

Wisconsin TAX BULLETIN

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Florence County Adopts County Tax

Effective July 1, 2006, the county sales and use tax will be in effect in Florence County. This brings to 59 the number of counties that have adopted the 1/2% county tax.

Retailers were notified about Florence County's adoption of the county tax in the March 2006 *Sales and Use Tax Report* (number 1-06). A copy of the Report appears on pages 22 to 25 of this Bulletin.

For additional information about the county tax, see Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII, on pages 39 to 45. Publication 201 is available from any Department of Revenue office. See the article titled "Tax Publications Available" on page 14 of this Bulletin for information about how to obtain copies of Publication 201 by mail, phone, fax, or the Internet. [☞](#)

Regional Transit Authority Fee to be Imposed

Effective June 1, 2006, a \$2.00 fee will be imposed for each transaction in Kenosha, Milwaukee, and Racine counties for the rental of Type I automobiles by establishments primarily engaged in the short-term rental of passenger cars without drivers, for a period of 30 days or less. The fee will be imposed by the regional transit authority created by the counties of Kenosha, Milwaukee, and Racine.

This fee will be collected from the person to whom the passenger car is rented, and the retailer that collects this fee will be required to separately state the fee on the receipt that the retailer provides to the rental customer.

The Department of Revenue will administer the fee and distribute 97.45% of the fees collected to the regional transit authority. Retailers liable for the fee will be notified of their new requirements.

Additional information, including the exemptions that apply to the fee, is provided in *Wisconsin Tax Bulletin* 144 (September 2005), pages 18 to 20. [☞](#)

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 Taxpayer Services Division and the Income, Sales, and Excise Tax Division.

The listing appears on pages 26 to 30 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. [☞](#)

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Businesses Contacted Concerning Filing Sales and Use Tax Returns Electronically


In February the Wisconsin Department of Revenue (DOR) began sending letters to Wisconsin businesses encouraging them to electronically file their Wisconsin sales and use tax returns. DOR's goal is to have all Wisconsin businesses e-filing by June of 2007. Since the ability to file Wisconsin sales tax returns electronically was introduced in 1999, more and more merchants are choosing the convenience of e-filing sales tax payments online versus the old-fashioned paper method. DOR receives over 900,000 sales tax returns annually, 57% of which are currently still filed on paper.

Electronic filing is more accurate because a computer does the arithmetic and eliminates errors. Businesses can be sure the return was received by DOR and a file is kept. Plus, fewer return adjustments are made on e-filed returns, so interest payments can be avoided.

There are three ways a business can e-file their sales tax returns:


- **Sales Internet Process (SIP):** A free Internet filing application. A business can make a tax payment electronically or by check or money order.
- **XML File Transmission:** Sales tax returns can be reported securely via the Internet with authorized vendor software or converting your file to XML format.
- **Telefile:** Any touch-tone phone will do. Dial (608)261-5340 in Madison or (414) 227-3895 in Milwaukee.

If e-filing imposes an undue hardship on a business, a waiver may be requested. Further information can be

found on DOR's website at www.dor.state.wi.us or by calling (608) 261-6261. 

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 isetechns@dor.state.wi.us. Your suggestions could help make "tax time" easier for taxpayers and practitioners. 

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2006 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 2006 Wisconsin income tax return are required to pay 2006 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 2006 Form 1-ES, *Wisconsin Estimated Income Tax Voucher*, is filed with each estimated tax payment. (**Note:** Only individuals and fiduciaries making estimated **income** tax payments may file a Form 1-ES.)

For calendar year taxpayers, the first estimated income tax payment is due on April 17, 2006 (April 15 is a Saturday and April 16 is a Sunday). Installment payments are also due on June 15, 2006, September 15, 2006, and January 16, 2007 (January 15 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, 2005. 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, 2007.

A trust that is subject to tax on unrelated business income is generally required to pay 2006 Wisconsin estimated income tax if it expects to owe \$500 or more (including recycling surcharge) on a 2006 Wisconsin franchise or income tax return (Form 4T). A 2006 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 estimated tax payments are not made when required or any installment is underpaid, interest may be assessed. [☞](#)

Publication Focuses on Temporary Events

What is the tax treatment of sales by persons at temporary events such as swap meets, flea markets, and craft fairs? What are the requirements of organizers of temporary events to report information to the Department of Revenue relating to persons selling at such events?

Answers to these and other questions relating to temporary events can be found in a publication titled *Temporary Events* (Publication 228). This publication also includes examples of taxable and exempt sales

made by sellers at temporary events and other helpful information.

A copy of Publication 228 appears on pages 37 to 51 of this Bulletin. It is also available on the Department of Revenue's web site at www.dor.state.wi.us/pubs/pb228.pdf. To obtain additional copies of this or other publications, see the article titled "Tax Publications Available" on page 14 of this Bulletin.

Additional information concerning temporary events is also available in the article titled "Collecting Sales Tax at Temporary Events" on page 4 of this Bulletin. [☞](#)

Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available in March. The March 2006 *Sales and Use Tax Report* (1-06) contains summaries of recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the March 2006 Report include:

- new tax law;
- Florence County adopts county tax;

- regional transit authority fee to be imposed;
- don't forget use tax;
- filing sales and use tax returns electronically; and
- question and answer.

A copy of the Report appears on pages 22 to 25 of this Bulletin. It is also available on the Department of Revenue's web site at www.dor.state.wi.us/ise/sales/06-1.pdf. [☞](#)

Collecting Sales Tax at Temporary Events

Spring is here, and so are trade shows, fairs, flea markets, and craft shows. 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 (920) 832-2910 or cpurath@dor.state.wi.us. 



Hiring a Speaker? You May Be Required to Withhold Wisconsin Income Tax

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. This includes a foreign corporation, partnership, or other entity not regularly engaged in business in Wisconsin that derives income from any of these activities or from these services performed by a

nonresident person. (A foreign corporation, partnership, or other entity is one not organized under the laws of Wisconsin.)

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*. Publication 508 is available on the Department of Revenue's web site at

www.dor.state.wi.us/pubs/pb508.pdf. Also see the article titled “Tax Publications Available” on page 14 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) 



Farmers Receive \$24.9 Million in Farmland Credits

Direct benefits of approximately \$24.9 million were distributed to Wisconsin farmers in 2005, primarily for the 2004 tax year, through the farmland preservation credit program and the farmland tax relief credit program.

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 54,000 farmers claimed farmland tax relief credits totaling \$11.6 million in 2005, for an average credit of \$215.

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. For the 2004 tax year (credits claimed in 2005), the credit was equal to 15% of the first \$10,000 of property taxes on farmland. For the 2005 tax year (credits

claimed in 2006), the credit is equal to 20% of the first \$7,500 of property taxes on farmland.


Farmland Preservation Credit Program

About 19,500 farmers claimed farmland preservation credits totaling \$13.3 million in 2005. The credit averaged \$684 per claimant. About 36% of farm owners with 35 or more acres claimed the credit, which equaled about 20% 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. 

Voluntary Disclosure Pays

If an individual or 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 31 to 33, relating to additional taxes or excessive credits on previously filed returns.

- Pages 34 to 36, relating to unfiled returns.

Information regarding the Voluntary Disclosure Program can 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
Mail Stop 5-144
P.O. Box 8906
Madison WI 53708-8906



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 9 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 (see definition above) from Wisconsin sources of \$600 or more regardless of the taxable income.

Wisconsin source income includes income or gain from:

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

Residency of a 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.

Law change effective on October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2005, 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, 2005, 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, 2005, 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, 2005, and James was a Wisconsin resident at the 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, 2005, she made an irrevocable gift to the trust of \$2 million of her company stock. The value of the assets in the trust is \$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, 2005, 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 2005, 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.

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 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 modified by 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

The department will issue a 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 CC, Part II.

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. [✉](#)

Reminder: Personal Representative Fees Taxable to the Recipient

Every year, the Department of Revenue discovers 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, federal 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), federal 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 concerning the taxability of personal representative fees, please contact the department at (608) 266-2772 or via e-mail at income@dor.state.wi.us. [✉](#)

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 2005 are as follows:

- a. Single person:
 - (1) Under age 65 - gross income of \$9,000 or more.
 - (2) Age 65 or over - gross income of \$9,120 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 \$11,250 or more.
 - (2) Age 65 or over - gross income of \$11,500 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
Mail Stop 3-138
P.O. Box 8903
Madison, WI 53708-8903.

If a taxpayer’s spouse died during 2005 and the taxpayer did not remarry in 2005, a joint return may be filed. A joint return for 2005 may also be filed if a taxpayer’s spouse died in 2006 before filing a 2005 return. A joint return should show the deceased spouse’s 2005 income before death and the surviving spouse’s income for all of 2005. “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

The estate of a decedent is considered resident of Wisconsin if the decedent was domiciled in Wisconsin at the time of death.

Every personal representative or special administrator of a resident estate 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.

Nonresident Estate

The estate of a decedent is considered nonresident of Wisconsin if the decedent was not domiciled in Wisconsin at the time of death.

Every personal representative or special administrator of a nonresident estate must file a *Wisconsin Fiduciary Income Tax Return*, Form 2, if it has gross income (as described under “*Resident Estate*” on page 9) of \$600 or more from Wisconsin sources. 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

The department will issue a 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 included 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 CC, as well as the information

requested in Part I of Schedule CC, should also be included 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 a *Wisconsin Estate Tax Return*, Form W706, is required to be filed (see the next section of this article titled “Estate Tax Return”), the Closing Certificate for Fiduciaries will not be issued until Form 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 that return, the following procedures should be used.

- a. Complete the top portion of Form 2, above line 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. Sign and date the Form 2.
- d. Complete Part I of Schedule CC.
- e. Attach Schedule CC, the information requested in Part I of Schedule CC, and 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 for 2005 and \$2,000,000 for 2006 and 2007. 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). An *Estate Tax Computation Schedule*, Schedule TC, should accompany 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, 2005. 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, 2006, 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 114 (1% x 9 1/2 months)
 Total \$1,314

2. Decedent B died April 15, 2005, 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, 2006, and showed no tax due. This estate owes the minimum penalty of \$25.

Copies of Form W706, instructions, Schedule TC, Form W4768, and Form 401T, as well as earlier versions of the forms, are available by accessing the department's web site, www.dor.state.wi.us. Click on

"Forms," then scroll to and click on "Estate, Inheritance and Gift Tax."

Certificate Determining Estate Tax

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

Inheritance Tax Return

There is no Wisconsin inheritance tax for decedents dying on or after January 1, 1992. If death occurred prior to January 1, 1992, you may obtain information and the appropriate forms by calling (608) 266-2772, or by accessing the department's web site, www.dor.state.wi.us. Click on "Forms," then scroll to and click on "Estate, Inheritance and Gift Tax."

Note: Wisconsin continues to have an estate tax. See the previous section of this article titled "Estate Tax Return." [↗](#)

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 and indicate no activity by entering zeros.
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 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 D.

*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 and Withholding 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 Internet web site at www.dor.state.wi.us. 


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 online 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 online, 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 52 of this Bulletin. The Index is also on the department's web site at www.dor.state.wi.us. Just click on “Publications.” 

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 online 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

- 102 Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/05)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/05)
- 104 Wisconsin Taxation of Military Personnel (10/05)
- 106 Wisconsin Tax Information for Retirees (12/05)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2005 (11/05)
- 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 (2/06)
- 116 Income Tax Payments are Due Throughout the Year (1/06)

- 119 Limited Liability Companies (LLCs) (12/05)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/05)
- 121 Reciprocity (12/05)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2004 (11/05)
- 123 Business Tax Credits for 2005 (12/05)
- 125 Credit for Tax Paid to Another State (11/05)
- 126 How Your Retirement Benefits Are Taxed (11/05)
- 600 Wisconsin Taxation of Lottery Winnings (12/03)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/02)

Sales and Use Taxes

- 200 Electrical Contractors – How Do Wisconsin Sales and Use Taxes Affect Your Business? (11/02)
- 201 Wisconsin Sales and Use Tax Information (11/02)
- 202 Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)
- 203 Sales and Use Tax Information for Manufacturers (7/00)
- 204 Sales and Use Tax Information for Colleges, Universities and Technical Colleges (3/01)
- 205 Use Tax Information for Individuals (4/03)
- 206* Sales Tax Exemption for Nonprofit Organizations (1/06)
- 207 Sales and Use Tax Information for Contractors (9/04)
- 210 Sales and Use Tax Treatment of Landscaping (11/03)
- 211 Cemetery Monument Dealers – How Do Wisconsin Sales and Use Taxes Affect You? (6/00)
- 212 Businesses: Do You Owe Use Tax on Imported Goods? (4/03)
- 213 Travelers: Don't Forget About Use Tax (4/03)
- 214 Businesses: Do You Owe Use Tax? (4/03)
- 216 Filing Claims for Refund of Sales or Use Tax (2/03)
- 217 Auctioneers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)

- 219 Hotels, Motels, and Other Lodging Providers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (2/03)
- 220 Grocers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/01)
- 221 Farm Suppliers and Farmers – How Do Wisconsin Sales and Use Taxes Affect Sales to Farmers? (3/02)
- 222* Motor Vehicle Fuel Users: Do You Owe Use Tax? (3/06)
- 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? (3/06)
- 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)
- 228 Temporary Events (9/05)
- 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 (7/05)
- MF-106* Alternate Fuel Tax Information (3/06)
- MF-107* Motor Vehicle Fuel Tax Information (3/06)
- MF-108* General Aviation Fuel Tax Information (3/06)
- 302 Wisconsin Alcohol Beverage and Tobacco Laws for Retailers (1/06)

Other Taxes and Credits

- 127 Wisconsin Homestead Credit Situations and Solutions (12/05)
- 400 Wisconsin's Recycling Surcharge (12/05)
- 403 Premier Resort Area Tax (8/05)
- 410* Local Exposition Taxes (3/06)

- 503 Wisconsin Farmland Preservation Credit (12/05)
- 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 (2/06)

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 2006 Handbook for Federal/State Electronic Filing (11/05)
- 117 Guide to Wisconsin Information Returns (1/06)
- 124 Petition for Compromise of Taxes (12/05)
- 130* Fax A Form (2/06)
- 401 Extensions of Time to File (1/06)
- 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 . . . (1/06) [🔗](#)



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* 146 (February 2006), pages 44 to 78. It includes information for issues 1 to 145 (through November 2005). [\[E\]](#)



Enforcement Report

Brothers Sentenced for Tax Fraud

Two brothers who operated 11 “Tobacco Deals” cigarette stores in and around Milwaukee were sentenced to prison in March 2006 for their part in a sales tax scheme that bilked Wisconsin taxpayers out of \$1.2 million between 1998 and 2002. The brothers were prosecuted by the Wisconsin Department of Justice after an investigation by the Department of Revenue’s Criminal Investigation Section.

Ali Shanaa, who owned the stores, received a prison sentence of 42 months with 18 months confinement and 24 months of extended supervision. Assem Chanaa, who managed the stores, was sentenced to 37 months with 13 months confinement. They previously pled guilty to criminal charges of sales tax theft and tobacco tax evasion in October 2005.

Between March 1998 and December 2002, the brothers falsified over 300 sales tax returns underreporting their cigarette sales. According to the Department of Revenue, the brothers skimmed \$810,000 of sales taxes collected between January 2001 and December 2002. Almost \$15 million in cigarette sales were not reported on their monthly sales tax returns.

Revenue agents estimate the brothers skimmed an additional \$400,000 in years prior to 2001. In addition, the Department of Revenue estimated that Ali Shanaa skimmed over \$50,000 in Minnesota sales taxes from businesses he operated there in 2001 and 2002.

According to court documents, the brothers started their operation in March 1998 with one store in West Allis, Wisconsin. By March 2002, they had expanded to include 11 different locations scattered throughout Wisconsin in 7 different cities including West Allis, Cudahy, St. Francis, Burlington, Janesville, Madison, and 5 stores in Milwaukee.

They operated under 7 different corporations and used 11 different bank accounts. Three of the bank accounts

used fictitious names not registered with the State Department of Financial Institutions.

Between January 2001 and November 2002, they made deposits of \$11 million in cash alone into 9 of the accounts, and made numerous transfers between the accounts. Between 2000 and 2002, they transferred at least \$300,000 to an account at the Bank of Beirut in Lebanon. Over half of these transfers consisted of small denomination money orders purchased with cash that evaded Internal Revenue Service reporting requirements. On October 22, 2002, Ali Shanaa wire-transferred an additional \$175,000 to a Bank of Beirut account in Lebanon.

In a personal financial statement dated November 30, 2001, Ali Shanaa listed assets of \$55,000 in cash and \$155,000 in furnishings and gold.

Since 1999, Ali Shanaa and his wife, Amy, have purchased several homes including a home in Apple Valley, Minnesota in June 1999 for \$285,000; a home in Franklin, Wisconsin, in July 2002 for \$425,000; and two homes in Blaine, Minnesota, one in November 2003 for \$399,000 and another in August 2004 for \$325,000. Assem Chanaa currently resides in the Blaine, Minnesota home purchased in August 2004.

In April 2001, Amy Shanaa purchased a \$49,000 BMW SUV and between October 2002 and March 2003, Ali and Amy Shanaa wrote checks on an account at the Franklin State Bank for \$61,000 in personal expenses including mortgage payments, travel agency expenses, credit card bills, and auto loan payments. Between February 24, 2003 and March 4, 2003, the Shanaa’s also transferred \$55,000 out of this account to a new account at the Bremer Bank in Minnesota.

Court documents also show that the brothers attempted to impede the Department of Revenue’s investigation by claiming they had not maintained books, ledgers, sales records, or bank account records. Ali Shanaa also tried to further mislead investigators by providing only 2 of every 4 monthly vendor invoices for his cigarette

purchases, in an attempt to make it appear that he was purchasing fewer cigarettes than he really was.

By September 2002, the brothers attempted to distance themselves from the operation by purporting to sell the entire business to another person, while still secretly retaining control.

In addition to the theft of sales tax money, the brothers also evaded Wisconsin excise taxes due on tobacco products by purchasing thousands of dollars of tobacco products from unlicensed dealers in Texas and Florida.

In 2003, the brothers had either sold off their Wisconsin business interests or abandoned them, and relocated to Minnesota.

In addition to their prison terms, the brothers were sentenced to serve 5 years probation and were ordered to make restitution of \$810,000 to the State of Wisconsin. They presented Department of Revenue officials with a check in the amount of \$94,000 prior to sentencing.

Man Charged With Sales Tax Theft

John K. Kosmatka, age 53, owner of Layton Park Auto Body, was charged in March 2006 in Milwaukee County Circuit Court with 2 counts of felony theft of state sales taxes.

The criminal tax charges were brought by the Milwaukee County District Attorney's Office following an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

According to the complaint, Mr. Kosmatka failed to remit \$14,424.15 in sales taxes that he collected from February 2000 through December 2005. Mr. Kosmatka operates Layton Park Auto Body, located in Milwaukee. Mr. Kosmatka has frequently failed to file sales tax returns and remit taxes collected from customers in the past.

If convicted on all counts, Mr. Kosmatka could face up to 25 years in prison and fines totaling \$35,000. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the tax liability. Assessment and collection of the taxes, penalties, and interest follows a conviction for criminal violations. [☞](#)

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 January 1, 2006, and at each step where action occurred during the period from January 1, 2006, through April 1, 2006.

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

Emergency Rules in Effect

- 1.12 Electronic funds transfer – A (expires May 27, 2006)
- 2.04 Information returns and wage statements – A (expires May 27, 2006)

- 2.50 Apportionment of apportionable income of interstate public utilities – R&R (expires May 4, 2006)
- 2.502 Apportionment of apportionable income of interstate telecommunications companies – NR (expires May 4, 2006)

Scope Statement Published

- 2.39 Apportionment of apportionable income – A (published March 31, 2006)
- 8.63 Liquor wholesaler warehouse facilities – NR (published January 15, 2006)
- 9.70 Cigarette and tobacco products tax bad debts and repossessions – NR (published March 31, 2006)

Sent to Legislative Council Rules Clearinghouse

- 1.12 Electronic funds transfer – A
- 2.04 Information returns and wage statements – A
- 8.63 Liquor wholesaler warehouse facilities – NR

**Reviewed by Legislative Council Rules
Clearinghouse**

- 1.12 Electronic funds transfer – A
- 2.04 Information returns and wage statements – A
- 2.50 Apportionment of apportionable income of interstate public utilities – R&R
- 2.502 Apportionment of apportionable income of interstate telecommunications companies – NR

Sent to Revisor for Publication of Notice

- 1.12 Electronic funds transfer – A (published February 15, 2006)
- 2.04 Information returns and wage statements – A (published February 15, 2006)
- 2.50 Apportionment of apportionable income of interstate public utilities – R&R (published February 28, 2006)

- 2.502 Apportionment of apportionable income of interstate telecommunications companies – NR (published February 28, 2006)

Sent for Legislative Committee Review

- 1.12 Electronic funds transfer – A
- 2.04 Information returns and wage statements – A
- 2.49 Apportionment of apportionable income of interstate financial institutions – R&R
- 2.495 Apportionment of apportionable income of interstate brokers-dealers, investment advisers, investment companies, and underwriters – NR
- 2.50 Apportionment of apportionable income of interstate public utilities – R&R
- 2.502 Apportionment of apportionable income of interstate telecommunications companies – NR





Report on Litigation

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

The following decision is included:

Sales and Use Taxes

Use tax – transfer of tangible personal property from related corporation

River City Refuse Removal, Inc...... 19

SALES AND USE TAXES



Use tax – transfer of tangible personal property from related corporation.

Wisconsin Department of Revenue vs. River City Refuse Removal, Inc. (Court of Appeals, District IV, February 2, 2006). On August 2, 2004, the Circuit Court for Dane County reversed the Wisconsin Tax Appeals Commission's August 19, 2003 decision. See *Wisconsin Tax Bulletin* 136 (October 2003), page 19, and *Wisconsin Tax Bulletin* 140 (October 2004), page 23, respectively, for summaries of the Commission and Circuit Court decisions.

The issues in this case are:

- A. Whether tangible personal property the taxpayer received by intercompany transfer from separately organized affiliated entities is subject to Wisconsin use tax under sec. 77.53(1), Wis. Stats.
- B. Whether the taxpayer's failure to report use tax on its intercompany transfers and other purchases was subject to the negligence penalty under sec. 77.60(3), Wis. Stats.

During the period from October 1, 1993 through September 30, 1997, the taxpayer was a separately incorporated Wisconsin corporation and wholly-owned subsidiary of Browning-Ferris Industries, Inc. (BFI), with its headquarters and principal place of business in Eau Claire, Wisconsin.

The taxpayer was primarily engaged in the business of collecting refuse and recyclables from Wisconsin resi-

dences and businesses and hauling those materials to landfills or recycling centers.

Other subsidiaries of BFI (BFI subsidiaries) transferred to the taxpayer items of tangible personal property such as motor vehicles and related assets. The taxpayer did not provide BFI subsidiaries with exemption certificates claiming any exemption on these transfers. These "intercompany transfers" included all rights to, and ownership of, the transferred assets. The motor vehicles transferred were re-titled in the taxpayer's name with the Wisconsin Department of Transportation. The assets transferred were valued at net book value (original purchase price less accumulated depreciation), entered into the taxpayer's financial records at that value, and depreciated on the taxpayer's income or franchise tax returns. The taxpayer paid no sales or use tax on the intercompany transfers.

The BFI subsidiaries that transferred assets to the taxpayer were separate, legal, corporate entities from the taxpayer and were not divisions or units of the taxpayer. The taxpayer's bookkeeping entry for the receipt of the intercompany transfers was to debit the specific intercompany asset account and credit an intercompany payable account. No money was exchanged or expected between the BFI subsidiaries and the taxpayer for the intercompany transfers. The taxpayer received no invoice or other bill in connection with the receipt of intercompany assets.

The Commission decision held that (1) the intercompany transfers of tangible personal property to the taxpayer from BFI subsidiaries were not subject to Wisconsin use tax because there was no transfer for remuneration or consideration, and (2) the negligence penalty did not apply as the taxpayer's failure to report the use tax was "due to good cause and not due to neglect." The Circuit Court, in a de novo review (giving the Commission decision no weight), reversed the Commission on both issues.

The Court of Appeals reviewed the Commission's decision de novo (giving the Circuit Court's conclusions no weight). Upon review, the Court of Appeals agreed with the Commission's conclusions that the transferring companies were not "retailers" within the meaning of sec. 77.51(13), Wis. Stats., and the transfers lacked consideration.

Therefore, the Court of Appeals reversed the Circuit Court's order and reinstated the Commission's ruling and order.

The department has appealed this decision to the Wisconsin Supreme Court. [Ⓜ](#)



Tax Releases

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

The following tax release is included:

Individual Income Tax and Corporation Franchise and Income Tax

1. Wisconsin's Treatment of Ohio's Commercial Activity Tax 21

INDIVIDUAL INCOME TAX AND CORPORATION FRANCHISE AND INCOME TAX

1 Wisconsin's Treatment of Ohio's Commercial Activity Tax

Statutes: Sections 71.07(7), 71.21(5), 71.26(3)(g), and 71.34(1)(ag), Wis. Stats. (2003-04)

Wis. Adm. Code: Section Tax 2.955, Wis. Adm. Code (April 1993 Register)

Background: Effective July 1, 2005, Ohio began imposing a new commercial activity tax (CAT). The CAT is an annual tax on the privilege of doing business in Ohio, measured by taxable gross receipts from most business activities. The CAT will be phased in over a five-year period. Businesses subject to the tax include sole proprietorships, partnerships, tax-option (S) corporations, and corporations, with certain exceptions. See chapter 5751, Ohio Revised Code (ORC).

Partnerships and corporations compute their Wisconsin income under the Internal Revenue Code (IRC) as defined for Wisconsin purposes, with certain

modifications. One of the modifications provides that IRC sec. 164(a)(3) is modified so that state taxes and taxes of the District of Columbia that are value-added taxes, single business taxes, or taxes on or measured by all or a portion of net income, gross income, gross receipts, or capital stock are not deductible. See secs. 71.21(5), 71.26(3)(g), and 71.34(1)(ag), Wis. Stats. (2003-04).

Section 71.07(7), Wis. Stats. (2003-04), provides that a Wisconsin resident who pays a net income tax to another state may claim a credit against tax otherwise payable to Wisconsin on income of the same year. The credit is allowed only if the income taxed by the other state is considered income for Wisconsin income tax purposes. Income and franchise taxes measured by net income paid to another state by a partnership or tax-option (S) corporation may be claimed as a credit by the partnership's or corporation's shareholders who are Wisconsin residents and who otherwise qualify for the credit.

Question 1: May a partnership or corporation deduct the Ohio CAT paid under ORC ch. 5751 for Wisconsin franchise and income tax purposes?

Answer 1: Generally the Ohio CAT is deductible for Wisconsin franchise and income tax purposes. It is essentially a deductible sales tax measured by gross receipts. A corporation that has deducted the CAT for federal income tax purposes is not required to add back the amount deducted to compute Wisconsin net income. However, if the expenditure must be capitalized for federal income tax purposes, it must be capitalized for Wisconsin purposes.

Question 2: May a Wisconsin resident claim a credit for his or her share of Ohio CAT paid by a partnership or tax-option (S) corporation or for Ohio CAT paid as a sole proprietor?

Answer 2: No, a Wisconsin resident may not claim credit for his or her share of Ohio CAT paid by a partnership or tax-option (S) corporation or for Ohio CAT paid as a sole proprietor. The Ohio CAT is not a net income tax and does not qualify for the credit for taxes paid to other states under sec. 71.07(7), Wis. Stats. (2003-04).