

Wisconsin TAX BULLETIN

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New Tax Laws Included in This Issue

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted changes to the Wisconsin tax laws. See pages 3 through 17 of this Bulletin for brief descriptions of the individual and fiduciary income tax, corporation franchise and income tax, sales and use tax, withholding, excise tax, and other provisions. [☞](#)

Internet Access Services Are Subject to Wisconsin Sales or Use Tax

Sales of Internet access services are subject to Wisconsin sales or use tax if the service originates or terminates in Wisconsin and is charged to a service address in Wisconsin.

Note: There have been questions about how the federal Internet Tax Nondiscrimination Act (P.L. 108-435) affects Wisconsin's sales and use taxes on Internet access services. This act extends, through November 1, 2007, a moratorium on taxation of Internet access services for certain states. However, states like Wisconsin that had enacted a state law imposing sales and use taxes on Internet access services prior to October 1, 1991 are exempt from the moratorium. Therefore, Wisconsin sales and use taxes continue to apply to Internet access services. [☞](#)

City of Eagle River Adopts Premier Resort Area Tax

Beginning October 1, 2006, the 0.5% premier resort area tax will be in effect in the City of Eagle River.

Every retailer making retail sales or rentals of tangible personal property or taxable services that are subject to the 5% Wisconsin state sales tax is also subject to the 0.5% premier resort area tax on such sales or rentals if all three of the following conditions are met:

1. The retailer is "engaged in business" in a premier resort area.
2. The sale or rental has a "situs" in the premier resort area.
3. The retailer is classified in the Standard Industrial Classification Manual, 1987 Edition, published by the U.S. Office of Management and Budget, under certain industry numbers.

Retailers were notified about the City of Eagle River's adoption of the premier resort area tax in the June 2006 *Sales and Use Tax Report* (number 2-06). A copy of the Report appears on pages 35 to 38 of this Bulletin.

For more information about the premier resort area tax, refer to Wisconsin Publication 403, *Premier Resort Area Tax*, which is available from any Department of Revenue office. See the article titled "Tax Publications Available" on page 22 of this Bulletin for information about how to obtain copies of Publication 403 by mail, phone, fax, or the Internet. [☞](#)

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 account information increased this tax season.

Taxpayers who request electronic deposits but provide incorrect bank account 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 account information on income tax returns. [☞](#)

In This Issue**Articles –**

New Tax Laws Included	1
Internet Access Services	1
Eagle River Premier Resort Tax	1
Undeliverable Tax Refunds	1
Make Wage Attachment Payments Using EFT	2
Computer Hardware, Software, and Services	2
New Tax Laws	3
Wisconsin/Minnesota Sales Tax Seminars	17

Treasury Offset Program	17
Form PW-1 Procedures	18
WT-7 and W-2 Electronic Filing	18
Free-File an Online Hit	19
Use Tax Calculator	19
Internet Posting of Delinquent Accounts	20
Bulletin Index Available	20
Use Sufficient Postage	20
Information or Inquiries?	21
Enforcement Report	21
Tax Publications Available	22
Index of Reference Material	25

Sales and Use Tax Report

Available	25
Administrative Rules in Process	25
Recently Adopted Rules	26
Report on Litigation	29
Private Letter Rulings	32
Attachments –	
June Tax Report	35
FAQs – Computer Hardware, Software, and Services	39
Order Blank	43

EFT Payment Options for Department Issued Wage Assignments

The Wisconsin Department of Revenue (DOR) encourages employers who make employee wage attachment payments to do so 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.
- **Online Payment** – The online 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, go to <https://ww2.dor.state.wi.us/EFTCert/application> and click on “add tax type.” Once you have requested

wage attachment as an additional tax type, you may begin submitting payments the next business day.

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

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 39 to 42 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.” [☎](#)

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New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major individual and fiduciary income tax, corporation franchise and income tax, sales and use tax, withholding, excise tax, and other provisions. These provisions are contained in 2005 Acts 149, 268, 307, 323, 327, 335, 361, 362, 366, 440, 441, 452, 454, 460, 479, 483, and 487.

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.

	Effective Date	Page
A. Individual and Fiduciary Income Taxes		
1. Donations to the Fire Fighters Memorial	Taxable years beginning on or after January 1, 2006	5
2. Donations to the Prostate Cancer Research Program	Taxable years beginning on or after January 1, 2006	6
3. Interest Income From Wisconsin Aerospace Authority Bonds Exempted From Tax	April 29, 2006	6
4. Depreciation and Sec. 179 Expense Deduction Revised for Property Used in Farming	Various	6
5. Enterprise Zone Jobs Credit Created	Taxable years beginning on or after July 1, 2007	7
6. Credit Created for Internet Equipment Used in the Broadband Market	December 1, 2006	7
7. Film Production Services Credit Created	Taxable years beginning on or after January 1, 2008	7
8. Film Production Company Investment Credit Created	Taxable years beginning on or after January 1, 2008	7
9. Development Zone Credits Expanded to Airport Development Zones	Taxable years beginning on or after January 1, 2007	7
B. Corporation Franchise and Income Taxes		
1. Income of Wisconsin Aerospace Authority Exempt	April 29, 2006	7
2. Exemption for Interest Income From Wisconsin Aerospace Authority Bonds	April 29, 2006	7
3. Enterprise Zone Jobs Credit Created	Taxable years beginning on or after July 1, 2007	7
4. Depreciation and Sec. 179 Expense Deduction Revised for Property Used in Farming	Various	9

	Effective Date	Page
5. Increased Research Credits Allowed for Certain Activities	Various	9
6. Credit Created for Internet Equipment Used in the Broadband Market	December 1, 2006	10
7. Film Production Services Credit Created	Taxable years beginning on or after January 1, 2008	10
8. Film Production Company Investment Credit Created	Taxable years beginning on or after January 1, 2008	12
9. Development Zone Credits Expanded to Airport Development Zones	Taxable years beginning on or after January 1, 2007	13
C. Sales and Use Taxes		
1. Exemption Created for Wisconsin Aerospace Authority	April 29, 2006	13
2. Farming Exemption Expanded	July 1, 2007	13
3. Create Exemption for Certain Admissions Sold by Gun Clubs	July 1, 2007	14
4. Village of Sister Bay May Impose Premier Resort Area Tax	June 6, 2006	14
5. Village of Ephraim May Impose Premier Resort Area Tax	June 6, 2006	14
6. Expand the Definition of “Person” to Include Unincorporated Cooperative Associations	May 26, 2006	14
7. Exemption Created for “Internet Equipment Used in the Broadband Market” if Certified by Department of Commerce	July 1, 2007	14
8. Clarify References to Property That Retains Its Character as Tangible Personal Property for Purposes of Certain Services	April 5, 2006	16
9. Clarify Exemption Relating to Persons Dispensing Prescription Medicine	April 5, 2006	16
10. Clarify Definitions of “Meal” and “Sandwich”	April 5, 2006	16
D. Withholding		
1. Expand the Definition of “Wages”	May 26, 2006	16

	Effective Date	Page
E. Excise Taxes		
1. Sale of Wine in Opened Original Bottle	April 20, 2006	16
2. “Class B” Liquor License Quota Exception	April 21, 2006	17
F. Other		
1. Provisions Relating to Setoffs for Municipalities and Counties Expanded	June 10, 2006	17

A. Individual and Fiduciary Income Taxes

1. Donations to the Fire Fighters Memorial (2005 Act 323, create sec. 71.10(5fm), effective for taxable years beginning on or after January 1, 2006.)

Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate on the return any amount of additional payment or any amount of a refund due that individual for the fire fighters memorial.

If the individual owes any tax, the individual must remit in full the tax due and the amount designated on the return for the fire fighters memorial when the individual files a tax return. If an individual who owes taxes fails to remit an amount equal to or in excess of the total actual tax due (after any error correction) and the amount designated on the return as a fire fighters memorial donation, the department will reduce the amount designated to reflect the amount remitted in excess of the actual tax due (after any error correction). If the amount remitted with the return does not exceed the tax due (after any error correction), the designation is void.

If the individual still has a refund after applying the refund to any delinquency owing the department and to any offset (pursuant to secs. 71.75(9) and 71.80(3) and (3m), Wis. Stats.), the department will deduct the amount designated on the return as a fire fighter memorial donation from the amount of the refund. If an individual is owed a refund that does not equal or exceed the amount designated on the return as a fire

fighters memorial donation (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the fire fighters memorial to reflect the actual amount of refund (after any error correction and deduction for a delinquency or offset).

If an individual places any conditions on a designation for the fire fighters memorial, the designation is void.

If a designation for the fire fighters memorial is void, the department shall disregard the designation and determine amounts due, owed, refunded, and received without regard to the void designation.

A place must be provided on the individual income tax return for designations to the fire fighters memorial.

Amounts designated for the fire fighters memorial are not subject to refund unless the taxpayer submits information to the satisfaction of the department within 18 months after the date on which taxes are due or the date on which the return is filed, whichever is later, that the amount designated is clearly in error.

No designation may be made to the fire fighters memorial that relate to any taxable year beginning on or after January 1 of the year in which the Secretary of Revenue certifies that the total net donated amount exceeds \$400,000.

- 2. Donations to the Prostate Cancer Research Program** (2005 Act 460, create sec. 71.10(5h), effective for taxable years beginning on or after January 1, 2006.)

Every individual filing an income tax return who has a tax liability or is entitled to a tax refund may designate on the return any amount of additional payment or any amount of a refund due that individual for the prostate cancer research program. "Prostate cancer research program" means the program under sec. 255.054, Wis. Stats., that provides money for prostate cancer research to the Medical College of Wisconsin, Inc., and the University of Wisconsin Comprehensive Cancer Center.

If the individual owes any tax, the individual must remit in full the tax due and the amount designated on the return for the prostate cancer research program when the individual files a tax return. If an individual who owes taxes fails to remit an amount equal to or in excess of the total actual tax due (after any error correction) and the amount designated on the return for the prostate cancer research program, the department will reduce the amount designated to reflect the amount remitted in excess of the actual tax due (after any error correction). If the amount remitted with the return does not exceed the tax due (after any error correction), the designation is void.

If the individual still has a refund after applying the refund to any delinquency owing the department and to any offset (pursuant to secs. 71.75(9) and 71.80(3) and (3m), Wis. Stats.), the department will deduct the amount designated on the return for the prostate cancer research program from the amount of the refund. If an individual is owed a refund that does not equal or exceed the amount designated on the return for the prostate cancer research program (after any error correction and deduction for a delinquency or offset), the department will reduce the designation for the prostate cancer research program to reflect the actual amount of refund (after any error correction and deduction for a delinquency or offset).

If an individual places any conditions on a designation for the prostate cancer research program, the designation is void.

If a designation for the prostate cancer research program is void, the department shall disregard the designation and determine amounts due, owed, refunded, and received without regard to the void designation.

A place must be provided on the individual income tax return for designations to the prostate cancer research program.

Amounts designated for the prostate cancer research program are not subject to refund unless the taxpayer submits information to the satisfaction of the department within 18 months after the date on which taxes are due or the date on which the return is filed, whichever is later, that the amount designated is clearly in error.

- 3. Interest Income From Wisconsin Aerospace Authority Bonds Exempted From Tax** (2005 Act 335, create sec. 71.05(1)(c)7., effective April 29, 2006.)

Interest income received on bonds or notes issued by the Wisconsin Aerospace Authority is exempt from Wisconsin income tax.

- 4. Depreciation and Sec. 179 Expense Deduction Revised for Property Used in Farming** (2005 Act 362, renumber sec. 71.01(7r) to 71.01(7r)(a) and amend as renumbered and create secs. 71.01(7r)(b) and 71.765, various effective dates.)

For property acquired and placed in service in taxable years beginning on or after January 1, 2006, a person who is actively engaged in farming may compute amortization and depreciation on property used in farming under any subsequent change to section 101 of P.L. 107-147 or section 201 of P.L. 108-27 (relating to bonus depreciation) enacted after December 31, 2005.

"Actively engaged in farming" has the meaning given in 7 CFR 1400.201. "Farming" means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity.

This provision does not apply unless a federal law change enacted after December 31, 2005, revises section 101 of P.L. 107-147 or section 201 of P.L. 108-27.

For property acquired and placed in service in taxable years beginning on or after January 1, 2008, a person who is actively engaged in farming may compute a sec. 179 expense deduction on property used in farming under any subsequent change to section 202 of P.L. 108-27 or section 201 of P.L. 108-357 (relating to increased expensing). This provision does not apply unless a federal law change enacted after December 31, 2005, revises section 202 of P.L. 108-27 or section 201 of P.L. 108-357.

5. **Enterprise Zone Jobs Credit Created** (2005 Act 361, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), and 71.10(4)(i) and create sec. 71.07(3w), effective for taxable years beginning on or after July 1, 2007.)

See Item B3.

6. **Credit Created for Internet Equipment Used in the Broadband Market** (2005 Act 479, amend sec. 71.05(6)(a)15., repeal and recreate sec. 71.08(1)(intro.), and create secs. 71.07(5e) and 71.10(4)(gy), effective December 1, 2006.)

See Item B6.

7. **Film Production Services Credit Created** (2005 Act 483, amend secs. 71.05(6)(a)15., 71.08(1)(intro.), and sec. 71.10(4)(i) and create secs. 71.07(5f) and 71.10(4)(ga), effective for taxable years beginning on or after January 1, 2008.)

See Item B7.

8. **Film Production Company Investment Credit Created** (2005 Act 483, amend sec. 71.05(6)(a)15. and create secs. 71.07(5h) and 71.10(4)(en), effective for taxable years beginning on or after January 1, 2008.)

See Item B8.

9. **Development Zone Credits Expanded to Airport Development Zones** (2005 Act 487, amend secs. 71.07(2dm)(a) 1. and 3., (f)1., (j), and (k) and (2dx)(a)2., (b)(intro.), (c), and (d), effective for taxable years beginning on or after January 1, 2007.)

See Item B9.

B. Corporation Franchise and Income Taxes

1. **Income of Wisconsin Aerospace Authority Exempt** (2005 Act 335, amend sec. 71.26(1)(be), effective April 29, 2006.)

Income of the Wisconsin Aerospace Authority created under subchapter II of Chapter 114 of the Wisconsin Statutes is exempt from Wisconsin income and franchise tax.

2. **Exemption for Interest Income from Wisconsin Aerospace Authority Bonds** (2005 Act 335, create secs. 71.26(1m)(h) and 71.45(1t)(h), effective April 29, 2006.)

Interest income from obligations of the Wisconsin Aerospace Authority, issued under secs. 114.70 or 114.72, Wis. Stats., is exempt from Wisconsin income taxes imposed upon corporations and insurance companies. However, interest income from these obligations is not exempt from Wisconsin franchise taxes.

3. **Enterprise Zone Jobs Credit Created** (2005 Act 361, amend secs. 71.21(4), 71.26(2)(a), 71.30(3)(f), 71.34(1)(g), 71.45(2)(a)10., 71.49(1)(f), and 77.92(4) and create secs. 71.28(3w), 71.47(3w) and 560.799, effective for taxable years beginning on or after July 1, 2007.)

The enterprise zone jobs credit is a refundable credit which applies to taxpayers who are certified by the Department of Commerce for enterprise zone tax benefits.

The payroll credit is computed as follows:

- a. Determine the increase in zone payroll compared to the base year. "Zone payroll" means the amount of compensation paid to individuals for services performed in the enterprise zone. "Zone payroll" does not

include the amount of compensation paid to any individual that exceeds \$100,000.

- b. Determine the increase in state payroll compared to the base year. "State payroll" means the amount of payroll apportioned to this state, as determined under sec. 71.25(8), Wis. Stats.
- c. Determine the increase in the number of full-time employees employed in the enterprise zone compared to the base year. "Full-time employee" means an individual employed in a regular, nonseasonal job who, as a condition of employment, is required to work at least 2,080 hours per year, including paid leave and holidays.
- d. Multiply the amount determined in c. by \$30,000.
- e. Subtract the amount determined in d. from the lesser of a. or b.
- f. Multiply the amount determined in e. by 7%.

"Base year" means the taxable year beginning during the calendar year prior to the calendar year in which the enterprise zone in which the claimant is located takes effect.

Supplemental claims are available, which are computed as follows:

- If all of the claimant's payroll is zone payroll and all of the claimant's business-related property is located in an enterprise zone, 20 percent of the sum of the claimant's zone payroll and the adjusted basis of the claimant's property when first placed in service in the enterprise zone, multiplied by 7.9 percent.
- An amount equal to the amount the claimant paid in the taxable year to upgrade or improve the skills of any of the claimant's full-time employees, to train any of the claimant's full-time employees on the use of new technologies, or to train any full-time employee whose employment with the claimant represents the employee's first full-time job. This computation cannot

include employees who do not work in an enterprise zone.

Partnerships, limited liability companies, and tax-option corporations may not claim the enterprise zone jobs credit, but the eligibility for and computation of the credit are determined at the entity level. Partners, members of limited liability companies, and shareholders of tax-option corporations may claim the credit in proportion to their ownership interests.

No claimant may claim the enterprise zone jobs credit to the extent the basis for the enterprise zone jobs credit is also the basis for which another credit was claimed under the same subchapter. No credit may be allowed unless the claimant includes with the claimant's return a copy of the Department of Commerce certification for tax benefits.

The Department of Commerce may designate not more than 10 enterprise zones, and may certify for tax benefits any of the following:

- A business that begins operations in an enterprise zone.
- A business that relocates to an enterprise zone from outside this state, if the business offers compensation and benefits for the same type of work to employees working in the zone that are at least as favorable as those offered to employees working outside the zone.
- A business that will increase its personnel by at least 10 percent and enters into an agreement with the Department of Commerce to claim tax benefits only for years during which the business maintains the increased level of personnel. The business must offer compensation and benefits for the same type of work to employees working in the zone that are at least as favorable as those offered to employees working in this state but outside the zone.
- A business that makes a capital investment in property located in the enterprise zone, the value of which is equal to at least 10 percent of the business' gross revenues in the preceding tax year attributable to

business activities in Wisconsin, and enters into an agreement with the Department of Commerce to claim tax benefits only for years during which the business maintains the capital investment. The business must offer compensation and benefits for the same type of work to employees working in the zone that are at least as favorable as those offered to employees working in this state but outside the zone.

4. Depreciation and Sec. 179 Expense Deduction Revised for Property Used in Farming (2005 Act 362, renumber secs. 71.738(1) and 71.738(2) to 71.738(1m) and 71.738(2m), renumber secs. 71.26(3)(y) and 71.365(1m) to 71.26(3)(y)1. and 71.365(1m)(a) and amend as renumbered, and create secs. 71.26(3)(y)2., 71.365(1m)(b), 71.738(1d) and (2d) and 71.765, various effective dates.)

For property acquired and placed in service in taxable years beginning on or after January 1, 2006, a regular (C) corporation or tax-option (S) corporation who is actively engaged in farming may compute amortization and depreciation on property used in farming under any subsequent change to section 101 of P.L. 107-147 or section 201 of P.L. 108-27 (relating to bonus depreciation) enacted after December 31, 2005. This provision does not apply to insurance companies, tax exempt entities, RICs, REITs or REMICs.

“Actively engaged in farming” has the meaning given in 7 CFR 1400.201. “Farming” means the cultivation of land or the raising or harvesting of any agricultural or horticultural commodity including the raising, shearing, feeding, caring for, training, and management of animals. Trees (other than trees bearing fruit or nuts) shall not be treated as an agricultural or horticultural commodity.

This provision does not apply unless a federal law change enacted after December 31, 2005, revises section 101 of P.L. 107-147 or section 201 of P.L. 108-27.

For property acquired and placed in service in taxable years beginning on or after January 1, 2008, a person who is actively engaged in farming may compute a sec. 179 expense deduction on property used in farming under

any subsequent change to section 202 of P.L. 108-27 or section 201 of P.L. 108-357 (relating to increased expensing). This provision does not apply unless a federal law change enacted after December 31, 2005, revises section 202 of P.L. 108-27 or section 201 of P.L. 108-357.

5. Increased Research Credits Allowed for Certain Activities (2005 Act 452, renumber secs. 71.28(4)(a), 71.28(5)(a), 71.47(4)(a), and 71.47(5)(a) to 71.28(4)(ad)1., 71.28(5)(ad)1., 71.47(4)(ad)1., and 71.47(5)(ad)1. and amend as renumbered, amend secs. 71.28(4)(am)1. and 71.47(4)(am), and create secs. 71.28(4)(ab), (ad)2. and 3., and (af) and (5)(ab) and (ad)2. and 3. and 71.47(4)(ab), (ad)2. and 3., and (af) and (5)(ab) and (ad)2. and 3., various effective dates.)

For taxable years beginning after June 30, 2007, increased credits are available for qualified research, as defined in sec. 41 of the Internal Revenue Code, for the following activities if such activities take place in Wisconsin during the taxable year:

- a. Designing internal combustion engines for vehicles, including expenses related to designing vehicles that are powered by such engines and improving production processes for such engines and vehicles
- b. Designing and manufacturing energy efficient lighting systems, building automation and control systems, or automotive batteries for use in hybrid-electric vehicles, that reduce the demand for natural gas or electricity or improve the efficiency of its use

“Vehicle” means any vehicle or frame, including parts, accessories, and component technologies, in which or on which an engine is mounted for use in mobile or stationary applications. “Vehicle” includes any truck, tractor, motorcycle, snowmobile, all-terrain vehicle, boat, personal watercraft, generator, construction equipment, lawn and garden maintenance equipment, automobile, van, sports utility vehicle, motor home, bus, or aircraft.

“Frame” includes every part of a motorcycle, except the tires; in the case of a truck, the control system and the fuel and drive train,

excluding any comfort features located in the cab or the tires; in the case of a generator, the control modules, fuel train, fuel scrubbing process, fuel mixers, generator, heat exchangers, exhaust train, and similar components.

“Internal combustion engine” includes substitute products such as fuel cell, electric, and hybrid drives.

The increased research expense credit is equal to 10 percent of the amount obtained by subtracting the base amount from the corporation’s qualified research expenses for the activities in a. or b. above conducted in Wisconsin for the taxable year. The percentage for taxable years beginning before June 30, 2007 is 5 percent.

The increased research facilities credit is equal to 10 percent of the amount paid by the corporation during the taxable year to construct and equip new facilities or expand existing facilities used in Wisconsin for qualified research that is also an activity in a. or b. above. The percentage for taxable years beginning before June 30, 2007 is 5 percent.

For purposes of electing the alternative incremental research credit, the credit available for the activities in a. above is treated as a credit separate from the credit available for the activities in b. above and from any credit applicable to other qualified research activities. The corporation may use a different computation method to calculate each of the credits and, after June 9, 2006, may choose to change the computation method once for each credit without the department’s approval.

6. **Credit Created for Internet Equipment Used in the Broadband Market** (2005 Act 479, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(5e), 71.30(3)(es), 71.47(5e), and 71.49(1)(es), effective December 1, 2006.) Also see Item C7 on page 14 for details of the sales and use tax exemption under sec. 77.54(48).

This credit becomes effective beginning the first taxable year following the taxable year in which the claimant claims an exemption under

sec. 77.54(48). The exemption under sec. 77.54(48) takes effect on July 1, 2007.

The claimant may claim as a credit against income or franchise taxes, in each taxable year for two years, the amount claimed for exemption under sec. 77.54(48) for Internet equipment used in the broadband market, as certified by the Department of Commerce.

“Internet equipment used in the broadband market” means equipment that is capable of transmitting data packets or Internet signals at speeds of at least 200 kilobits per second in either direction.

This is a nonrefundable credit. Unused credits may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years, to the extent not offset by taxes otherwise due in the intervening years between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

Partnerships, limited liability companies, and tax-option (S) corporations may not claim this credit, but the eligibility for and computation of the credit are determined at the entity level. Partners, members of limited liability companies, and shareholders of tax-option (S) corporations may claim the credit in proportion to their ownership interests.

The total amount of income and franchise tax credits and sales and use tax exemptions that may be claimed by all claimants, regarding Internet equipment used in the broadband market, is \$7,500,000.

7. **Film Production Services Credit Created** (2005 Act 483, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(5f), 71.30(3)(epp), 71.47(5f), 71.49(1)(epp), and 560.206, effective for taxable years beginning on or after January 1, 2008.)

The film production services credit applies to claimants who incur production expenditures for making an accredited production.

“Accredited production” means a film, video, electronic game, broadcast advertisement, or

television production, as approved by the Department of Commerce, for which the aggregate salary and wages included in the cost of production for the period ending 12 months after the month in which the principal filming or taping of the production begins exceeds \$100,000 for a production that is 30 minutes or longer or \$50,000 for a production that is less than 30 minutes. “Accredited production” does not include any of the following, regardless of production costs:

- News, current events, or public programming or a program that includes weather or market reports
- A talk show
- A production with respect to a questionnaire or contest
- A sports event or sports activity
- A gala presentation or awards show
- A finished production that solicits funds
- A production for which the production company is required under 18 USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program
- A production produced primarily for industrial, corporate, or institutional purposes

“Claimant” means a film production company that operates an accredited production in this state, if the company owns the copyright in the accredited production or has contracted directly with the copyright owner or a person acting on the owner’s behalf and if the company has a viable plan, as determined by the Department of Commerce, for commercial distribution of the finished production.

“Production expenditures” means any expenditures incurred in this state and directly used to produce an accredited production, including expenditures for:

- Set construction and operation
- Wardrobes
- Make-up
- Clothing accessories

- Photography
- Sound recording
- Sound synchronization
- Sound mixing
- Lighting
- Editing
- Film processing
- Film transferring
- Special effects
- Visual effects
- Renting or leasing facilities or equipment
- Renting or leasing motor vehicles
- Food
- Lodging
- Any other similar expenditure as determined by the Department of Commerce

“Production expenditures” also include expenditures for:

- Music performed, composed, or recorded by a musician who is a Wisconsin resident or published or distributed by an entity headquartered in Wisconsin
- Air travel purchased from a travel agency or company headquartered in Wisconsin
- Insurance purchased from an insurance agency or company headquartered in Wisconsin

“Production expenditures” do not include salary or wages or expenditures for the marketing and distribution of an accredited production.

The credit includes any of the following amounts:

- a. 25 percent of the salary or wages paid by the claimant to the claimant’s employees in the taxable year for services rendered in Wisconsin to produce an accredited production and paid to employees who were residents of Wisconsin when they were paid. This credit may not exceed an amount

equal to the first \$25,000 paid to each of the claimant's employees, not including the salary or wages paid to the two highest paid employees. The salary or wages must be paid for services rendered after December 31, 2007 and must be directly incurred to produce the accredited production.

- b. 25 percent of the production expenditures paid by the claimant in the taxable year to produce an accredited production.
- c. An amount equal to the sales and use taxes paid by the claimant in the taxable year on the purchase of tangible personal property and taxable services used directly in producing an accredited production in Wisconsin, including all stages from the final script to distribution of the finished production.

The amount in b. above is a refundable credit. The amounts in a. and c. above are not refundable. Unused credit may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years, to the extent not offset by taxes otherwise due in the intervening years between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

No credit may be allowed unless the claimant files an application with the Department of Commerce and submits a copy of the approved application with the claimant's return.

Partnerships, limited liability companies, and tax-option (S) corporations may not claim this credit, but the eligibility for and computation of the credit are determined at the entity level. Partners, members of limited liability companies, and shareholders of tax-option (S) corporations may claim the credit in proportion to their ownership interests.

8. **Film Production Company Investment Credit Created** (2005 Act 483, amend secs. 71.21(4), 71.26(2)(a), 71.34(1)(g), 71.45(2)(a)10., and 77.92(4) and create secs. 71.28(5h), 71.30(3)(epr), 71.47(5h), 71.49(1)(epr), and 560.206, effective for taxable years beginning on or after January 1, 2008.)

The film production company investment credit applies to claimants who establish a film production company in Wisconsin.

"Claimant" means a person who files a claim for this credit and who does business in Wisconsin as a film production company. "Film production company" means an entity that creates films, videos, electronic games, broadcast advertisement, or television productions, but not including:

- News, current events, or public programming or a program that includes weather or market reports
- A talk show
- A production with respect to a questionnaire or contest
- A sports event or sports activity
- A gala presentation or awards show
- A finished production that solicits funds
- A production for which the production company is required under 18 USC 2257 to maintain records with respect to a performer portrayed in a single media or multimedia program
- A production produced primarily for industrial, corporate, or institutional purposes

Under this provision, a claimant may claim credit against Wisconsin income or franchise tax, up to the amount of such tax, for the first 3 taxable years of doing business in this state as a film production company, an amount equal to 15 percent of the following expenditures that the claimant paid in the taxable year to establish a film production company in this state:

- a. The purchase price of depreciable, tangible personal property, if such property is purchased after December 31, 2007 and is used for at least 50 percent of its use in the claimant's business as a film production company.
- b. The amount expended to construct, rehabilitate, remodel, or repair real property, if the claimant began the physical work of construction, rehabilitation, remodeling, or

repair, or any demolition or destruction in preparation for the physical work, after December 31, 2007, or if the completed project is placed in service after December 31, 2007.

- c. The amount expended to acquire real property, if the property is not previously owned property and if the claimant acquires the property after December 31, 2007, or if the completed project is placed in service after December 31, 2007.

“Physical work” does not include preliminary activities such as planning, designing, securing financing, researching, developing specifications, or stabilizing property to prevent deterioration.

“Previously owned property” means real property that the claimant or a related person owned during the 2 years prior to doing business in this state as a film production company and for which the claimant may not deduct a loss from the sale of the property to, or an exchange of the property with, the related person under section 267 of the Internal Revenue Code.

No credit may be allowed unless the Department of Commerce certifies, in writing, that the credit is for expenses related to establishing a film production company in Wisconsin and the claimant submits a copy of the certification with the claimant’s return.

This is a nonrefundable credit. Unused credit may be carried forward and credited against Wisconsin income or franchise taxes otherwise due for the following 15 taxable years, to the extent not offset by taxes otherwise due in the intervening years between the year in which the expense was incurred and the year in which the carryforward credit is claimed.

Partnerships, limited liability companies, and tax-option (S) corporations may not claim this credit, but the eligibility for and computation of the credit are determined at the entity level. Partners, members of limited liability companies, and shareholders of tax-option (S) corporations may claim the credit in proportion to their ownership interests.

9. **Development Zone Credits Expanded to Airport Development Zones** (2005 Act 487, amend secs. 71.28(1dm)(a)1. and 3., (f)1., (j), and (k) and (1dx)(a)2., (b)(intro.), (c), and (d) and 71.47(1dm)(a)1. and 3., (f)1., (j), and (k) and (1dx)(a)2., (b)(intro.), (c), and (d) and create sec. 560.799, effective for taxable years beginning on or after January 1, 2007.)

Effective for taxable years beginning on or after January 1, 2007, the development zone credit and development zone capital investment credit are expanded to apply to businesses located in airport development zones. The Department of Commerce may designate an area as an airport development zone. A claimant must operate a business in a development zone and obtain certification from the Department of Commerce in order to claim these credits.

C. Sales and Use Taxes

1. **Exemption Created for Wisconsin Aerospace Authority** (2005 Act 335, amend sec. 77.54(9a)(a), effective April 29, 2006.)

The gross receipts from sales to, and the storage, use, or other consumption of tangible personal property and taxable services by the Wisconsin Aerospace Authority are exempt from Wisconsin sales and use taxes.

2. **Farming Exemption Expanded** (2005 Act 366, repeal sec. 77.54(34) and amend sec. 77.54(3)(a), (3m)(intro.), and (30)(a)3. and 5., effective July 1, 2007.)

Effective July 1, 2007, the gross receipts from the sales of and the storage, use, or other consumption of lubricants, nonpowered equipment, and other tangible personal property that are used exclusively and directly, or are consumed or lose their identities, in the business of farming will be exempt from Wisconsin sales and use taxes.

In addition, the definition of “farming” is expanded to include silviculture. (“Silviculture” is defined in Webster’s II New College Dictionary, 1995, as “Care and cultivation of forest trees: FORESTRY.”)

- 3. Create Exemption for Certain Admissions Sold by Gun Clubs** (2005 Act 327, renumber sec. 77.52(2)(a)2. to sec. 77.52(2)(a)2.a. and amend as renumbered and create sec. 77.51(4m) and (13s) and sec. 77.52(2)(a)2.b., effective July 1, 2007.)

Effective July 1, 2007, the sale of admissions by a gun club, including the sale of a gun club membership, will not be subject to Wisconsin sales or use tax if the gun club is a nonprofit organization and if the gun club provides safety classes to at least 25 individuals in the calendar year.

“Gun club” includes a trapshooting club, skeet-shooting club, sporting-clay club, rifle and pistol club, sportsmen’s club, hunting club, rod and gun club, hunting and fishing club, and conservation club. “Gun club” does not include a wild animal farm or bird hunting preserve licensed under Chapter 169, Wis. Stats.

“Safety classes” means all classes approved by the Department of Natural Resources related to hunting, including hunting with a bow, and related to firearms, all-terrain vehicles, boats, and snowmobiles.

- 4. Village of Sister Bay May Impose Premier Resort Area Tax** (2005 Act 440, amend sec. 66.1113(2)(a) and (b) and create sec. 66.1113(2)(g), effective June 6, 2006.)

The Village of Sister Bay may, by ordinance, impose a 0.5% premier resort area tax, even if less than 40% of the equalized assessed value of the taxable property within the Village of Sister Bay is used by tourism-related retailers. The Village may not impose the tax, however, unless the Village Board adopts a resolution proclaiming its intent to impose the tax and the resolution is approved by a majority of the electors in the Village voting on the resolution at a referendum, to be held at the first spring primary or election or September primary or general election following by at least 45 days the date of adoption of the resolution.

- 5. Village of Ephraim May Impose Premier Resort Area Tax** (2005 Act 440, amend sec. 66.1113(2)(a) and (b) and create sec. 66.1113(2)(h), effective June 6, 2006.)

The Village of Ephraim may, by ordinance, impose a 0.5% premier resort area tax, even if less than 40% of the equalized assessed value of the taxable property within the Village of Ephraim is used by tourism-related retailers. The Village may not impose the tax, however, unless the Village Board adopts a resolution proclaiming its intent to impose the tax and the resolution is approved by a majority of the electors in the Village voting on the resolution at a referendum, to be held at the first spring primary or election or September primary or general election following by at least 45 days the date of adoption of the resolution.

- 6. Expand the Definition of “Person” to Include Unincorporated Cooperative Associations** (2005 Act 441, amend secs. 77.51(10) and 77.53(17r)(f), effective May 26, 2006.)

The definition of “person” in sec. 77.51(10), Wis. Stats. (2003-04), is expanded to include any unincorporated cooperative association.

Section 77.53(17r)(f), Wis. Stats. (2003-04), is amended to provide that use tax does not apply to an aircraft purchased in another state if the owner or lessee is an unincorporated cooperative association that does not have real property or other tangible personal property (except aircraft and such property as hangars, accessories, attachments, fuel, and parts required for operation of aircraft) in this state at the time the aircraft is registered in this state, and if certain other requirements under sec. 77.53(17r), Wis. Stats. (2003-04), are met.

- 7. Exemption Created for “Internet Equipment Used in the Broadband Market” if Certified by Department of Commerce** (2005 Act 479, create sec. 77.51(6m) and 77.54(48), effective July 1, 2007.) Also see Item B6 on page 10, which relates to an income or franchise tax credit for Internet equipment used in the broadband market.

Subject to the nonstatutory provisions identified below, a sales and use tax exemption is created for the gross receipts from the sale of and the storage, use, or other consumption of Internet equipment used in the broadband market, if the purchaser certifies to the Department of Commerce, in the manner prescribed by the Department of Commerce, that the purchaser

will, within 24 months after the effective date of this exemption (July 1, 2007), make an investment that is reasonably calculated to increase broadband Internet availability in Wisconsin.

“Internet equipment used in the broadband market” is defined to mean equipment that is capable of transmitting data packets or Internet signals at speeds of at least 200 kilobits per second in either direction.

Every person who is required to make an investment that qualifies for this exemption and is reasonably calculated to increase broadband Internet availability in Wisconsin, shall, within 60 days after the end of the year in which the investment is made, file a report with the Department of Commerce that provides a detailed description of the investment, including the amount invested. The Department of Commerce shall provide copies of the report to the Department of Administration, the Department of Revenue, and the Public Service Commission.

Nonstatutory Provisions

Internet Equipment Credit and Exemption Program

Not later than December 31, 2006, the Department of Commerce shall implement a program for certifying businesses as eligible for the tax credits and exemptions under secs. 71.07(5e), 71.28(5e), 71.47(5e), and 77.54(48), Wis. Stats.

If the Department of Commerce certifies a business as eligible for the credits and exemptions under secs. 71.07(5e), 71.28(5e), 71.47(5e), and 77.54(48), Wis. Stats., the Department of Commerce shall determine the maximum amount of credits and exemptions that the business may claim, subject to the requirements of the next paragraph. The amount of the tax credits allocated to each business for each year in which the business may claim credits shall equal the amount of the exemptions allocated to the business. The Department of Commerce may not allocate tax credits and exemptions to a business unless the allocation of tax credits and exemptions to the business is likely to increase the availability of broadband Internet service in areas of this state that are not

served by a broadband Internet service provider or are served by not more than one broadband Internet service provider, as determined by the Department of Commerce. The total amount of exemptions from the taxes imposed under subchapter III of Chapter 77 of the statutes and tax credits allocated to all eligible businesses may not exceed \$7,500,000. The Department of Commerce shall complete the certifications and determinations under this paragraph and the preceding paragraph no later than July 1, 2007.

Not later than 10 days after the Department of Commerce completes the certifications and determinations noted above, the Department of Commerce shall submit to the Joint Committee on Finance a report identifying the businesses certified under this subsection and the maximum amount of tax credits and exemptions each business may claim. If the cochairpersons of the Committee do not notify the Department of Commerce within 14 working days after the Department of Commerce submits the report that the Committee has scheduled a meeting to review the Department of Commerce’s certifications and determinations, the Department of Commerce shall notify the Department of Revenue of the Department of Commerce’s certifications and determination. If, within 14 working days after the Department of Commerce submits the report, the cochairpersons of the Committee notify the Department of Commerce that the Committee has scheduled a meeting to review the proposal, the Department of Commerce may not notify the Department of Revenue of the Department of Commerce’s certifications and determinations unless one of the following is true:

1. The Committee approves the Department of Commerce’s certifications and determinations.
2. The Committee does not hold a meeting to review the proposal within 30 days after the cochairpersons notify the Department of Commerce that a meeting has been scheduled.

Notwithstanding sec. 227.24, Wis. Stats., the Department of Commerce may promulgate emergency rules necessary to administer this subsection. Notwithstanding sec. 227.24 (1) (c)

and (2), Wis. Stats., emergency rules promulgated under this subsection remain in effect until the Department of Commerce notifies the Department of Revenue of the Department of Commerce's certifications and determinations, or the first day of the 13th month after the effective date of this subsection, whichever is sooner. Notwithstanding sec. 227.24 (1) (a) and (3), Wis. Stats., the Department of Commerce is not required to provide evidence that promulgating a rule under this subsection as an emergency rule is necessary for the preservation of the public peace, health, safety, or welfare and is not required to provide a finding of emergency for a rule promulgated under this subsection.

Reconciliation Provision

If the amendment of sec. 71.08 (1) (intro.), Wis. Stats., by 2005 Assembly Bill 208 takes effect before the effective date of this subsection, the repeal and recreation of sec. 71.08 (1) (intro.), Wis. Stats., by Section 3 of 2005 Wisconsin Act 479 is void. If the amendment of sec. 71.08 (1) (intro.), Wis. Stats., by 2005 Assembly Bill 208 does not take effect before the effective date of this subsection, or if 2005 Assembly Bill 208 is not enacted into law, the repeal and recreation of sec. 71.08 (1) (intro.), Wis. Stats., by Section 4 of 2005 Wisconsin Act 479 is void.

8. **Clarify References to Property That Retains Its Character as Tangible Personal Property for Purposes of Certain Services** (2005 Act 149, amend sec. 77.52(2)(a)10. and create sec. 77.52(2)(ag), effective April 5, 2006.)

For improved readability and conformity with current style, the list of property that retains its character as tangible personal property for purposes of certain services was moved from sec. 77.52(2)(a)10. to sec. 77.52(2)(ag) and divided into tabular form. This is a nonsubstantive change.

9. **Clarify Exemption Relating to Persons Dispensing Prescription Medicine** (2005 Act 149, renumber sec. 77.54(14)(f) to sec. 77.54(14)(f)(intro.) and amend as renumbered, effective April 5, 2006.)

To improve readability, the list of persons dispensing exempt prescription medicines was subdivided into tabular form and put into a different order to accommodate the numbering of the subdivided list. This is a nonsubstantive change.

10. **Clarify Definitions of "Meal" and "Sandwich"** (2005 Act 149, renumber sec. 77.54(20)(bg)1. to sec. 77.54(20)(bg)1.a. and amend as renumbered, renumber sec. 77.54(20)(bg)2. to sec. 77.54(20)(bg)2.a. and amend as renumbered, effective April 5, 2006.)

For improved readability and conformity with current style, these provisions were subdivided and punctuation was added and modified. This is a nonsubstantive change.

D. Withholding

1. **Expand the Definition of "Wages"** (2005 Act 441, amend sec. 71.63(6)(b)4., effective May 26, 2006.)

The definition of "wages" in sec. 71.63(6), Wis. Stats. (2003-04), is expanded to include remuneration paid for service performed in the employ of an unincorporated cooperative association.

E. Excise Taxes

1. **Sale of Wine in Opened Original Bottle** (2005 Act 268, amend secs. 125.68(4)(c)1., 125.68(4)(c)3., and 125.68(4)(c)4. and create sec. 125.51(3r), effective April 20, 2006.)

Restaurants that also hold a "Class B" liquor or a "Class C" wine license may sell an opened original bottle of wine in a quantity not to exceed one bottle, for consumption both on and off the premises where sold, if all of the following apply:

1. The purchaser orders food to be consumed on the licensed premises.
2. The licensee provides a dated receipt identifying the purchase of food and the bottle of wine.

3. Prior to the opened bottle being taken off the licensed premises, the licensee inserts the cork into the bottle so that the top of the cork is even with the top of the bottle and the cork is not reinserted between 12 midnight and 6 a.m.

2. “Class B” Liquor License Quota Exception
(2005 Act 307, create sec. 125.51(4)(v)3., effective April 21, 2006.)

Notwithstanding its “Class B” liquor license quota, a municipality may issue a license to an opera house or theater for the performing arts operated by a non-profit organization, as defined in sec. 134.695(1)(am), Wis. Stats.; this license authorizes the retail sale of intoxicating liquor only for consumption on the premises where sold and only in connection with ticketed performances.

F. Other

1. Provisions Relating to Setoffs for Municipalities and Counties Expanded (2005 Act 454, amend sec. 71.935(1)(a) and create sec. 71.935(1)(am), effective June 10, 2006.)

Debt that a municipality or county may certify to the department has been expanded to include debt related to property taxes that is at least \$20, if the debt has been reduced to a judgment or the municipality or county to which the debt is owed has provided the debtor reasonable notice and an opportunity to be heard with regards to the debt.

“Debt related to property taxes” means delinquent general property taxes, as defined in sec. 74.01(1), Wis. Stats., special assessments, as defined in sec. 74.01(3), Wis. Stats., special charges, as defined in sec. 74.01(4), Wis. Stats., and special taxes, as defined in sec. 74.01(5), Wis. Stats. It includes any interest and penalty charged as a result of the delinquency. [§](#)



**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 3, 2006 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

October 17, 2006 – Hudson, Wisconsin
Hudson House
1616 Crestview Drive

October 17, 2006 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Street



Treasury Offset Program Works for Wisconsin

The Department of Revenue (DOR) has collected over \$16.7 million in delinquent income taxes through the Treasury Offset Program, a federal offset program implemented in Wisconsin in February 2001.

Since the program’s inception, DOR has certified more than \$482 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. As a result of the program more than 26,500 federal refunds have been intercepted, either in whole or in part, on behalf of DOR.

The Treasury Offset Program, 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, thirty-eight states and the District of Columbia participate in the program. [§](#)

Pass-Through Entities: Procedures Updated for Form PW-1

The purpose of Form PW-1 is for pass-through entities (including tax-option (S) corporations, partnerships, limited liability companies treated as partnerships, estates, and trusts) to compute the withholding due on income passed through to a nonresident, as required by sec. 71.775, Wis. Stats. This provision was first effective for taxable years beginning on or after January 1, 2005. Issues 144, 145, and 146 of the *Wisconsin Tax Bulletin* provide more details of the requirements for pass-through entity withholding.

Described below are changes to the department's procedures for administering pass-through entity withholding. As of July 1, 2006, the provisions of sec. 71.775, Wis. Stats., remain the same as when enacted on July 25, 2005, by 2005 Act 25.

Electronic Filing

An automatic waiver from electronic filing is now allowed for entities with \$25,000 or less of total Wisconsin income passed through to all shareholders, partners, members, or beneficiaries. This threshold amount is the amount computed on Form PW-1, Part 1, line 1. Entities eligible for the automatic waiver do not have to request a waiver before filing Form PW-1 on paper.

Entities that do not qualify for the automatic waiver must file Form PW-1 and make the corresponding payment by electronic means. The department has two electronic filing programs available from its web site, at www.dor.state.wi.us/eserv/pw/index.html. Both allow electronic filing of Form PW-1 and electronic payment

without any pre-registration. If electronic filing or electronic payment presents an undue hardship, paper filing is permitted if the taxpayer obtains a waiver from the department.

Transitional Rules Expire for Tax Years Beginning in 2006

Since the pass-through entity withholding law was enacted July 25, 2005, but effective for tax years beginning on or after January 1, 2005, special transitional rules were used in 2005. These transitional rules expire for tax years beginning on or after January 1, 2006. The following procedures apply for tax years beginning in 2006, which are different than those applicable for tax years beginning in 2005:

- No credit against Form PW-1 withholding is allowed for estimated payments made for or applied to a nonresident's return or a composite return. Accordingly, Form CN-ES, *Composite Estimated Tax Voucher*, has been discontinued. Pass-through entities should **not** make composite estimated payments.
- A pass-through entity that terminates after January 1, 2006 is required to withhold and file Form PW-1 for its final taxable year.

Tiered Entities

For tax years beginning in 2006, if a pass-through entity (an "upper-tier entity") is a nonresident member of another pass-through entity (a "lower-tier entity") with Wisconsin income, the upper-tier entity must file Form PW-1 even if, after credit is taken for the amount withheld by the lower-tier entity, its total withholding due is \$0. [✎](#)

WT-7 and W-2 Electronic Filing

Note: The Department of Revenue (DOR) recently adopted changes to Tax 2.04, Wisconsin Administrative Code, related to filing Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, electronically. See the article titled "Recently Adopted Rules Summarized" on page 26 of this Bulletin for more information.

Did you know you could have filed your Form WT-7 electronically and for free this year? In the second year of our program almost 7,500 employers did!

DOR launched **WT-7 Free-File** 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 web site at: <https://ww2.dor.state.wi.us/GenericFile/application?interview=1119640>.

Starting in January 2006, DOR also began accepting **WT-7 electronic file transmission over the Internet!** This alternative provides Wisconsin employers and/or

their representatives an electronic interface between their systems and DOR. This alternative should 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/wt-7/index.html.

Along with filing W-2s on magnetic media, you may also **file W-2s online** 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. 




Free-File Continues as an Online Hit!

In its fourth year, the Department of Revenue's Free-File program was a success. Over 99,000 taxpayers took advantage of the Wisconsin Free-File program to file their 2005 Wisconsin income tax returns and homestead credit claims online, on time, and completely free of charge.

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

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, E, F, or federal Form 4797.

The free Internet income tax filing service is one of the ways the department is reducing costs and improving its quality of service to the taxpayers of Wisconsin. Electronic filing, whether through Free-File or another method, remains the only way to receive a refund within three to five days. 

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," then "Sales and Use Tax," and then scroll down to and click on "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*, which is 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



Internet Posting of Delinquent Tax Accounts

2005 Act 25 authorizes the Wisconsin Department of Revenue (DOR) to post information about delinquent taxpayers on the Internet if they owe more than \$25,000 including tax, interest, penalty, fees, and costs, and the amount is unpaid more than 90 days after all appeal rights have expired. DOR cannot post the accounts of taxpayers who have entered into an installment agreement, submitted a complete Petition for Compromise, or have filed for bankruptcy.

The Internet site, which went online on January 3, 2006, is updated each business day to account for cases that meet the non-posting criteria identified above. The site is also updated quarterly to add new accounts and remove accounts that no longer owe more than \$25,000.

Quarterly updates to the site took place on April 3, 2006, and July 10, 2006.

Taxpayers eligible for posting are warned by letter and given 30 days to resolve their account balances with DOR to avoid posting. To date, over \$12 million has been collected through the issuance of warning letters and the posting of accounts on the Internet site.

The Internet site also contains a separate list of the 100 largest delinquent accounts.

Information about Internet posting of delinquent accounts may be obtained by visiting DOR's web site at www.dor.state.wi.us or by calling the Central Collection Section at (608) 266-7879.



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).



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).

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 Taxpayer Services Division. A comprehensive listing of telephone numbers and addresses appears in Wisconsin Tax Bulletin 147 (April 2006), pages 26 to 30.

Madison – Main Office Area Code (608)

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

District Offices

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



Enforcement Report

Chippewa Falls Man Charged With Tax Crimes

A criminal complaint was filed in April 2006 in Eau Claire County charging Duane J. Kolve, 39, of Chippewa Falls with 2 counts of tax crimes. Kolve was previously charged with 13 counts of racketeering having to do with raising millions of dollars through deceptive telephone solicitations for questionable charities.

The first tax count alleges that Kolve failed to file a 2002 Wisconsin individual income tax return. The complaint states that Kolve's corporation, Public Awareness, Inc., filed a Form W-2 with the Wisconsin Department of Revenue reporting they paid wages of \$74,750 to Kolve in 2002.

The second tax count accuses Kolve of filing a fraudulent 2003 Wisconsin income tax return. According to the complaint, Kolve reported gross income of \$70,336. The complaint claims that Kolve actually received funds from Public Awareness, Inc., totaling \$181,652.24 in 2003. The Department of Revenue determined that Kolve's total gross income in 2003 was \$195,273.24. Thus, Kolve did not report income of \$124,913.24. The Wisconsin income tax evaded by Kolve on unreported income in 2003 was \$8,377. The complaint alleges that Kolve made expenditures from two personal bank accounts in excess of \$179,000 in 2003.

The charges against Kolve are the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section and the Wisconsin Department of Agriculture, Trade and Consumer Protection. If convicted on both counts, Kolve faces 6 years and 9 months in prison as well as \$20,000 in fines.

(continued on page 24)

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? (6/06)
- 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 (6/06)
- 229* Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales (6/06)
- 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 (4/06)

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) [🔗](#)

Enforcement Report (continued from page 21)

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

Sturgeon Bay Man Sentenced in Dane County

In April 2006 a Door County businessman was ordered to spend 60 days in jail and was placed on probation for 5 years for making a false statement on a motor vehicle title application.

Edward T. Jones, 57, of Sturgeon Bay was charged in October 2004 by the Dane County District Attorney's Office with 2 felony counts of filing false Wisconsin income tax returns and one felony count of making a false statement on a motor vehicle title application. The criminal charges resulted from an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

According to the criminal complaint, Jones purchased a 1999 Jeep Grand Cherokee for \$33,448 and filed a title application in December 1998 stating that no sales tax was due. Jones indicated on the title application that the purchase was exempt from sales tax because he was going to lease the vehicle and would be paying sales tax on the lease receipts. During the investigation, Jones acknowledged that he did not remit any sales tax for the lease of the vehicle. The investigation revealed that Jones should have paid state and county sales taxes of \$1,839.64 when the vehicle was titled.

The complaint also alleged that Jones reported Wisconsin taxable income of \$3,624 for 1997 and reported a loss of \$25,003 for 1998. An analysis completed by a Department of Revenue Special Agent revealed that Jones' actual taxable income for 1997 was \$122,729 and for 1998 was \$102,354. Jones was accused of evading Wisconsin income taxes of \$7,982 for 1997 and \$7,208 for 1998.

Jones pled no contest to making a false statement on a motor vehicle title application in January 2006. The tax evasion charges were dismissed, but read in for sentencing.

Dane County Circuit Court Judge Daniel R. Moeser ordered that Jones pay court costs, file accurate tax returns, and pay restitution to the Wisconsin Department of Revenue. Judge Moeser said that Jones knew what he was doing and that he didn't buy Jones' defense that innocent mistakes were made.

Making a false statement on a motor vehicle title application is a felony punishable by up to 6 years imprisonment or up to \$10,000 in fines, or both, together with the cost of prosecution. Filing a fraudulent income tax return is also a felony punishable by up to 6 years imprisonment or up to \$10,000 in fines, or both, together with the cost of prosecution.

Cashton Man Makes Initial Court Appearance in Monroe County

Ljubisa Vulovic, 49, of Cashton made his initial appearance in Monroe County Circuit Court in May 2006 on charges of failing to file Wisconsin individual and corporate tax returns. A criminal complaint was filed in April 2006 charging Vulovic with five tax crimes.

Counts one through three allege that Vulovic failed to file 2002, 2003, and 2004 Wisconsin individual income tax returns. The complaint states that Vulovic had gross income of \$65,469 in 2002, \$39,796 in 2003, and \$112,685 in 2004.

Counts four and five allege that Vulovic failed to file 2003 and 2004 corporate income tax returns for Flight Service, Inc. Vulovic was the sole shareholder and officer of the corporation and was responsible for filing the corporate returns. According to the complaint, Flight Service, Inc. made deposits into the corporate checking account of \$69,487 in 2003 and \$32,090.50 in 2004.

The charges against Vulovic are the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section. If convicted on all counts, Vulovic faces 3 years and 9 months in prison as well as \$50,000 in fines.

In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the tax, penalty, and interest due follows the conviction for criminal tax violations. [!\[\]\(c1168d6a8b365d11e842ece304635fa7_img.jpg\)](#)



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



Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available in June. The June 2006 *Sales and Use Tax Report* (2-06) contains summaries of recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the June 2006 Report include:

- City of Eagle River Adopts Premier Resort Area Tax;
- Reminder – Florence County Tax Becomes Effective July 1, 2006;
- Reminder – Regional Transit Authority Fee Becomes Effective June 1, 2006 in Kenosha, Racine, and Milwaukee Counties;
- New Tax Laws;

- Utilities’ Budget Billing Plans – Wisconsin Sales and Use Tax Treatment;
- Streamlined Sales Tax Exemption Certificate Only Acceptable in Wisconsin for Resale Exemption;
- Internet Access Services Are Subject to Wisconsin Sales or Use Tax; and
- Question and Answer (fees charged for locker rentals).

A copy of the Report appears on pages 35 to 38 of this Bulletin. It is also available on the Department of Revenue’s web site at www.dor.state.wi.us/ise/sales/06-2.pdf.

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, 2006, and at each step where action occurred during the period from April 1, 2006, through July 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 43 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Sent to Legislative Council Rules Clearinghouse

2.39 Apportionment method – A

Reviewed by Legislative Council Rules Clearinghouse

2.39 Apportionment method – A

8.63 Liquor wholesaler warehouse facilities – NR

Sent to Revisor for Publication of Notice

- 8.63 Liquor wholesaler warehouse facilities – NR
(published May 15, 2006)

Sent for Legislative Committee Review

- 8.63 Liquor wholesaler warehouse facilities – NR

Adopted and in Effect (7/1/06)

- 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

Additional information concerning the rules that have been adopted and are effective July 1, 2006 may be found in the article below titled “Recently Adopted Rules Summarized.” [↗](#)

Recently Adopted Rules Summarized

Included below are summaries of administrative rules that have been adopted by the Department of Revenue (DOR) and are effective July 1, 2006. The full text of the final rulemaking orders is available on the State of Wisconsin administrative rules home page. A link to this page may be found on DOR’s web site at www.dor.state.wi.us. Click on “Links” and then “Text and Status of Proposed Rules” under the heading “Wisconsin Laws and Rules.”

To order up-to-date administrative rules of the department, you can use the order blank that appears on page 43 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

Tax 1.12 Electronic funds transfer. Tax 1.12 is amended to create a provision specifying that income and franchise tax withholding payments of pass-through entities are required to be made by electronic funds transfer (EFT) and to change a provision to specify that EFT payments made by automated clearing house (ACH) debit transfer may be initiated up until 4:00 p.m. on the due date of the payment.

Tax 2.04 Information returns and wage statements. Tax 2.04 is amended to do the following:

1. Create a provision specifying that the department may require pass-through entities to file returns for nonresident withholding taxes by electronic means. An exception is provided for situations where the Secretary of Revenue determines that the requirement to file by electronic means causes an undue hardship.

2. Create a provision specifying that the department may require Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to be filed by electronic means. An exception is provided for situations where the Secretary of Revenue determines that the requirement to file by electronic means causes an undue hardship.
3. Update notes to list current street and mailing addresses.

Tax 2.49 Apportionment of apportionable income of interstate financial institutions. Tax 2.49 is repealed and recreated to prescribe the method of apportioning the apportionable income of interstate financial organizations, other than brokerage houses, investment companies, and insurance companies, as required by ss. 71.04 (4) (e) and (8) (c) and 71.25 (6) (e) and (10) (c), Wis. Stats. Tax 2.49 as recreated does all of the following:

1. Defines “financial institution” and other terms used in the rule.
2. Extends the application of Tax 2.49 to mortgage bankers, as authorized by ss. 71.04 (11) and 71.25 (12), Wis. Stats. Sections 71.04 (8) (a) and 71.25 (10) (a), Wis. Stats., exclude mortgage bankers from the definition of “financial organization.”
3. Phases in the use of an apportionment formula consisting solely of a receipts factor:
 - For taxable years beginning after December 31, 2005, and before January 1, 2007, apportionable income is apportioned using an apportionment fraction composed of a receipts factor

representing 60% of the fraction and a payroll factor representing 40% of the fraction.

- For taxable years beginning after December 31, 2006, and before January 1, 2008, apportionable income is apportioned using an apportionment fraction composed of a receipts factor representing 80% of the fraction and a payroll factor representing 20% of the fraction.
 - For taxable years beginning after December 31, 2007, apportionable income is apportioned using an apportionment fraction consisting of the receipts factor.
4. Expands the types of income included in the receipts factor. In the rule prior to its repeal and recreation, “gross receipts” included all business income associated with the lending of money in the normal course of business, such as interest, discounts, finance charges or fees, and service charges or fees. In this rule, receipts also include the following:
- Net gain from the sale of loans and credit card receivables.
 - Gross receipts from credit card receivables, credit card issuer's reimbursement fees, and merchant discount.
 - Loan servicing fees.
 - Gross receipts from travelers checks, cashiers checks, certified checks, and money orders.
 - Gross receipts from automated teller machines, debit card transactions, and electronic funds transfer.
 - Gross receipts from maintaining accounts, safety deposit boxes, investment banking services, cash management services, international trade services, data processing, document imaging, and microfilming services, research services, trust services, investment banking services, and security brokerage services.
 - Net gain from the sale of trading assets.
 - Gross receipts from leasing real or tangible personal property.
 - Gross royalties for the use of intangible property.
 - Gross receipts from computer software.
 - Gross receipts from other services.
 - Gross receipts from services provided to regulated investment companies.
 - Gross receipts from sales of tangible personal property.
 - Gross receipts passed through from partnerships.
5. Changes the way that receipts are attributed to Wisconsin. The rule prior to repeal and recreation assigned gross receipts to Wisconsin if the transaction producing the income was principally negotiated in Wisconsin. This rule specifies which receipts are assigned to Wisconsin, based on the type of receipt. For example, interest and other fees from loans secured by real property and net gains from the sale of loans secured by real property are assigned to Wisconsin if the real property is located in Wisconsin. Interest and other fees charged to credit card holders and net gains from the sale of credit card receivables are assigned to Wisconsin if the billing address of the credit card holder is in Wisconsin.

Tax 2.495 Apportionment of apportionable income of interstate brokers-dealers, investment advisers, investment companies, and underwriters. Tax 2.495 is created to prescribe the method of apportioning the apportionable income of interstate brokerage houses, investment companies, and underwriters, as required by ss. 71.04(4) (e) and (8) and 71.25 (6) (e) and (10), Wis. Stats. Tax 2.495 does all of the following:

1. Defines “brokerage house” and other terms used in the rule.
2. Prescribes the method of apportioning the apportionable income of investment advisers, as authorized by ss. 71.04 (11) and 71.25 (12), Wis. Stats. Sections 71.04 (8) (a) and 71.25 (10) (a), Wis. Stats., exclude investment advisers from the definition of “financial organization.”
3. Phases in the use of an apportionment formula consisting solely of a receipts factor:
 - For taxable years beginning after December 31, 2005, and before January 1, 2007, apportionable income is apportioned using an apportionment fraction composed of a receipts factor representing 60% of the fraction, a payroll factor representing 20% of the fraction, and a property factor representing 20% of the fraction.

- For taxable years beginning after December 31, 2006, and before January 1, 2008, apportionable income is apportioned using an apportionment fraction composed of a receipts factor representing 80% of the fraction, a payroll factor representing 10% of the fraction, and a property factor representing 10% of the fraction.
 - For taxable years beginning after December 31, 2007, apportionable income is apportioned using an apportionment fraction consisting of the receipts factor.
4. Prescribes the types of income included in the receipts factor.
 5. Specifies which receipts are assigned to Wisconsin, based on the type of receipt.

Tax 2.50 Apportionment of apportionable income of interstate public utilities. Tax 2.50 is repealed and recreated to prescribe the method to be used for apportioning the apportionable income of interstate public utilities, other than telecommunications companies. Tax 2.50 as recreated eliminates the special

apportionment formula for interstate public utilities, other than telecommunications companies and cable television companies. For taxable years beginning before 2006, the three factors will be equally weighted in the apportionment formula. The phase-in of the single sales factor apportionment formula will apply to public utilities, other than telecommunications companies and cable television companies.

Tax 2.502 Apportionment of apportionable income of interstate telecommunications companies. Tax 2.502 is created to prescribe the method to be used for apportioning the apportionable income of interstate telecommunications companies. Tax 2.502 provides that interstate telecommunications companies, including interstate cable television companies, will compute their property, payroll, and sales factors under the 2001 statutes and rules. The three factors will be equally weighted in the apportionment formula. Gross receipts from the use of computer software and from services will continue to be included in the numerator of the sales factor based on the location of the income-producing activity. The phase-in of the single sales factor apportionment will not apply to telecommunications companies. [!\[\]\(339a16584d5da0f0a3ca4e9ec17bf6a1_img.jpg\)](#)



Report on Litigation

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

The following decisions are included:


Individual Income Taxes

Native Americans – reservation of another tribe
Edward and Margaret Snow. 29

Sales and Use Taxes

Bad debts
DaimlerChrysler Services North America LLC. 30
 Real property construction activities versus manufacturing
Visu-Sewer Clean & Seal, Inc. 30

INDIVIDUAL INCOME TAXES

 **Native Americans – reservation of another tribe.** *Edward and Margaret Snow vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, January 6, 2006). This is a judicial review of a March 31, 2005, decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 143 (July 2005), page 14, for a summary of the Commission's decision. 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.

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 sought to distinguish their case from *La Rock* based on several factors:

1. The Snows remain married, unlike the La Rocks. Joan La Rock, a Menominee Tribe member, was divorced from her husband, an Oneida Tribe member, at the time she earned the income in question. Thus, Joan La Rock's connection to the Oneida Tribe and its lands was somewhat more tenuous, even though all her children were Oneida Tribe members and all her income was earned from Oneida Tribe employment at a job site on the Oneida Reservation.
2. Mr. Snow's status, specifically as a Menominee Tribe non-member "citizen resident," was not explicitly considered in *La Rock*. Oneida Tribe status was at issue in *La Rock*. The Oneida and Menominee Tribes should be distinguished based on various legislation, specifically the exemption of the Menominee Tribe from Public Law 280. The Oneida Tribe is subject to Public Law 280, which confers on Wisconsin certain types of civil and criminal jurisdiction over it.
3. All of Mr. Snow's income is from federal sources or unemployment compensation from his job with the Tribe in providing security services to the Tribe. In *La Rock*, the wife's income was earned for work on the Oneida Reservation at the Oneida's casino, wholly owned and operated by the Oneida Tribe.


The Court found these arguments to be unpersuasive, and accepted and applied *La Rock* as controlling in this case.

The Court affirmed the Commission's decision, concluding that it is bound by the *La Rock* decision and its reasoning: inherent tribal sovereignty does not come into play except as to its own members.

The taxpayers have not appealed this decision.



SALES AND USE TAXES

 **Bad debts.** *DaimlerChrysler Services North America LLC vs. Wisconsin Department of Revenue* (Dane County Circuit Court, December 21, 2005). This is a judicial review of the Wisconsin Tax Appeals Commission decision dated September 7, 2004. See *Wisconsin Tax Bulletin* 141 (January 2005), page 25, for a summary of the Commission's decision. The issue in this case is whether the taxpayer may claim a refund for bad debts resulting from installment contracts assigned to the taxpayer by motor vehicle dealers and later found to be worthless.

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


The retail installment contracts were then assigned to the taxpayer. The taxpayer did not pay the sales tax due on each contract to the Department of Revenue. The taxpayer paid the full amount financed, including the sales tax, to the dealer when the contract was assigned to the taxpayer. After the taxpayer purchased the contracts from the dealers, the vehicle purchasers owed the amount financed to the taxpayer.

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

The Circuit Court concluded that the Commission was correct in its decision that the taxpayer was not entitled to a Wisconsin sales tax bad debt deduction for the default contracts because the taxpayer was not the retailer that previously paid the sales tax to the Department of Revenue as required by secs. 77.51(4)(b)4 and 77.52(6),

Wis. Stats. The Court stated that Wisconsin case law supports the requirement that only those who are responsible for and who actually remit the sales tax are eligible for a refund under the bad debt statutes. Therefore, the Commission was correct in its decision that the Department of Revenue properly denied the taxpayer's claim for refund.

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

 **Real Property Construction Activities Versus Manufacturing.** *Visu-Sewer Clean & Seal, Inc. vs. Wisconsin Department of Revenue* (Dane County Circuit Court, June 12, 2006). This is a review of the Wisconsin Tax Appeals Commission decision dated October 6, 2005. See *Wisconsin Tax Bulletin* 146 (February 2006), page 37, for a summary of the Commission's decision.

The taxpayer is a Wisconsin corporation engaged in various lines of business, including sewer cleaning and inspecting and re-lining underground sewer pipes that are in disrepair. All of the taxpayer's sewer re-lining work is for underground sewer pipes made of such materials as clay, reinforced concrete, non-reinforced concrete, case iron, steel, and transite. Sewer pipes have a design life of 50 years. The liners at issue that the taxpayer used have a design life of 50 years.

The issues addressed by the Wisconsin Tax Appeals Commission were whether Visu-Sewer Clean & Seal, Inc. ("taxpayer") was (1) engaged in real property construction activities when it installed sewer liners, and (2) whether royalties paid by the taxpayer for its purchases of U-Liners are subject to Wisconsin use tax. The issue relating to royalties was not under review by the Circuit Court.

The taxpayer contended that its installation of the National Liners and U-Liners into a customer's host sewer pipes is a manufacturing process, and that the raw materials, equipment, and equipment repair and maintenance were exempt from Wisconsin sales and use tax.

The Commission previously determined that the installation of sewer liners by the taxpayer was a real property construction activity. The taxpayer's purchase of the materials, machinery, and equipment used to install the sewer liners were not exempt from Wisconsin use tax under sec. 77.53, Wis. Stats. The sewer liners were physically annexed to the real estate when they were installed into the host pipes and were clearly adapted to

the use of those pipes. The sewer pipe lines were intended to be a permanent accession to the realty.

The Commission also ruled that the taxpayer is liable for sales or use tax on its purchase of the materials that it used in the real property construction activity of the sewer liner installation, stating that “(the taxpayer) is a real property construction contractor, and the activities in question are real property construction activities. Thus, (the taxpayer’s) activities are not eligible for the manufacturing exemption.”

In making its determination, the Commission relied on the three-part test for determining when an item becomes a fixture or real property, as set forth by the Wisconsin Supreme Court in *Department of Revenue v. Smith Harvestore Products* 72 Wis.2d 60, 240 N.W.2d 357 (1976). The elements of this test are “(1) Actual physical annexation to the real estate; (2) application or adaptation to the use or purpose to which the realty is devoted; and (3) an intention on the part of the person making the annexation to make a permanent accession to the freehold.” The *Harvestore* test has been codified

in sec. 77.51(2), Wis. Stats., as part of the definition of “real property construction activities.”

The Circuit Court determined that the Commission correctly applied the *Harvestore* test in its determination that the pipe liners are real property, and thus, that the taxpayer was engaged in real property construction. The Circuit Court affirmed the Commission’s decision that the taxpayer is not entitled to a tax exemption under sec. 77.54(2), Wis. Stats., on its purchases of the materials that it used in the real property construction activity of the sewer liner installation. The Commission was also correct in its conclusion that the exemption under sec. 77.54(6)(a), Wis. Stats., does not apply, because the subject machines and equipment are not used in the manufacture of tangible personal property, as required by the exemption. Rather, the items are used or consumed by the contractor and, therefore, the contractor must pay tax on purchases of such property.

It was not known at the time of publication whether the taxpayer would appeal this decision. [Ⓜ](#)



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter ruling is included:

Sales and Use Taxes

Use tax liability on the hanging of an aircraft in Wisconsin
W 0625001 (p. 32)

✱ **W 0625001** ✱

April 3, 2006

Type Tax: Sales and Use Taxes

Issue: Use tax liability on the hanging of an aircraft in Wisconsin

Statutes: Sections 77.51(14r), 77.52(1), and 77.53(1) and (17r), Wis. Stats. (2003-04)

Wis. Adm. Code: Section 11.84, Wis. Adm. Code (July 2003 Register)

This letter responds to your request for a private letter ruling dated March 30, 2005.

Facts you provided:

Company A (the Taxpayer) is a limited liability company organized under the laws of the State of Delaware. The Taxpayer was formed to acquire and hold aircraft

used by the management personnel of a non-Wisconsin brother sister company, Company B, an Illinois corporation, in order to isolate and segregate the liabilities associated with owning and operating aircraft from the brother sister company, a real estate operating company (the Operating Company). The Operating Company owns real estate in the states of Indiana, Michigan, Illinois and Minnesota.

A helicopter (the “Aircraft”) will be used to provide transportation to the executives and employees of the Operating Company to enable them to visit and inspect the real estate owned by the Operating Company. Neither the Taxpayer nor the Operating Company currently transact any business in the State of Wisconsin; and none of the managers, members or owners of the Taxpayer or of the Operating Company are domiciled in Wisconsin. However, the owner of the Operating Company does maintain a vacation home in the State of Wisconsin.

The Aircraft was manufactured in the State of Texas and the Taxpayer took delivery of the Aircraft from the manufacturer in the State of Texas. No sales tax was paid to the State of Texas on the acquisition of the Aircraft based on the Texas exemption for aircraft that are sold for use and registration in another state before any use in Texas (other than transportation of the aircraft out of Texas).

The Aircraft will be hangared in Wisconsin because of the cost savings of hangaring the Aircraft in Wisconsin when compared to hangaring the Aircraft in Illinois, the location of the Taxpayer’s and the Operating Company’s principal place of business. The aircraft will be registered in Wisconsin. The hangar is owned by Company C, which is a related party to the Taxpayer. Except for the hangar, Company C does not own any property in Wisconsin. Company C is a Delaware limited liability company and none of its members, officers, directors, or managers are domiciled in Wisconsin.

The Taxpayer does not own any aircraft other than that which is the subject of this ruling request. The members of the Taxpayer are Individual D and Company E.

The Taxpayer does not have any tangible personal property or real estate in Wisconsin, other than aircraft and property such as hangars, accessories, attachments, fuel,

and parts required for operation of aircraft. The corporate member of the Taxpayer, Company E, does not own any real or tangible personal property in Wisconsin and is not organized under the laws of Wisconsin. It is organized under the laws of Illinois. Furthermore, Company E does not file a consolidated return for federal income tax purposes.

The Taxpayer is not currently being audited by the department with respect to the issue on which the ruling is requested; and, to the best knowledge of the Taxpayer, the issue or an identical issue is not in the return of the Taxpayer or of a related party to the Taxpayer within the meaning of Section 267 of the Internal Revenue Code of 1986, as amended (IRC) or a member of an affiliated group of which the Taxpayer is also a member within the meaning of IRC Section 1504.

Request:

The Taxpayer requests that the department rule that the hangaring of the Aircraft in the State of Wisconsin will not result in a Wisconsin use tax liability to the Taxpayer since the Aircraft is exempt from Wisconsin use tax pursuant to sec. 77.53(17r), Wis. Stats. (2003-04), and sec. Tax 11.84(1)(e), Wis. Adm. Code (July 2003 Register).

Ruling:

Under the facts you provided, the Taxpayer has fulfilled the requirements of sec. 77.53(17r), Wis. Stats. (2003-04), and the hangaring of the Aircraft in Wisconsin does not result in a Wisconsin use tax liability to the Taxpayer.

Analysis:

Section 77.52(1), Wis. Stats. (2003-04), imposes Wisconsin sales tax on the retail sale, lease, or rental of tangible personal property in Wisconsin.

The tax imposed by sec. 77.52(1), Wis. Stats. (2003-04), does not apply to the manufacturer's sale of the Aircraft to the Taxpayer, because the sale did not occur in Wisconsin. The sale of the Aircraft to the Taxpayer occurred in the State of Texas, where the Taxpayer took delivery of the Aircraft from the manufacturer.

As provided in sec. 77.51(14r), Wis. Stats. (2003-04), a sale or purchase of tangible personal property is deemed to have been completed at the time when and the place where possession is transferred from the seller or the seller's agent to the purchaser or the purchaser's agent.

Section 77.53(1), Wis. Stats. (2003-04), imposes Wisconsin use tax on the storage, use, or other consumption in Wisconsin of tangible personal property purchased from any retailer, at the rate of 5% of the sales price of that property.

Section 77.53(17r), Wis. Stats. (2003-04), provides:

“This section does not apply to an aircraft if all of the following requirements are fulfilled:

- (a) It is purchased in another state.
- (b) Its owner or lessee has paid all of the sales and use taxes imposed in respect to it by the state where it was purchased.
- (c) If the owner or lessee is a corporation, that corporation, and all corporations with which that corporation may file a consolidated return for federal income tax purposes, neither is organized under the laws of this state nor has real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.
- (d) If the owner or lessee is a partnership, all of the corporate partners fulfill the requirements under par. (c) and none of the general partners and none of the limited partners who has management or control responsibilities is domiciled in this state and the partnership has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.
- (dm) If the owner or lessee is a limited liability company, all of the corporate members fulfill the requirements under par. (c) and none of the managers and none of the members who has management or control responsibilities is domiciled in this state and the limited liability company has no other tangible personal property and no real property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft;

in this state at the time the aircraft is registered in this state.

- (e) If the owner or lessee is an individual, the owner or lessee is not domiciled in this state.
- (f) If the owner or lessee is an estate, trust or cooperative; that estate, that trust and its grantor or that cooperative does not have real property or other tangible personal property; except aircraft and such property as hangars, accessories, attachments, fuel and parts required for operation of aircraft; in this state at the time the aircraft is registered in this state.
- (g) The department has not determined that the owner, if the owner is a corporation, trust, partnership or limited liability company, was formed to qualify for the exception under this subsection.”

Each of these requirements is discussed below.

- (a) This requirement is met. Because the Taxpayer took delivery of the Aircraft from the manufacturer in the State of Texas, the Taxpayer purchased the Aircraft in a state other than Wisconsin.
- (b) This requirement is met. Because an exemption from Texas sales and use taxes applied to the Taxpayer’s purchase of the Aircraft, no sales or use taxes were imposed by the State of Texas on this transaction.
- (c) This requirement does not apply because the owner is not a corporation.

(d) This requirement does not apply because the owner is not a partnership.

(dm) This requirement is met. The corporate member of the Taxpayer, Company E, fulfills the requirements under sec. 77.53(17r)(c), Wis. Stats. (2003-04) (i.e., Company E is not organized under the laws of Wisconsin, it does not own any real or tangible personal property in Wisconsin, and it does not file a consolidated return for federal income tax purposes). None of the managers or members of the Taxpayer are domiciled in Wisconsin. Finally, the Taxpayer does not have any tangible personal property or real estate in Wisconsin, other than aircraft and property such as hangars, accessories, attachments, fuel, and parts required for operation of aircraft.

(e) This requirement does not apply because the owner is not an individual.

(f) This requirement does not apply because the owner is not an estate, trust, or cooperative.

(g) This requirement is met. The Wisconsin Department of Revenue has not determined that the Taxpayer was formed to qualify for the exemption provided in sec. 77.53(17r), Wis. Stats. (2003-04). The taxpayer was formed to acquire and hold aircraft used by the management personnel of the Operating Company, in order to isolate and segregate the liabilities associated with owning and operating aircraft from the Operating Company.