

Wisconsin TAX BULLETIN


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Number 143

July 2005

Suggestions for Tax Forms?

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

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

FreeFile Free-File Continues as an On-Line Hit!


In its third season, the Department of Revenue's Free-File program was a success. Over 91,000 taxpayers took advantage of the Wisconsin Free-File program to file their 2004 Wisconsin income tax returns and homestead credit claims on-line, on time, and completely free of charge.

Taxpayers who are familiar with paper Forms 1, 1A, WI-Z, and, for those who claim homestead credit, Schedules H and H-EZ will find Free-File a comfortable way to update to the on-line world. The system provides on-line instructions to complete Free-File's on-screen fill-in forms, and uses the latest computer file encryption technology to ensure confidentiality.

(continued on page 3)

Streamlined Sales Tax Project to Meet in Milwaukee


Wisconsin is participating in the Streamlined Sales Tax Project (SSTP). The SSTP is a multi-state initiative to make sales tax laws, rules, and systems more uniform across states and thus easier for vendors to collect states' sales and use taxes.

The next meeting of the SSTP will be held on Monday and Tuesday, August 29 and 30, 2005, at the Milwaukee Hilton. All Project Meetings are open to the public. Look for agenda details and registration information, as well as additional information about the Project itself, on the SSTP web site at www.streamlinedsalestax.org. 


Tax Seminar to Be Presented in Madison

The Institute for Professionals in Taxation, in cooperation with the Wisconsin Department of Revenue, is presenting a one-day tax seminar in Madison on October 19, 2005. The all-day seminar, which will be held at the Monona Terrace Community and Convention Center, will include primarily sales tax and property tax issues but will also touch on audit issues.

Presentations on a variety of topics will be made by Department of Revenue personnel. Topics will include an update on the Streamlined Sales Tax Project, recent law changes affecting Wisconsin businesses, current litigation, a sales tax update, and a property tax update.

Additional information concerning this seminar, including the specific agenda and registration materials, will be available on the Department of Revenue's web site by the middle of August at www.dor.state.wi.us/training/events.html. 

Electronic Filing of Corporation Returns Becoming a Reality

The Department of Revenue is working with the Internal Revenue Service and the Federation of Tax Administrators (FTA) to bring the convenience, accuracy, and cost-effectiveness of electronic filing to Wisconsin corporation franchise and income tax returns. This new federal/state e-filing service is expected to be available in January of 2006. Look for updates on the department's web site at www.dor.state.wi.us and in future issues of the *Wisconsin Tax Bulletin*. 

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EFT Payment Options Now Available for Department Issued Wage Assignments

The Wisconsin Department of Revenue (DOR) is pleased to announce that employers may now make employee wage attachment payments safely and efficiently using **Electronic Funds Transfer (EFT)**. If you are currently withholding delinquent tax payments from employee compensation, you are invited to make these payments to DOR using one of the following EFT options:

- **ACH Debit** - The ACH debit method allows you to transfer funds by instructing the state to electronically debit a bank account you control by logging into the state's Internet site. There is no cost for this type of payment transaction.
- **ACH Credit** - The ACH credit method allows you to transfer funds by instructing your financial institution to debit your account and credit the state's bank account. Financial institutions may charge a fee for making ACH credit payments.
- **On-Line Payment** – The on-line payment method allows you to log on to DOR's web site and enter the payment amount to be debited from your bank account, along with the employee information. The employee information you submit is saved and available for subsequent submissions. The only requirement for this option is that you have a computer connected to the Internet.

Before you begin making EFT payments, you must register with DOR. Registration information and payment instructions are available at www.dor.state.wi.us/eserv/eft1.html. If you are already registered, you only need to go to <https://www.witaxeft.com> and add "wage attachment" as a tax type code.

If you have any questions, you may contact DOR at (608) 264-9956. [☎](#)

Undeliverable Income Tax Refunds

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

Taxpayers who request electronic deposits but have incorrect bank numbers are issued paper checks instead. This adds approximately one month to the time for a taxpayer to receive his or her refund. For taxpayers who request paper checks, checks that are returned by the Post Office are held until the taxpayer contacts Customer Service (608-266-2772) and provides a new address.

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

Wisconsin Tax Bulletin

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Income, Sales, and Excise Tax Division
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P.O. Box 8933
Madison, WI 53708-8933

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Wisconsin Department of Administration
Document Sales
P.O. Box 7840
Madison, WI 53707-7840

Annual cost \$7.00

Free-File Continues as an On-Line Hit !

(Continued from page 1)

Free-File is available through the state government e-portal at www.Wisconsin.gov or more directly at www.dor.state.wi.us.

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

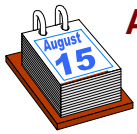
The free Internet income tax filing service is one of the ways the department is meeting its budget reduction targets, while maintaining and improving its quality of service to the taxpayers of Wisconsin.

Electronically filed tax returns help the Department of Revenue save resources because e-filed returns capture the taxpayer's keystrokes. There's no need for the department to manually enter or scan e-filed returns into its computers. Electronic filing remains the only method to receive a refund electronically within three to five days. [✎](#)

Automation and Data from External Sources to Assist Tax Gap Compliance Initiative

The Wisconsin Department of Revenue (DOR) is currently building a Tax Compliance Infrastructure system to help address tax gap issues. The "tax gap" has three components: nonfiling, underreporting, and underpayment. The Tax Compliance Infrastructure system will combine multiple internal and external data sources and apply business rules to identify individuals and businesses who are not filing required tax returns or who are underreporting their tax liabilities.

The technology and information environment created by the Tax Compliance Infrastructure system will provide better information than is currently available to DOR, and will have tools available for department staff to view and analyze the information in an effective manner. The use of better information to direct DOR staff activity will not only result in increased revenue collections, but will also help meet the department's objective of increasing fairness in tax administration through increased compliance with Wisconsin's tax laws. [✎](#)



Automatic 4-Month Extension Expires August 15

If your 2004 Wisconsin and federal individual income tax returns were due April 15, 2005, but you filed an application for an automatic 4-month extension for filing your federal return with the Internal Revenue Service (IRS), both your federal and Wisconsin returns are due August 15, 2005.

Any filing extension available under federal law may be used for Wisconsin purposes, even if you are not using that extension to file your federal return. If you did not file a federal extension application but needed a 4-month extension for Wisconsin only, your 2004 Wisconsin return, ordinarily due April 15, 2005, must be filed by August 15, 2005.

If you used the federal extension application, Form 4868, to apply for the extension of time to file your federal return, be sure to attach a copy to the 2004 Wisconsin return you file.

If you are extending the time to file your Wisconsin return only, or if you filed the application for the extension of time to file your federal return electronically or by phone, attach one of the following items to the 2004 Wisconsin return you file:

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

Note: You were not required to pay your 2004 taxes by April 15, 2005, as a condition for receiving an extension of time to file your Wisconsin tax return. However, an extension of time to file your return does not extend the time to pay your tax; taxes paid after April 15 are subject to 12% per year interest during the extension period and 18% per year interest after the extension period. [✎](#)



Wisconsin/Minnesota Sales Tax Seminars

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

October 11, 2005 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

October 18, 2005 – Hudson, Wisconsin
Hudson House
1616 Crestview Drive

October 25, 2005 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Street



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 22 of this Bulletin. The Index is also on the department's Internet web site at www.dor.state.wi.us. Just click on "Publications."



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 on-line request form at the department's web site, www.dor.state.wi.us; click on "Training."



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, phone, 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.

By Phone

Call (608) 266-1961.

Via Your Fax Machine

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.

Via the Internet

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*.

Income and Franchise Taxes

- | | |
|---|---|
| <p>102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (11/04)</p> <p>103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/04)</p> <p>104 Wisconsin Taxation of Military Personnel (5/04)</p> <p>106 Wisconsin Tax Information for Retirees (11/04)</p> <p>109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2004 (11/04)</p> <p>112 Wisconsin Estimated Tax and Estimated Surcharge for Individuals, Estates, Trusts, Corporations, Partnerships (11/02)</p> <p>113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (12/04)</p> <p>116 Income Tax Payments are Due Throughout the Year (11/02)</p> | <p>119 Limited Liability Companies (LLCs) (12/04)</p> <p>120 Net Operating Losses for Individuals, Estates, and Trusts (11/04)</p> <p>121 Reciprocity (11/03)</p> <p>122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2004 (11/04)</p> <p>123 Business Tax Credits for 2004 (12/04)</p> <p>125 Credit for Tax Paid to Another State (11/04)</p> <p>126 How Your Retirement Benefits Are Taxed (11/04)</p> <p>600 Wisconsin Taxation of Lottery Winnings (12/03)</p> <p>601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/02)</p> |
|---|---|
-
- | Sales and Use Taxes | |
|---|--|
| <p>200 Electrical Contractors – How Do Wisconsin Sales and Use Taxes Affect Your Business? (11/02)</p> <p>201 Wisconsin Sales and Use Tax Information (11/02)</p> <p>202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)</p> <p>203 Sales and Use Tax Information for Manufacturers (7/00)</p> <p>204 Sales and Use Tax Information for Colleges, Universities and Technical Colleges (3/01)</p> <p>205 Use Tax Information for Individuals (4/03)</p> <p>206 Sales Tax Exemption for Nonprofit Organizations (11/04)</p> <p>207 Sales and Use Tax Information for Contractors (9/04)</p> <p>210 Sales and Use Tax Treatment of Landscaping (11/03)</p> <p>211 Cemetery Monument Dealers – How Do Wisconsin Sales and Use Taxes Affect You? (6/00)</p> <p>212 Businesses: Do You Owe Use Tax on Imported Goods? (4/03)</p> <p>213 Travelers: Don't Forget About Use Tax (4/03)</p> <p>214 Businesses: Do You Owe Use Tax? (4/03)</p> <p>216 Filing Claims for Refund of Sales or Use Tax (2/03)</p> <p>217 Auctioneers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)</p> | |

- 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 (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

- 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 (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) [🔗](#)

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 Service Division. A comprehensive listing of telephone numbers and addresses appears in *Wisconsin Tax Bulletin* 142 (April 2005), pages 20 to 23.

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 Requests:	
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



Question and Answer ?

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

(Individual Income Tax)

Q I owned a second home in Wisconsin, which I sold earlier this year. I was not a resident of Wisconsin when I sold the home. Is the gain from the sale taxable to Wisconsin?


A Yes. Gain on the sale of a home located in Wisconsin that does not qualify for the federal exclusion for gain from the sale of a personal residence is taxable to Wisconsin, regardless of whether you are a resident or nonresident of Wisconsin at the time of the sale.

Q I am a nonresident of Wisconsin. I recently sold a cabin located in Wisconsin at a small loss. Do I have to report this sale to Wisconsin?

A Yes, if the selling price of the cabin was \$2,000 or more. As a nonresident of Wisconsin, if your gross income from Wisconsin sources is \$2,000 or more you are required to file a Wisconsin income tax return. Gross income from Wisconsin sources includes the gross selling price of property located in Wisconsin without reduction for the cost of the property, expenses of sale, or any other amounts.

(Sales and Use Tax)

Q Is the sale of dyed diesel fuel subject to Wisconsin sales tax?

A Yes. The sale of dyed diesel fuel is subject to Wisconsin sales tax, unless an exemption applies (for example, sold for use in farming). The sale of fuel that is subject to motor fuel tax (for example, clear diesel fuel and gasoline) is exempt from Wisconsin sales or use tax. 

Treasury Offset Program Pays Big Dividends

The Department of Revenue (DOR) has collected over \$14.4 million in delinquent income taxes through the Treasury Offset Program (TOP), a federal offset program implemented in Wisconsin in February 2001.

Since the program's inception, DOR has certified more than \$433 million of unpaid income taxes to Financial Management Services, the branch of the U.S. Treasury that disperses federal payments, including federal

income tax refunds. More than 23,500 delinquent taxpayers in Wisconsin have had their federal refunds intercepted, either in whole or in part, as a result of the program.

The TOP, an off-shoot of a larger program that offsets most types of federal payments on behalf of federal agencies, was first opened to state revenue departments in January 2000. To date, the thirty-six states participating in the program have collected more than \$693 million in delinquent income taxes. [↗](#)



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). [↗](#)

Use Tax Calculator Available

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

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

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

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

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

www.dor.state.wi.us. Click on "Forms," scroll down to and click on "Sales and Use Tax," and click on "Form SU-102."

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

Any questions?

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

Write: Wisconsin Department of Revenue
Mail Stop 5-77
P.O. Box 8949
Madison, WI 53708-8949

Telephone: (608) 266-2776

TTY: (608) 267-1049

Fax: (608) 267-1030

E-mail: sales10@dor.state.wi.us

Web site: www.dor.state.wi.us [↗](#)

Use Sufficient Postage

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

address, so the envelope won't end up in the "dead-letter office").

Envelopes that will need additional postage include those that weigh more than one ounce. This may occur if the envelope contains more than five pages or is oversized (for example, more than 1/4 inch thick). [✎](#)



Sales and Use Tax Report Mailed

The June 2005 *Sales and Use Tax Report* (1-05) was sent in late June and early July to all persons registered for Wisconsin sales and use tax purposes. The *Sales and Use Tax Report* contains summaries of any recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the June 2005 Report include:

- *Sales and Use Tax Report* available on-line;
- filing sales and use tax returns electronically; and
- video gambling machines.

A copy of the Report appears on pages 16 and 17 of this Bulletin. It is also available on the Department of Revenue's web site at www.dor.state.wi.us/ise/sales/05-1.pdf. [✎](#)

Sales and Use Tax Treatment of Computer Hardware, Software, and Services

Businesses that provide computer related services or that sell, lease, or license computer hardware or computer software should be aware of the Wisconsin sales and use tax provisions that relate to these activities. A copy of frequently asked questions (FAQs) and answers

concerning the Wisconsin sales and use tax treatment of computer hardware, software, and services appears on pages 18 through 21 of this Bulletin. These questions and answers may also be found on the department's web site at www.dor.state.wi.us. Click on "FAQs" and then "Business," and then see "Computer – Hardware, Software, Internet" under the heading "Sales Tax Treatment." [✎](#)

Enforcement Report

Michael T. Nelson, 44, of Rhinelander, Wisconsin was sentenced in February 2005 in Oneida County after pleading no contest to one count of operating without a seller's permit, one count of evading tax by using his revoked seller's permit to improperly claim exemption for resale on his purchases, one count of misdemeanor theft, and one count of felony theft. Eighteen counts were dismissed according to the terms of a plea agreement reached with the Oneida County District Attorney.

Assistant District Attorney Ruth Kressel noted that Nelson paid his total outstanding tax liability of \$43,900 to the Department of Revenue and posted a \$10,000 security bond in December of 2004. Kressel stated that in spite of the fact that the Department of Revenue made many attempts to collect the taxes from Nelson, he waited until after he had been charged with the crimes

and nine months after the department had revoked his seller's permit to pay the liability.

Nelson was sentenced by Circuit Court Judge Robert Kinney to 30 days in jail on each of the three misdemeanor counts, to be served concurrently with work release privileges. He was also ordered to pay court costs. In sentencing Nelson, Judge Kinney rejected the defense argument that Nelson's crimes were victimless. Judge Kinney stated that all the taxpayers of the state are victims. Judge Kinney questioned whether Nelson understood the seriousness of the charges. He noted Nelson's argument that there were many demands on the money of the business, but told Nelson that the tax liability was the first one Nelson had to pay.

A deferred prosecution agreement was entered on the felony count. Under the terms of the agreement, Nelson is required to file and pay all taxes in a timely manner and to obtain any necessary seller's permits for any business he is involved with. If he complies with the

terms of the agreement for a period of 30 months, the felony charge will be dismissed.

Nelson was charged in November 2004 with two felony counts and eight misdemeanor counts of theft of sales taxes. 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 and with six 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 due January 20, 2004, to report the taxes collected by Hodag Express for 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, so the Department of Revenue notified Nelson on Friday, March 12, 2004 that he was operating illegally and that further operation would result in a criminal investigation. 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 revealed that Nelson was open and charging customers for work and also for the sales tax.

The theft charges were made because Nelson failed to pay sales taxes due with ten monthly sales tax returns that were submitted to the Department of Revenue for 2002 and 2003. Six of the returns were submitted without payment and four were submitted with checks that were subsequently returned NSF. The total amount of sales taxes Nelson was alleged to have stolen, in spite of having collected the tax from customers, is \$22,702.79.

The charges were the result of an investigation by the Department of Revenue's Criminal Investigation Section and Compliance Bureau.

Criminal charges were filed in March 2005 in Dane County Circuit Court against a Walworth County man for filing fraudulent state income tax returns and evading \$99,689 in state income taxes. The Dane County District Attorney's Office initiated the charges after an investigation by the Wisconsin Department of Revenue's Fraud Unit.

According to the complaint, Richard F. Cucco, 50, of Lake Geneva, evaded taxes for the 1998 and 1999 years by underreporting \$2,237,044 on his Wisconsin income tax returns by falsely claiming that he was an Illinois resident. At that time, the income tax rate in Wisconsin was 6.93% while the tax rate in Illinois was only 3%. The unreported income was derived from Cucco's business, Imagetec, located in McHenry, Illinois.

According to the complaint, Cucco and his wife Martha purchased a home in Lake Geneva, Wisconsin, in 1989 for \$265,000. In December 1990, they sold their home in Barrington, Illinois. At this time Cucco was working for Camadon, Inc., a copy machine leasing company located in Pewaukee, Wisconsin. By 1990 or 1991, Cucco had been promoted to Senior Vice President at Camadon. In 1992, Cucco left Camadon and formed his own copy machine business, Imagetec, in Buffalo Grove, Illinois, while he continued to reside in Lake Geneva.

From 1991 through 1994, the Cuccos filed joint Wisconsin income tax returns reporting themselves as Wisconsin residents living in Lake Geneva, while Cucco's Imagetec business continued to grow.

According to the complaint, sometime in 1995, while he still resided in Lake Geneva, Cucco approached his administrative manager who oversaw payroll and directed her to have his payroll information changed to list his home as an address in Northbrook, Illinois. At that time, Cucco provided no reason for the change other than to have her make the change, stating that it was something that he wanted done, and that was how he was going to get around things. The manager later learned that the Northbrook address was actually that of Cucco's father, Dr. Ulise Cucco. The manager believed, however, that Cucco still lived in Lake Geneva and on occasion, after she made the change, she attended social functions at or brought work to his home there.

The complaint goes on to state that around the same time as he had his payroll information changed, Cucco also told his accountant that he and his wife, Martha, had separated and that he was now living with his father

in Northbrook, Illinois. He indicated that he would not be filing Wisconsin income tax returns anymore.

In a statement taken in October 2002, Cucco's father asserted that while he has lived in Northbrook since 1970, his son, Richard, had not lived with him there for the past twenty years.

According to the complaint, one of Richard's siblings stated that on occasion Richard Cucco had remarked to him that Richard had things sent to their father's home to make it look as though he was living there, even though he was not. He also stated that Richard never moved back to Illinois and that on a few occasions Richard bragged about how he was getting away with not paying Wisconsin taxes even though he lived in Wisconsin.

According to the complaint, the investigation showed that Richard Cucco obtained a Wisconsin driver's license by 1993 and later renewed it on February 12, 1997. Traffic citations that Cucco received in 1999 and 2002 show that he lived at the Lake Geneva address.

Wisconsin Department of Transportation records show that during 1998 and 1999 Richard and Martha Cucco had several vehicles registered at their Lake Geneva home, including a 1991 Porsche, a 1998 Chevrolet, a 1999 Land Rover, and a 1999 Volkswagen.

The complaint states Richard Cucco joined the Bigfoot Country Club in Fontana, Wisconsin in 1997, listing his Lake Geneva address as his home. Cucco continued to list his Lake Geneva address as his residence in yearbooks put out by the country club for each year between 1997 and 2001.

The complaint also states that the parish priest for St. Francis De Sales Catholic Church in Lake Geneva reported that Richard and Martha Cucco had been active members of his church since August 1990.

In May 2002, the Cuccos sold their home on East Valley Park Road in Lake Geneva for \$730,000 and purchased a home on Basswood Drive for \$3,130,000.

If convicted on both counts, Cucco could face up to twelve years in prison and \$20,000 in fines.

In addition to 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.

Robert A. Spangler, 54, of Elkhorn, Wisconsin, pled guilty in April 2005 in Walworth County Circuit Court for failure to file state income tax returns for the years 2001, 2002, and 2003. Spangler was charged with the tax crimes in a complaint filed in December 2004 by the Walworth County District Attorney's Office after an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

According to the criminal complaint, Spangler had not filed state or federal income tax returns since 1995. The complaint alleges that the Wisconsin Department of Revenue had been in contact with Spangler in 1996, requesting him to file tax returns. Spangler refused, however, and responded to the department's correspondence by either returning it marked "acceptance denied" or by sending back canned tax protestor documents.

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 estimated assessment that had been issued due to Spangler's failure to file income tax returns. 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 cash 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 accounts and paid for what appeared to be personal expenses.

Spangler was scheduled to be sentenced in June 2005 and could face up to 27 months in jail, \$30,000 in fines, or both.

Former insurance agent Thomas E. Mikunda, 55, of Exeland, Wisconsin, pled guilty in May 2005 to three felonies in Rusk County Circuit Court. According to the terms of a plea agreement, guilty pleas were entered for two counts of engaging in unfair trade practices and one

count of filing a false Wisconsin income tax return. Mikunda's sentencing was scheduled for August 2005.

Mikunda was originally 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.

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 alleged 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 alleged that Mikunda deposited \$163,451 in cash and checks from elderly clients into 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 them not to 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 the conviction for criminal charges.



WT-7 and W-2 Electronic Filing

Did you know you could have filed your Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, electronically and for free this year? Over 2,000 employers did!

The Department of Revenue (DOR) launched **WT-7 Free-File** early in January 2005. This application has many benefits for employers as well as DOR:

Employers

- Receive confirmation that your return was received.
- Save postage and eliminate the risk of your return being lost in the mail.
- You can make an electronic payment right in the application, and receive confirmation that your payment was received.
- It's quick, easy, safe, and free!


DOR

- Less paper to handle.

- It saves time and money!

There are a few restrictions that apply. For more information, or to file your WT-7 (the application is available all year long), visit our website at: <https://ww2.dor.state.wi.us/GenericFile/application?interview=1119640>

Starting in January 2006, DOR will also be accepting **WT-7 electronic file transmission over the Internet!** This alternative will provide Wisconsin employers and/or their representatives an electronic interface between their systems and DOR. This alternative may be of particular interest to payroll providers who file many WT-7 reports each year. To find out more about this alternative, visit our website at www.dor.state.wi.us/eserv/index.html. Information will be available throughout the summer.

Along with filing W-2s on magnetic media, you may also **file W-2s on-line** at www.dor.state.wi.us/eserv/w-2.html. For more information on filing wage statements, reference Publication 509, *Filing Wage Statements and Information Returns on Magnetic Media or by Electronic Transmission*, at www.dor.state.wi.us/html/pubs.html. 

Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of July 1, 2005, and at each step where action occurred during the period from April 2, 2005, through July 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 22 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Adopted and in Effect (5/1/05)

1.12 Electronic funds transfer – A

A summary of the changes to Tax 1.12 and a reproduction of some of the text of the revised rule may be found in the article below titled “Recently Adopted Rule Summarized.” [✎](#)

Recently Adopted Rule Summarized

Summarized below is information regarding a rule that was amended effective May 1, 2005. Included is information concerning Tax 1.12, relating to electronic funds transfer (EFT). In addition to a summary of the changes to the rule, some of the text of the revised rule is reproduced. In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

Tax 1.12 Electronic funds transfer. Tax 1.12(4)(a)(intro.) is revised, to reflect the creation of a new subdivision. Tax 1.12(4)(a)12. is created, to provide that payments of certain installment agreements on overdue tax accounts are required to be made by electronic funds transfer.

The text of Tax 1.12(4) is as follows:

(4) REQUIREMENT OR ELECTION TO USE EFT. (a) Except as provided in sub. (11), the department requires a person who owes taxes and fees as described in subds. 1. to ~~4.~~ 12. to pay or deposit the taxes and fees using the EFT payment method. The following taxes and fees are included in the EFT payment requirement:

1. Corporate income and franchise tax estimated tax payments and tax due with the tax return when the net tax less refundable credits on the prior year's tax return was \$40,000 or more.
2. Income tax withholding payments when the required deposits were \$10,000 or more in the prior calendar year.
3. General, county and stadium sales and use tax when the aggregate amount due in the prior calendar year was \$10,000 or more.

Note: See s. Tax 11.001 (2) (d) for the definition of stadium tax.

4. Fermented malt beverages tax when the tax due after the adjustment for any overpayment or additional amount due for

a previous period was \$40,000 or more in the prior calendar year.

5. Liquor or “distilled spirits and wine” tax and administrative fee when the aggregate net amount of tax and fee due in the prior calendar year was \$40,000 or more.

6. Cigarette tax when the net tax due before printing and shipping costs was \$40,000 or more in the prior calendar year.

7. Tobacco products tax when the tax due in the prior calendar year was \$40,000 or more.

8. Alternate fuels tax when the total tax due in the prior calendar year was \$40,000 or more.

9. General aviation fuel tax when the tax due in the prior calendar year was \$40,000 or more.

10. Motor vehicle fuel tax and petroleum inspection fee when the aggregate amount due in the prior calendar year was \$40,000 or more.

11. Individual and fiduciary income tax estimated tax payments when the estimated tax payments as required under s. 71.09, Stats., were \$40,000 or more in the prior taxable year.

12. Installment agreement payments on overdue tax accounts, if at least one of the following requirements are met:

- a. The initial overdue balance is at least \$2,000.
- b. The installment agreement is for more than 2 years in length.
- c. The installment agreement was requested by an entity with an active business permit.
- d. The installment agreement is for a person with an out-of-state account.
- e. The payment history of the account dictates that it would be in the department's best interest to require EFT.

(b) Any person not required to use the EFT payment method under par. (a) may elect to use the EFT payment method to pay or deposit the taxes or fees specified in par. (a).



Report on Litigation

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

The following decisions are included:

Individual Income Taxes

Native Americans – reservation of another tribe


Edward and Margaret Snow 14

Withholding Taxes

Nonresident entertainers – employer liability

Wisconsin Health Care Association, Inc. 14

INDIVIDUAL INCOME TAXES

 **Native Americans – reservation of another tribe.** *Edward and Margaret Snow vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 31, 2005). The issue in this case is whether a member of one tribe who is living and working on the reservation of another tribe is subject to the Wisconsin income tax.

The taxpayer, Edward Snow, is an enrolled member of the Lac du Flambeau Band of Lake Superior Chippewa Indians. The taxpayer's spouse, Margaret Snow, is an enrolled member of the Menominee Tribe of Indians of Wisconsin (the Menominee Tribe). The taxpayers reside together within the Menominee Indian Reservation Boundaries.

The taxpayers filed Wisconsin income tax returns for the years at issue, claiming a deduction for all earned income. The deduction for the taxpayer's income was based on his status as an enrolled member of a federally recognized Indian tribe who lived and worked on a federally recognized Indian reservation.

By notice dated June 19, 2000, the department disallowed that portion of the deductions claimed that represented the taxpayer's income for each of the years at issue. Under date of July 16, 2000, the taxpayers filed a petition for redetermination, which was denied by the department in a Notice of Action issued July 9, 2001.


On September 10, 2001, the taxpayers filed a timely petition for review with the Commission.

The Commission concluded that the issue in this case is identical to the issue decided in *Joan La Rock vs. Wisconsin Department of Revenue* (see *Wisconsin Tax Bulletin* 110 [July 1998], page 14, 111 [October 1998], page 12, 119 [April 2000], page 15, and 125 [July 2001], page 14 for summaries of the decisions in this case), and that Wisconsin may impose an income tax on the taxpayer, an Indian who is an enrolled member of the Lac du Flambeau Band of Lake Superior Chippewa Indians but who lives and works on the Menominee Indian Reservation, because he is not a member of the Menominee Tribe.

The taxpayers argued that the facts in their case were clearly distinguishable from those in *La Rock*, but failed to state in the brief that they filed or otherwise establish any distinguishable facts between the two cases.

The taxpayers have appealed this decision to the Circuit Court. [↗](#)

WITHHOLDING TAXES

 **Nonresident entertainers – employer liability.** *Wisconsin Health Care Association, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 10, 2005). The issues in this case are:

- A. Whether the taxpayer was an “employer,” as that term is defined in sec. 71.80(15)(a), Wis. Stats., of certain nonresident entertainers during the years at issue.
- B. Whether the taxpayer engaged the services of an “entertainer,” as that term is defined in sec. 71.01(2), Wis. Stats.
- C. Whether the taxpayer is personally liable, under sec. 71.80(15)(e), for the surety bond that the nonresident entertainers failed to file with the department, as required by sec. 71.80(15)(b), Wis. Stats., or the cash deposit equal to the face value of the surety bond, as required by sec. 71.80(15)(c), Wis. Stats.

The taxpayer is a Wisconsin corporation that was organized in 1955. It is a trade association with about 225 members, at least during the years at issue, representing long-term care providers, such as nursing homes and assisted living facilities, within the state of Wisconsin. One of the taxpayer's functions is to provide educational information related to the long-term care profession to its members and their employees by conducting seminars, conferences, and two conventions per year. The taxpayer has a tax exempt status designation under §501(c)(6) of the Internal Revenue Code.

During the years at issue, the taxpayer held educational seminars, conferences, and conventions in the state of Wisconsin. The seminars, conferences, and conventions were not restricted to the taxpayer's members. Both members and nonmembers of the taxpayer's association attended the seminars. Between 200 and 250 people attended each convention during the years at issue, and between 50 and 150 people attended each seminar. Information provided by the taxpayer indicates that the majority of the attendees of the conventions and seminars were members of its association.

For four seminars and one convention held by the taxpayer between January 1999 and October 2001, the services of a speaker were contracted. In each instance, the firm that the taxpayer contracted with did not file the required surety bond or cash deposit equal to the face value of the surety bond with the department. The taxpayer did not require proof from the firms that the surety bond or cash deposit equal to the face value of the surety bond was filed with the department as required, even though they had direct knowledge of the total contract price to be paid to each firm.

In January 2003, the department assessed withholding tax personally against the taxpayer, as they did not withhold from the contract price to be paid to each firm the amount of the surety bond or cash deposit equal to the face value of the surety bond. In March 2003, the taxpayer filed a petition of redetermination in response to the assessment, which the department denied in December 2003. The taxpayer filed a timely petition for review with the Commission in February 2004.

The taxpayer argued that the firms that they contracted with were not entertainers as defined by sec. 71.01(2), Wis. Stats., because they provided educational presentations in a seminar forum and were therefore not for amusement or entertainment. They also argued that the presentations were not "public speaking services" as contemplated in the statutes, as that term is not defined and is ambiguous. They asserted that in order for a per-

son to engage in "public speaking services," that person must be speaking in a forum open to the "general public." Therefore, since the firms that they contracted with made speaking presentations before limited groups of its members and a small number of nonmembers at various conventions and seminars, the presentations were not open to the general public and were not "public speaking services."

The Commission concluded as follows:

- A. The taxpayer was the employer of, and engaged the services of, the firms contracted with.
- B. The firms contracted with were entertainers, as that term is defined in sec. 71.01(2), Wis. Stats.

The phrase "public speaking" is not ambiguous for purposes of statutory interpretation. When the language of the statute is unambiguous, the Court must apply the plain meaning. "[P]ublic speaking" is defined as "The art or process of making speeches before an audience." Websters II New College Dictionary at 895 (2001). This definition is not vague or ambiguous. There is simply no requirement that the speech must be open to the general public.

The taxpayer contracted with the firms to speak before audiences at conventions and seminars. At each convention or seminar, these speeches were given to audiences of between 50 and 250 people. These presentations of speaking in front of an audience clearly fit into the definition of "public speaking services." Therefore, the firms contracted with were entertainers.

- C. The taxpayer is personally liable under sec. 71.80(15)(e), Wis. Stats., for the surety bond that the firms contracted with failed to file with the department, as required by sec. 71.80(15)(b), Wis. Stats., or the cash deposit equal to the face value of the bond, as required by sec. 71.80(15)(c), Wis. Stats.

The taxpayer has not appealed this decision. [!\[\]\(e3275251d0893157c3584e20c81dc3ba_img.jpg\)](#)