the school board approved annual compensation of \$10,000 to Lee in his position as the school's business manager. Thereafter, his compensation was increased by \$1,000 per year.

Instead of taking any of these payments as a salary, Lee invoiced the school through his Metroserv, Inc. business for "financial management services." Lee made monthly payments from Harambee School to Metroserv, Inc. for these services. On a regular basis within three days of a Harambee payment to Metroserv, Inc., Lee disbursed an identical amount from Metroserv, Inc. to himself. In his capacity as chief financial officer, Lee omitted reporting to the Wisconsin Department of Revenue or the Internal Revenue Service any payments that he received from the Harambee Community School.

According to the complaint, for the 1999 through 2001 years Lee effectively paid no federal income taxes and only \$69 in state income taxes. By failing to include payments from Harambee Community School as well as embezzled funds as income, Lee evaded \$34,366 in state income taxes for these three years.

Lee is being prosecuted by the Milwaukee County District Attorney's Office after an investigation by the White Collar Crime Unit of the District Attorney's Office and the Criminal Investigation Section of the Wisconsin Department of Revenue.

Arthur Campbell, 66, of Milwaukee, Wisconsin, was sentenced in February 2005 before Milwaukee County Circuit Court Judge Jeffrey A. Conen, on three counts of medical assistance fraud and one count of failure to file a timely corporate tax return. 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.

Judge Conen sentenced Mr. Campbell to 30 days in jail and six years probation. Judge Conen stated he was withholding sentence. Judge Conen also ordered Mr. Campbell to pay restitution of \$375,000 to the Medicaid program and \$11,000 to the Department of Revenue. In addition, Mr. Campbell was fined \$30,000. [☞](#)

Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of April 1, 2005 and at each step where action occurred during the period from January 2, 2005, through April 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 30 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Sent for Legislative Committee Review

1.12 Electronic funds transfer – A

2.99 Dairy investment credit – NR

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

Adopted but Not Yet Effective

1.12 Electronic funds transfer – A (anticipated effective date 5/1/05)

Adopted and in Effect (4/1/05)

2.99 Dairy investment credit – NR

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

A summary and reproduction of the text of Tax 2.99 and 3.04 may be found in the article below titled “Recently Adopted Rules Summarized.” [☞](#)

Recently Adopted Rules Summarized

Summarized below is information regarding two rules created effective April 1, 2005. Included is information concerning Tax 2.99, relating to the dairy investment credit, and Tax 3.04, relating to the subtraction from income allowed for military pay received by members of a reserve component of the armed forces. In addition to the summary of the rules, the text of the rules is reproduced.

To order up-to-date administrative rules of the department, you can use the order blank that appears on page 30 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

Tax 2.99 Dairy investment credit. Tax 2.99 is created, to clarify the following terms as they apply to the dairy investment credit:

- “amount the claimant paid in the taxable year,”
- “dairy farm modernization or expansion,”

- “milk production,” and
- “used exclusively related to dairy animals.”

The text of Tax 2.99 is as follows:

Tax 2.99 Dairy investment credit. (1) PURPOSE. This section clarifies certain terms as they apply to the dairy investment credit under ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

(2) DEFINITIONS. In this section and in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.:

(a) “Amount the claimant paid in the taxable year” means the purchase price of facilities or equipment acquired and first placed in service in this state during taxable years that begin after December 31, 2003, and before January 1, 2010.

(b) “Dairy farm modernization or expansion” has the meaning as given in ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats. “Dairy farm modernization or expansion” refers only to those facilities or equipment in this state used exclusively on

the claimant's dairy farm related to the dairy animals located on the claimant's dairy farm. "Dairy farm modernization or expansion" does not include the purchase of:

1. Equipment used for raising crops for sale.
2. Vehicles licensed for highway use, snowmobiles, and all-terrain vehicles.

(c) "First placed in service" has the meaning as given under Treas. Reg. s. 1.167 (a)-11 (e) (1) (i) for purposes of computing depreciation.

Note: Treas. Reg. s. 1.167 (a)-11 (e) (1) (i) provides, in part, that property is first placed in service when first placed in a condition or state of readiness and availability for a specifically assigned function.

(d) "Milk production" means the activity of producing and handling milk on the claimant's dairy farm in this state for human consumption, but does not include activities such as transporting, pasteurizing, or homogenizing milk or making butter, cheese, ice cream or other dairy products.

(e) "Used exclusively related to dairy animals" means used in this state on the claimant's dairy farm to the exclusion of all other uses except for other uses not exceeding 5% of total use.

Note: Section Tax 2.99 interprets ss. 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats.

Note: Sections 71.07 (3n), 71.28 (3n), and 71.47 (3n), Stats., were created by 2003 Wis. Act 135, effective for taxable years that begin after December 31, 2003, and before January 1, 2010.

Tax 3.04 Subtraction for military pay received by members of a reserve component of the armed forces. Tax 3.04 is created, to clarify that the subtraction from income for military pay received by members of a reserve component of the armed forces is not available to persons who are serving on active or full-time duty in the active guard reserve (AGR) program under 32 USC 502 (f).

The text of Tax 3.04 is as follows:

Tax 3.04 Subtraction for military pay received by members of a reserve component of the armed forces.

(1) **PURPOSE.** This section limits the application of the phrase "called ... into special state service authorized by the federal department of defense under 32 USC 502 (f), that is paid to the person for a period of time during which the person is on active duty" as used in s. 71.05(6)(b)34, Stats., as created by 2003 Wis. Act 183.

(2) **LIMITATION ON SUBTRACTION.** A person who is a member of a reserve component of the U.S. armed forces, who is serving on active duty or full-time duty in the active guard reserve program under 32 USC 502 (f), does not qualify for the subtraction. [!\[\]\(799877f5c2f906134441300079881630_img.jpg\)](#)



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 decision is included:

Sales and Use Taxes

Exemptions – manufacturing machinery and equipment

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SALES AND USE TAXES

 **Exemptions – manufacturing machinery and equipment.** *Wisconsin Department of Revenue vs. Wissota Sand and Gravel Company* (Dane County Circuit Court, January 27, 2005). This is a judicial review of the Wisconsin Tax Appeals Commission decision dated January 24, 2004. See *Wisconsin Tax Bulletin* #138 (April 2004), page 22, for a summary of the Commission's decision. The issues in this case are:

- A. Whether the taxpayer's activity of picking up material (bank run) which has fallen from the face of its quarry and conveying it to its primary crusher is part of the taxpayer's manufacturing operation.
- B. Whether the taxpayer's purchases of wheel loaders, skid steers, and an excavator for use in its quarry operations qualify for the exemption for manufacturing machinery and equipment.

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

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

During the period under review, the taxpayer purchased two 988F wheel loaders, both of which were used exclusively to lift the bank run from the quarry face and carry the bank run to and deposit it in the primary crusher. The taxpayer also purchased a 980F II wheel loader that was used to move the sand and gravel from drying piles to large storage piles where it was ready to be sold to customers. In addition, the taxpayer purchased two skid steer loaders, which were used to pick up breaker run that had fallen off conveyors, and replace it back onto the conveyors to be crushed.

About once per month, the taxpayer used a 322L hydraulic excavator to remove small particles of sand, called fines, from settling ponds and deposit them in a dump truck which took them to a drying pile. The fines were sold as silt or bedding sand.

The Commission concluded that (A) the taxpayer's activity of picking up material (bank run) which had fallen from the face of its quarry and conveying it to its primary crusher is part of the taxpayer's manufacturing operation, and (B) the taxpayer's purchases of the wheel loaders, skid steers, and hydraulic excavator for use in its quarry operations qualified for the exemption for manufacturing machinery and equipment. The Commission also concluded that the taxpayer's purchase of light towers for use in its quarry operations did not qualify for the exemption for manufacturing machinery and equipment and that the taxpayer was negligent for failure to report use tax on the purchases of the light towers. The taxpayer *did not* challenge the Commission's decision with respect to the light towers or the associated negligence penalty.

Although the department requested that the Circuit Court review the issue *de novo* (giving no weight to the decision given by the Commission), the Circuit Court found the Commission's decision to be reasonable and supported by substantial evidence. Therefore, the Circuit Court affirmed the decision of the Commission and remanded a portion of the case back to the Commission for purposes of making the calculations necessary to properly reflect the correct amount of tax, interest, and negligence penalty owing.

The department has not appealed this decision to the Court of Appeals. [☞](#)