

Wisconsin TAX BULLETIN

www.revenue.wi.gov

Number 150

January 2007

Tax Practitioners are Valued Customers and Key Partners to Department of Revenue

We believe that a strong partnership with tax practitioners will result not only in better services to taxpayers, but will also help both of us accomplish our respective missions. In an effort to provide you with the highest level of customer service, and to continue to strengthen this important partnership, the department has implemented a new telephone queue that is devoted exclusively to tax practitioners. From now on, when you call us at (608) 264-6886, you will hear a list of options. One of these options will be specifically for tax practitioners. When you choose the tax practitioner option, you will be referred to one of our tax specialists who will be able to answer your technical and tax processing questions. We hope that this specialized service will enable you to provide your customers with both accurate and rapid service. [☞](#)

Rock County Adopts County Tax

Effective April 1, 2007, the county sales and use tax will be in effect in Rock County. This brings to 60 the number of counties that have adopted the 1/2% county tax.

Retailers were notified about Rock County's adoption of the county tax in the December 2006 *Sales and Use Tax Report* (number 4-06). A copy of the Report appears on pages 34 to 37 of this Bulletin.

For additional information about the county tax, see Publication 201, *Wisconsin Sales and Use Tax Information*, Part XVIII, on pages 39 to 45. Publication 201 is available from any Department of Revenue office. See the article titled "Tax Publications Available" on page 28 of this Bulletin for information about how to obtain copies of Publication 201 by mail, phone, fax, or the Internet. [☞](#)

Recent Federal Law Changes Do Not Apply for Wisconsin

For taxable years beginning in 2006, Wisconsin generally follows the Internal Revenue Code enacted as of December 31, 2004. Unless later adopted by the Wisconsin Legislature, changes to federal law enacted after December 31, 2004, do not apply for Wisconsin. Taxpayers must use 2006 Wisconsin Schedule I to adjust for Wisconsin and federal differences in the definition of the Internal Revenue Code. Schedule I provides a listing of the various items that must be adjusted.

(continued on page 3)

Did You Know the Department of Revenue... [✍](#)

- ◆ provides free taxpayer assistance all around Wisconsin (see article on page 9), and via the Internet (www.revenue.wi.gov, then click on "FAQS" – frequently asked questions)
- ◆ has free publications on a wide variety of tax subjects (see article on page 28)
- ◆ has indexes to make your research easier (see articles on pages 21 and 27)
- ◆ provides old and new tax forms via the Internet (www.revenue.wi.gov) and via Fax-A-Form (phone 608-261-6229 from a fax telephone) (see article on page 30)
- ◆ offers recorded refund information 24 hours a day, seven days a week (phone 608-266-8100, Madison, 414-227-4907, Milwaukee, or 1-866-947-7363, toll-free within the U.S. or Canada)
- ◆ provides an Internet site for inquiring about your refund (www.revenue.wi.gov) [☞](#)

In This Issue**Articles –**

Practitioners are Valued Customers	1
Rock County Adopts Tax	1
Federal Law Changes Do Not Apply	1
Did You Know	1
IRA Distributions Donated to Charity	2
Health Savings Accounts	2
Federal Telephone Excise Tax Credit	6
College Savings Accounts	6
Wisconsin Earned Income Credit	6
Standard Mileage Rates	7
Reminder: Electronic Filing Required	7
Pass-Through Withholding Reminders	8
Due Dates for Information Returns	8
Taxpayer Assistance	9


Attaching Federal Return	10
File Error-Free Returns	10
Processing Tax Refunds	12
Eliminate Fiduciary Return Delays ..	13
Enforcement Report	14
Sales Tax on Income Returns	15
Sales Tax Seminars	15
File Sales Tax Electronically	15
Question and Answer	16
Sales Tax Report Available	17
Excise Tax on Vegetable Oil	17
Corporation, Partnership E-Filing ...	18
Reminder: Estate Tax	19
Reminder: Internet Posting of Delinquent Accounts	19
Tax Compromises	20
Preparing Form WT-7	20
1099-Gs, 1099-INTs Mailed	21
Index of Reference Material	21
It's an Electronic World	22
Electronic Filing is Available for W-2s and 1099s	22

File Schedule 3K-1s on Magnetic/Electronic Media	23
Filing Free and Online	23
Negligence Penalties Imposed	24
How to Obtain Copies	24
Administrative Rules in Process	25
Recently Adopted Rules	26
Information or Inquiries?	27
Withholding Tax Update	27
Bulletin Index Included	27
Clearance Certificates and Successor Liability	27
Tax Publications Available	28
How to Obtain Forms	30
Report on Litigation	31
Attachments –	
December Tax Report	34
Withholding Tax Update.....	38
Frequently Asked Questions.....	40
Bulletin Index	42
Order Blank.....	77

Treatment of IRA Distributions Donated to Charity

The Pension Protection Act of 2006 (federal Public Law 109-280) provides that individuals aged 70 ½ or older can distribute up to \$100,000 of their IRA balance to charitable organizations in 2006 and 2007 without recognizing income and without taking a charitable deduction.

As of December 31, 2006, this provision of P.L. 109-280 has not been adopted for Wisconsin tax purposes. When filing their 2006 Wisconsin income tax returns, taxpayers who donated an IRA distribution to charity must complete 2006 Wisconsin Schedule I to include the IRA distribution in Wisconsin income. To calculate the Wisconsin itemized deduction credit, use the amount of charitable deduction that would have been allowed on federal Schedule A without considering P.L. 109-280.

The Wisconsin Legislature is in session beginning this month. Adoption of several federal public laws will be considered during that session. It will probably not be known until July whether this provision relating to IRAs will be adopted retroactively for Wisconsin. If this provision is adopted retroactively for Wisconsin, taxpayers who included in income an IRA distribution that was donated to charity may file an amended return (Form 1X) to remove such amount from income and to adjust the itemized deduction credit. 

Reminder: Federal Provisions Relating to Health Savings Accounts Continue to Not Apply for Wisconsin

The Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Public Law 108-173), was enacted December 8, 2003. This federal Act amended the Internal Revenue Code (IRC) and provided for the establishment of health savings accounts. Since the federal provisions relating to health savings accounts were enacted during 2003, they did not apply for Wisconsin. See related article on page one of *Wisconsin Tax Bulletin* 140 (October 2004).

(continued on page 5)

Wisconsin Tax Bulletin

Published quarterly by:

Wisconsin Department of Revenue
Income, Sales, and Excise Tax Division
Mail Stop 6-40
P.O. Box 8933
Madison, WI 53708-8933

Subscriptions available from:

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

Annual cost \$7.00

Recent Federal Law Changes Do Not Apply for Wisconsin

(continued from page 1)

An additional federal law was enacted after the 2006 Schedule I was sent to the printer. Listed below are additional changes to federal law that must be considered when completing Schedule I. These law changes were made by Public Law 109-432 (the Tax Relief and Health Care Act of 2006), enacted December 20, 2006, and do not apply for Wisconsin for 2006.

Note: These changes are also listed as a supplement to the Internet version of the 2006 Schedule I instructions, available at www.revenue.wi.gov.

1. Deduction for Tuition and Fees

- (a) Federal – The deduction for up to \$4,000 of qualified tuition and fees paid during the taxable year in connection with enrollment at an institute of higher education is extended through December 31, 2007.
- (b) Wisconsin – The federal deduction for up to \$4,000 of qualified tuition and fees does not apply for Wisconsin.

2. Educator Expenses

- (a) Federal – The deduction from gross income for up to \$250 of expenses paid or incurred by an eligible educator in connection with books, supplies, computer equipment and other equipment, and supplementary materials used by an educator in the classroom is extended through taxable years beginning in 2007.
- (b) Wisconsin – The deduction from gross income for expenses of an educator in connection with books, supplies, computer equipment and other equipment, and supplementary materials used in the classroom is not allowed.

3. Environmental Remediation Costs

- (a) Federal – The election to expense environmental remediation costs is extended through December 31, 2007. The definition of a hazardous substance is expanded to include any petroleum product.

- (b) Wisconsin – A taxpayer may not elect to treat environmental remediation costs as an expense which is not chargeable to a capital account.

4. Accelerated Depreciation for Indian Reservation Property

- (a) Federal – The provision allowing accelerated depreciation for business property on Indian reservations is extended. It will expire for property placed in service after December 31, 2007.
- (b) Wisconsin – Depreciation is determined under the provisions of the Internal Revenue Code in effect on December 31, 2000.

5. Qualified Leasehold Improvements and Qualified Restaurant Property

- (a) Federal – The 15-year recovery period for qualified leasehold improvement property and qualified restaurant property is extended to apply to property placed in service during 2006 and 2007.
- (b) Wisconsin – The recovery period for depreciation of leasehold improvement property and restaurant property is determined under the provisions of the Internal Revenue Code in effect on December 31, 2000.

6. Archer Medical Savings Accounts (MSAs)

- (a) Federal – The cut-off year for purposes of the Archer MSAs is extended through calendar year 2007.
- (b) Wisconsin – No deduction is allowed for contributions to Archer MSAs established after calendar year 2005.

7. Bonus Depreciation for Gulf Opportunity Zone Property

- (a) Federal – Fifty percent bonus depreciation is extended for Gulf Opportunity Zone property placed in service on or before December 31, 2010.
- (b) Wisconsin – Bonus depreciation does not apply for Wisconsin. Depreciation is determined under the provisions of the Internal Revenue Code in effect on December 31, 2000.

8. Energy Efficient Commercial Buildings Deduction

- (a) Federal – The deduction for energy-efficient commercial building property expenditures is extended to property placed in service after December 31, 2007, and before January 1, 2009.
- (b) Wisconsin – The treatment of energy-efficient commercial building property expenditures is determined under the provisions of the Internal Revenue Code in effect on December 31, 2000.

9. Depreciation for Cellulosic Biomass Ethanol Plant Property

- (a) Federal – The depreciation deduction for cellulosic biomass ethanol plant property shall include an allowance equal to 50% of the adjusted basis of such property.
- (b) Wisconsin – Depreciation for cellulosic biomass ethanol plant property is determined under the provisions of the Internal Revenue Code in effect on December 31, 2000.

10. Rollovers from Health FSAs and HRAs into HSAs

- (a) Federal – Certain amounts in a health flexible spending arrangement (FSA) or health reimbursement arrangement (HRA) may be distributed from the FSA or HRA and contributed through a direct transfer to a health savings account (HSA). Amounts contributed to the HSA under this provision are excludable from gross income and are not deductible.
- (b) Wisconsin does not recognize HSAs. Any distribution from an FSA or HRA is taxable when rolled over to an HSA.

11. Domestic Production Activities in Puerto Rico

- (a) Federal – For purposes of determining production gross receipts, Puerto Rico may be treated as part of the United States.
- (b) Wisconsin – Puerto Rico may not be treated as part of the United States when determining production gross receipts.

12. Partial Expensing for Advanced Mine Safety Equipment

- (a) Federal – For property placed in service after December 20, 2006, a taxpayer may elect to treat 50% of the cost of any qualified advanced mine safety equipment property as a deduction in the taxable year in which the equipment is placed in service.
- (b) Wisconsin – Advanced mine safety equipment is depreciated under the provisions of the Internal Revenue Code in effect on December 31, 2000.

13. Whistleblower Reforms

- (a) Federal – For information provided on or after December 20, 2006, an above-the-line deduction is allowed for attorneys' fees and costs paid by, or on behalf of, an individual in connection with any award for providing information to the IRS regarding violations of tax laws.
- (b) Wisconsin – Attorneys' fees and costs can only be claimed as a miscellaneous itemized deduction. Such fees are not allowed in computing the Wisconsin itemized deduction credit.

14. Exclusion of Gain on Sale of Residence by Members of the Intelligence Community

- (a) Federal – To be eligible to exclude gain on the sale of a principal residence, the taxpayer must have owned and used the residence as a principal residence for at least two of the five years ending on the sale or exchange. For sales and exchanges after December 20, 2006, specified employees of the intelligence community may elect to suspend the running of the five-year test period during any period in which they are serving on extended duty.
- (b) Wisconsin – Taxpayers must meet the five-year test period to qualify to exclude gain on the sale of a principal residence.

15. Percentage Depletion from Oil and Natural Gas

- (a) Federal – The taxable income limitation suspension provision for marginal production is extended for taxable years beginning after December 31, 2005, and before January 1, 2008.

- (b) Wisconsin – Under the percentage depletion method, 15% of the taxpayer's gross income from an oil- or gas-producing property is allowed as a deduction in each taxable year. The amount deducted may not exceed 100% of the taxable income from that property in any year.

16. Sale of Property by Judicial Officers

- (a) Federal – Under prior law, employees of the executive branch of the federal government (and their spouses and minor or dependent children) who are required to divest property in order to

comply with conflict of interest requirements may elect to postpone the recognition of gains by investing in certain replacement property within 60 days. For sales after December 20, 2006, this postponement is extended to judicial officers.

- (b) Wisconsin – The election to postpone recognition of gain applies to an officer or employee of the executive branch of the Federal Government and their spouses and minor or dependent children.



Reminder: Federal Provisions Relating to Health Savings Accounts Continue to Not apply for Wisconsin

(continued from page 2)

For tax years beginning in 2006, Wisconsin generally follows the IRC as amended to December 31, 2004. An exception to this treatment is the federal provisions in the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 relating to health savings accounts. Therefore, these provisions continue to not apply for Wisconsin for taxable years beginning in 2006.

Effect of Wisconsin Not Following Federal Law Changes Relating to Health Savings Accounts

- A deduction is not allowed for the amount contributed to a health savings account for an individual.
- Earnings on the health savings account are taxable to the individual.
- Amounts distributed from the health savings account are not taxable to Wisconsin, regardless of whether or not the amount is used to pay medical expenses.
- Medical expenses paid with a distribution from a health savings account are allowed in the computation of the Wisconsin itemized deduction credit.
- A rollover from an Archer medical savings account to a health savings account results in a taxable transaction.

- Amounts contributed by an employer to a health savings account for an employee are taxable wages to the employee.
- Amounts contributed to a health savings account pre-tax by an employee under sec. 125, IRC (cafeteria plan), are taxable wages for Wisconsin.

Employers Must Notify Employee on W-2 Wage Statement

Contributions to a health savings account that represent additional wages to an employee for Wisconsin purposes can be reported to employees by either:

- (1) including the amount that is taxable for Wisconsin purposes (but not taxable for federal purposes) in Box 16 of the 2006 Form W-2, or
- (2) providing employees with a supplemental "Wisconsin only" 2006 Form W-2 with the taxable health savings account benefits shown in Box 16.

Where to Adjust for Differences Between Wisconsin and Federal Law

Individuals should use Wisconsin Schedule I (titled "Adjustments to Convert 2006 Federal Adjusted Gross Income and Itemized Deductions to the Amounts Allowable for Wisconsin") to adjust for differences between the Wisconsin and federal income tax treatment of health savings accounts.

Schedule I is available from any Wisconsin Department of Revenue office. Schedule I is also available from the department's Internet website at www.revenue.wi.gov.



Federal Telephone Excise Tax Credit

For federal purposes, a credit or refund is available for 2006 for the amount paid for excise tax billed after February 28, 2003, and before August 1, 2006, on long distance or bundled telephone service. Individuals (including Schedule C filers) may claim either the safe harbor (standard) amount or the actual amount of tax paid. The standard amount ranges from \$0 to \$60, depending upon the number of exemptions claimed on the tax return. Taxpayers other than individual taxpayers may request only the actual amount of tax paid during the relevant period.

For federal purposes, an individual who claims the standard amount does not have to include the credit or refund in income for any tax year. For taxpayers who claim the actual amount of tax paid, any part of the credit or refund attributable to tax payments that were deducted as an ordinary and necessary business expense must be included in income for the taxable year in which the refund is received or accrued to the extent that the tax payments reduced the amount of federal income tax imposed.

The Wisconsin treatment of the credit or refund is the same as the federal treatment. [!\[\]\(d66ff64371a51729ac8c1cdaa685ba6f_img.jpg\)](#)

Contributions to College Savings Accounts

Wisconsin law (sec. 71.05(6)(b)32 and 33, Wis. Stats.) provides a subtraction from federal adjusted gross income when computing Wisconsin income for the amount contributed to a Wisconsin state-sponsored college savings account. The beneficiary of the account must be the contributor or his or her spouse, child who is claimed as a dependent on the federal income tax return, grandchild, great-grandchild, niece, or nephew. The subtraction is limited to the lesser of the amount contributed to the account or \$3,000 per beneficiary.

The Wisconsin state-sponsored college savings account plan is a qualified tuition program under sec. 529 of the Internal Revenue Code (IRC). There are two Wisconsin state-sponsored college savings accounts. They are known as EdVest and “tomorrow’s scholar.”

Only contributions to Wisconsin EdVest and “tomorrow’s scholar” accounts qualify for the Wisconsin subtraction. Contributions to any other sec. 529, IRC, qualified tuition program maintained by another state or educational institution may not be claimed as a subtraction. [!\[\]\(faf942dc3e59ce8eb64b4ac481eca7e0_img.jpg\)](#)

Wisconsin Earned Income Tax Credit

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

The federal EITC amount used in the computation of the Wisconsin EITC is taken directly from the federal return that the person files with the Internal Revenue Service (line 66a of 2006 Form 1040 or line 40a of Form 1040A).

Note: The credit is not recomputed for differences in the Wisconsin and federal definition of the Internal Revenue Code (Schedule I adjustments) or for any Wisconsin additions or subtractions.

Who is a qualifying child?

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

Relationship test:

The child must be a son, daughter, stepchild, eligible foster child, brother, sister, half brother, half sister, stepbrother, stepsister, or a descendent of any of them (for example, a grandchild, niece, or nephew).

An adopted child is always treated as the taxpayer’s own son or daughter. An adopted child includes a child lawfully placed with the taxpayer for legal adoption.

An eligible foster child is a child placed by an authorized placement agency or by judgement, decree, or other order of any court of competent jurisdiction.

Age test:

The child must be under the age of 19 at the end of the tax year or under age 24 if a full time student for at least five months of the tax year. If the child is permanently

and totally disabled at any time during the year, the age test does not apply.

Residency test:

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


What other qualifications are there for claiming the EITC?

The taxpayer must meet certain eligibility rules to claim the EITC, including the following:

- The taxpayer, spouse (if married), and all qualifying children must have a valid social security number.
- The taxpayer must be a United States citizen or a resident alien for the full calendar year.

- The taxpayer's correct filing status cannot be "married filing separate."
- The taxpayer's investment income must be less than \$2,800 for tax year 2006 (less than \$2,700 for tax year 2005).
- The taxpayer must have earned income.

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

Additional information concerning the Wisconsin EITC may be obtained on the Department of Revenue's website at www.revenue.wi.gov, or by contacting the department by phone at (608) 266-2772 or by e-mail at income@dor.state.wi.us. 




Standard Mileage Rates for 2007

The optional standard mileage rates provided by the Internal Revenue Service (IRS) for 2007, for computing automobile expenses for business, charitable, medical, and moving expense purposes, also apply for Wisconsin.

For 2007 the IRS has increased the business standard mileage rate from 44.5¢ per mile to 48.5¢ per mile for all business miles driven. The 48.5¢ per mile rate is allowed without regard to whether the automobile was previously considered fully depreciated.

If the standard mileage rate of 48.5¢ per mile is used, depreciation is considered to be allowed at 19¢ per mile for 2007, an increase from 17¢ per mile for 2006. However, no portion is considered to be depreciation after the adjusted basis of the automobile reaches zero.

For 2007 the IRS has increased the allowable standard mileage rate for medical expense and moving expense deductions from 18¢ per mile to 20¢ per mile. The rate for charitable purposes remains at 14¢ per mile. (**Note:** The increased rate for charity work related to Hurricane Katrina expired for federal purposes on December 31, 2006. This increased rate did not apply for Wisconsin purposes.) 


Reminder: Electronic Filing Required for Certain Practitioners

Per Administrative Code Section Tax 2.08, the Department of Revenue requires practitioners who file 100 or more Wisconsin individual income tax returns (Forms 1, 1A, and WI-Z) and homestead credit claims to file electronically.

The department allows for a waiver in the case of undue hardship, and in specific cases when the individual taxpayer does not want to file electronically. A taxpayer who prefers to file a paper return may write "no e-file" before his or her signature on the tax return; this will relieve the practitioner of the e-filing requirement for that return. A practitioner may request a waiver by mailing a letter to Wisconsin Department of Revenue,

Mail Stop 5-77, P.O. Box 8903, Madison, WI 53708-8903. The request should clearly indicate why the requirement to electronically file causes an undue hardship.

For more information about the administrative rule, go to <http://www.revenue.wi.gov/eserv/rule.html> or contact the department at the e-mail address or phone number below.

For more information about registering to submit individual income tax returns electronically through the federal/state e-file program, go to <http://www.revenue.wi.gov/eserv/e-ero.html> or contact the department by e-mail at efiling@dor.state.wi.us or by phone at (608) 264-6886. 

Important Reminders for Pass-Through Entities and Nonresidents

Pass-through entities are required to withhold Wisconsin income or franchise tax on Wisconsin income allocable to nonresident shareholders, partners, members, or beneficiaries. The withholding is paid with Form PW-1, which is due on the unextended due date of the pass-through entity's income or franchise tax return.

Reminders for Pass-Through Entities

- Form PW-1 is required to be filed electronically. Two free electronic filing methods are available on the department's website at www.revenue.wi.gov/eserv/pw/index.html. Do **not** enclose Form PW-1 with Form 2, 3, or 5S.
- Quarterly withholding estimates are **not** required. Instead, Form PW-1 and a single withholding payment for the entire taxable year are due on the unextended due date of the pass-through entity's income or franchise tax return.
- A tax-option (S) corporation may **not** claim withholding credit at the corporate level for income that is passed through to shareholders. Withholding attributable to income passed through to shareholders must be reported on Schedules 5K and 5K-1. Only withholding attributable to income taxed at the corporate level may be claimed on Form 5S.

- Pass-through entities which are nonresident members of tiered pass-through entities must file Form PW-1. On Form PW-1, a pass-through entity may claim credit for tax already withheld by an upper-tier entity.

Reminders for Nonresidents Claiming Credit for Pass-Through Entity Withholding

- The withholding does not relieve you of the requirement to file a Wisconsin income or franchise tax return, if you are otherwise required to file one.
- Claim credit for the withholding on the line designated for Wisconsin tax withheld. To ensure correct processing of your return, do **not** use the line designated for estimated payments.
- Remember to enclose with your return a copy of the Schedule 2K-1, 3K-1, or 5K-1 that you received from the pass-through entity. (This requirement does not apply to filers of Form 1CNS or Form 1CNP.)

For More Information on Pass-Through Entity Withholding

Visit the department's website at www.revenue.wi.gov/eserv/pw/index.html for links to the Form PW-1 instructions, electronic filing instructions, and answers to Frequently Asked Questions. Also, see issue 148 of the *Wisconsin Tax Bulletin* (July 2006), page 18. [↗](#)



Don't Forget Due Dates for Information Returns

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

Information returns due January 31, 2007 include Form W-2 to report wages, tips, and other compensation, and Form W-2G to report gambling winnings.

Information returns due February 28, 2007 include Wisconsin Form 9b (or federal Form 1099-R or 1099-MISC) to report retirement plan distributions and other nonwage compensation, and for payers other than corporations to report rents or royalties.

Information returns due March 15, 2007 by **corporations** include Form 9b or federal Form 1099-MISC to report rents or royalties, and Form 8 to report capital stock transfers.

Regardless of the due date for filing the information returns with the department, copies of the information returns (except Form 8) must be given to the recipients of the payments by January 31, 2007. Copies of Form 8 are not required to be given to individuals who transfer capital stock.

Additional information is available in Wisconsin Publication 117, *Guide to Wisconsin Information Returns*. See the article titled "Tax Publications Available" on page 28 of this Bulletin for information about how to obtain a copy of the publication. [↗](#)



Department Offers Taxpayer Assistance

Department personnel will be available through April 16, 2007, to provide taxpayer telephone and walk-in assistance. Assistance is provided Monday through Friday in many of the larger offices, and Mondays only in other offices (except as noted in the chart below).

Offices Providing Daily Assistance (Monday through Friday)

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

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Location	Address	Telephone No.	Hours
Baraboo	1000 Log Lodge Ct.	(608) 356-3472	7:45-1:00
Beaver Dam	220 Seippel Blvd.	(920) 356-6090	7:45-1:00
Elkhorn	715 W. Walworth St.	(262) 723-4098	7:45-1:00
Fond du Lac	845 S. Main, Ste. 150	(920) 929-3985	7:45-1:00
Grafton	1930 Wisconsin Ave.	(262) 375-7948	7:45-1:00
Green Bay	200 N. Jefferson St., Rm. 526	(920) 448-5179	7:45-4:30 *
Hayward	100 Ranch Rd.	(715) 634-8478	7:45-1:00
Hudson	2100 O'Neil Rd., Ste. 200	(715) 381-5060	7:45-1:00
Janesville	2524 Morse St.	(608) 758-6190	7:45-4:30 †
Kenosha	4911 88th Ave., Ste. B	(262) 653-7088	7:45-4:30 **
La Crosse	620 Main St., Rm. 213	(608) 785-9720	7:45-1:00
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-1:00
Marinette	Courthouse, 1926 Hall Ave.	(715) 732-7565	9:00-1:00
Oshkosh	515 S. Washburn, Ste. 105	(920) 424-2100	7:45-1:00
Rhineland	2187 N. Stevens St., Ste. D	(715) 365-2666	7:45-1:00
Sheboygan	807 Center Ave.	(920) 459-3101	7:45-1:00
Superior	1225 Tower Ave., Ste. 315	(715) 392-7985	7:45-1:00
Tomah	203 E. Clifton St.	(608) 372-3256	7:45-1:00
Wausau	710 Third St.	(715) 842-8665	7:45-1:00
Wisconsin Rapids	1681 2nd Ave. S.	(715) 421-0500	7:45-1:00

† Open Monday and Tuesday

* Open Monday through Thursday

** Open Monday through Wednesday



Enclosing Copy of Federal Return

Individuals who file their Wisconsin income tax return on Form 1 or 1NPR are required by law to enclose (using a paper clip) a complete copy of their federal income tax return with their Wisconsin return. Generally this will be a copy of federal Form 1040, 1040A, or 1040EZ and all accompanying schedules and statements. The federal income tax return is required by law to allow the Department of Revenue to perform its statutory duties including audit and delinquent tax collection.

Some taxpayers who are required to file a Wisconsin income tax return are not required to file a federal income tax return with the Internal Revenue Service.

For example, a person filing as head of household who is age 65 or over, with gross income of at least \$11,880 but less than \$12,100 for 2006, must file a 2006 Wisconsin return but is not required to file a 2006 federal return. In this situation, since the person would not have a copy of a federal return to enclose with the Wisconsin return, a statement listing the sources and amounts of income must be enclosed with the Wisconsin Form 1 or 1NPR in lieu of a federal return.

Note: Because the Wisconsin tax forms refer to various lines on the federal return, a person may find it helpful to complete a federal income tax form to use as a reference when completing the Wisconsin return. This federal form, even though it will not be filed for federal tax purposes, may be enclosed with the Wisconsin return instead of the required statement of income. [\[Link\]](#)



File Error-Free Tax Returns and Credit Claims

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

In the 2006 processing season (2005 returns and claims), the department sent back thousands of tax returns and credit claims. Processing was delayed on thousands of other forms, to obtain additional information from taxpayers or claimants. Tax returns and credit claims that were adjusted during processing numbered in the hundreds of thousands.

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

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

- Read and follow instructions.
- Fill in the social security number or employer identification number.
- Make sure all required line entries have been made, and that they are on the proper lines.

- Check and recheck the return before it is filed, even if it is filed electronically. Although electronic filing does significantly reduce errors, each year the department sees an increase in the number of amended returns it receives as a result of electronically filed returns being submitted without first being checked over.
- Sign the return or claim.
- Enclose required documents:
 - copies of federal return and schedules.
 - (individual returns) wage and tax statements, page 4 of Form 1 (when the itemized deduction credit or married couple credit is claimed), property tax bill(s) and the verification received from the Wisconsin Department of Veterans Affairs (when the eligible veteran's and surviving spouse's property tax credit is claimed).
 - (1NPR) residence questionnaire.
 - (corporation returns) manufacturer's sales tax, research, development zone, farmland tax relief schedules.
 - (homestead) copy of separately filed tax return (including federal return and wage statements), rent certificate (completed, signed, and unaltered), property tax bill, ownership verification if applicable.
 - (farmland preservation) property tax bills, farmland preservation agreement or zoning certificate if appropriate, ownership verification if applicable.

- (partnerships) Schedule 3K-1.
- (fiduciaries) as listed on page 2 of Form 2.
- (estate tax returns) copies of federal Form 706 and schedules, list of assets, will, trust instruments, approved federal extension if appropriate.
- Individual returns:
 - Fill in correct amounts and all information for the standard deduction, exemption deduction, school property tax/rent credit, married couple credit, itemized deduction credit, and Wisconsin withholding.
 - Correctly calculate the earned income credit, farmland tax relief credit, underpayment interest, retirement plan deductions, and federal/Wisconsin income differences.
 - Include all taxable income, such as S corporation and partnership income, IRA distributions, interest and dividends, income earned in another state, and gambling winnings.
 - If the eligible veteran's and surviving spouse's property tax credit is claimed on a 2006 return, the school property tax credit, homestead credit, farmland preservation credit, or farmland tax relief credit may not be claimed on the same return.
 - For more tips, see the article titled "Tips to Speed Processing of Income Tax Refunds," on page 12 of this Bulletin.
- Homestead credit:
 - Prorate rent for joint occupancy, if appropriate – see bottom of rent certificate.
 - Correctly prorate property taxes for part business use, more than one acre, or co-owned property.
 - Reduce property taxes/rent for months Wisconsin Works (W2) received.
 - Do not claim more than 12 months of property taxes/rent.
 - Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation (including standard mileage depreciation and partners, limited liability company (LLC) members, and tax-option (S) corporation shareholders distributive share of depreciation), IRA/deferred compensation deductions, Wisconsin Works (W2) payments, child support payments, and caretaker supplement payments.
- Farmland preservation credit:
 - Prorate property taxes for co-owned property.
 - Do not claim special assessments or property taxes for land not in a farmland preservation agreement or zoning certificate.
 - Claim the correct percentage of credit.
 - Include all household income, such as gross pensions and annuities, nontaxable capital gains, depreciation, capital loss carryover, and deferred compensation.
- Fiduciaries:
 - On page one, check one "type of trust" box if applicable, answer questions, request a closing certificate if needed.
 - For a fiscal year, a 52-53 week period, or a short-period return, fill in the taxable year beginning and ending dates in the taxable year space at the top of Form 2. Also fill in "11" in the Special Conditions box located above the closing certificate information section on page 1 of Form 2.
 - Follow special procedures if an ESBT (electing small business trust) or a QFT (qualified funeral trust).
 - Report all income, expenses, and credits as distributable income on a final Form 2.
 - If requesting a closing certificate, check the box on page one of Form 2 to indicate this and fill in the information below the check box indicating where the closing certificate is to be mailed. Also complete Schedule CC and enclose it with Form 2, along with the other information listed in the Form 2 instructions.
 - Do not write in the bottom margin of Form 2, this space is reserved for department use.
 - For more tips, see the article titled "Eliminate Delays in Processing Fiduciary Income Tax Returns," on page 13 of this Bulletin.
- Estate tax returns:
 - File if the gross estate (including nonprobate assets) plus adjusted taxable gifts exceeds \$675,000, even if no tax is due.

- File Form W4768 if an extension is needed for an estate that is filing only a Wisconsin estate tax return.
- File and pay tax timely – use Form 401T for payment, not Form 1-ES or 4-ES.
- Request a closing certificate for both the fiduciary and estate returns at the same time, if possible.
- Do not write in the bottom margin of Form W706, this space is reserved for department use.
- Corporation returns:
 - Be sure to fill in the apportionment percentage wherever it is requested, not just on Schedule S.
 - Claim the correct amount of estimated tax payment and credit carryforwards, taking into consideration any adjustments that have been made by the department to prior year returns. [↗](#)



Tips to Speed Processing of Income Tax Refunds

If you have a refund coming on your 2006 Wisconsin individual income tax return, you want your return processed quickly. You can help by following the tips listed below.



File Electronically

There are many good reasons to file your Wisconsin return electronically (e-file). It's fast, safe, documented, easy, and accurate (to help ensure accuracy, be sure to check over your e-filed return before you hit "submit"). For more information, see the articles promoting e-filing on pages 22 and 23 of this Bulletin.



File Early

The time it takes to issue a refund varies greatly, depending on when the return is received and the complexity of the return. Refunds for returns that are not adjusted are issued in an average of three weeks for returns received in January and February, four weeks for returns received in March, and ten to twelve weeks for returns received in April and after.



Name, Social Security Number, and Address Information

The department is no longer producing printed name and address labels. Therefore, it is very important to complete all of the information at the top of your return:

- Use black ink to fill in all return information.
- Fill in your full legal name (and your spouse's, if applicable).
- Fill in your social security number (and your spouse's, if applicable). Check the accuracy of the number(s) entered.



File an Accurate and Complete Return

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

- Check your arithmetic.
- Make entries legible and on the correct lines.
- Enclose the correct withholding statements.
- Claim only Wisconsin tax withheld, not federal tax, social security, or tax withheld for another state.
- Enclose **all** necessary supporting schedules.
- Enclose a **complete** copy of your federal return and schedules if you file on Form 1 or 1NPR (see the article titled "Enclosing Copy of Federal Return" on page 10 of this Bulletin).
- Attach a completed rent certificate or a copy of your 2006 property tax bill if you are claiming homestead credit.
- Assemble your return in the proper order (see page 28 of the Form 1 instruction booklet or page 31 of the Form 1NPR booklet).



More Tips

For more tips, see the article titled "File Error-Free Tax Returns and Credit Claims," on page 10 of this Bulletin. [↗](#)

Eliminate Delays in Processing Fiduciary Income Tax Returns

Recently, the department implemented a new processing and audit system for individual and fiduciary income taxes. This new technology will provide significant benefits to both the department and its customers. In addition, beginning with the 2006 Form 2, all estate and trust fiduciary income tax returns will be scanned. The 2006 Form 2 and instructions reflect these changes, but several points should be emphasized that will help the department provide good service and expedite the issuing of closing certificates.

1. Returns with errors will delay the completion of processing. To ensure timely issuance of refunds and closing certificates, it is important to:

- Use the correct name and identification number of the trust or estate. Trusts file with a federal employer identification number (FEIN). Estates file with the decedent's social security number. Do not put the estate's FEIN on a Form 2 for the estate.
- Complete **only one** of the first two lines of Form 2. Estates complete the first line and trusts complete the second line. Trusts making the election under sec. 645 of the Internal Revenue Code (IRC) to be treated as part of the decedent's estate should check the "Section 645 election" box (not "Decedent's estate") and enclose a copy of federal Form 8855, *Election to Treat a Qualified Revocable Trust as Part of an Estate*. The return will be processed as an estate return. Therefore, the decedent's name and social security number should be entered on the first line of Form 2. No entry should be made on the second line regarding trust name and FEIN.
- Check the correct box to indicate what type of entity the return is for. Check only **one** box.
- Enter the correct amounts on the proper lines of Form 2. All amounts should be rounded to whole dollars.
- **AVOID USING STAPLES.** Removing staples significantly increases the time it takes to prepare returns for scanning. Missed staples cause delays and possibly damage when they go through the scanning machines.

2. Requests for closing certificates will be handled as a high priority. In order to receive your certificate as quickly as possible, please remember to:

- Check the "Yes" box in answer to the question "Are you requesting a closing certificate at this time?" on the first page of the Form 2. Requesting the certificate in a letter or on Schedule CC is not sufficient to ensure that the certificate will be issued.
- Mail the return and required documents to the correct address.

Note: The address has changed. The new address to send your request for a Closing Certificate for Fiduciaries is **Wisconsin Department of Revenue, Post Office Box 8918, Madison, Wisconsin 53708-8918.**

- Submit all required documents with the return. A list of the required documents is found in the Form 2 instructions.

In all cases, be sure to use the correct form. The scanner identifies the form by the bar code found at the bottom of the page. You must use forms printed by the department, downloaded from the department's website, or provided by vendors who have had their forms approved by the department.

Note: Scanning equipment does not always read photocopied forms correctly, so please avoid filing on photocopies of Form 2. Do not alter a prior year form to file a 2006 return. The form will not scan properly and will be delayed in processing.

For fiscal years beginning in 2005, use a 2005 form. For fiscal years beginning in 2006, use a 2006 form.

In addition to the points noted above, you can expedite the issuance of a closing certificate by making sure that all required documents are provided and outstanding issues regarding the decedent's returns are resolved. The most common reasons for delays in issuing closing certificates include:

1. Missing documents. You are required to submit:
 - with Form W706, a complete copy of the federal Form 706 along with all schedules and supporting documents that were filed (or would be required to be filed) with the IRS.

- with an estate's request for a Closing Certificate for Fiduciaries, Schedule CC and a copy of the will and the inventory for an estate.
 - with a trust's request for a Closing Certificate for Fiduciaries, a copy of the trust agreement and amendments, annual accountings for the prior three years, and the petition to the court to close the trust.
2. No response to a request for additional information. Reply promptly to a letter from the department requesting information or additional documents.
 3. Unresolved delinquent accounts. The department will not issue a closing certificate if the decedent, the estate, or the trust has unpaid tax liabilities. Make sure that all outstanding bills and delinquent accounts are paid or resolved before requesting the closing certificate.
 4. Unfiled tax returns. The decedent's or trust's filing history will be reviewed and missing returns will be requested. Make sure that the decedent's or trust's returns have been filed for all tax years for which the taxpayer had a filing requirement.
 5. Not reporting income in respect of a decedent (IRD) accounts properly. Income in respect of a decedent accrued to the date of death is includable in the gross estate of the decedent.
 6. Questions about unusual transactions. Explain the circumstances of unusual or complicated transactions and how they were handled on the return.
 7. Misinterpreting the filing requirement. The filing requirement for Form W706 is based on the gross, not net, estate. A late filing fee may be imposed

even if there is no estate tax due. Similarly, the requirement to file an income tax return is based on gross, not net, income, and late filing fees may be imposed even if there is no tax due.

8. Not computing the correct amount due. If a return is filed late, compute the interest and late filing fee and remit the full amount with the return. This will avoid the necessity of the department issuing an assessment.

Note: Interest on estate tax is computed from the date of death if it is not paid within nine months of the decedent's death. A common mistake estates make on Form W706 is to compute interest from the unextended due date of the return instead of from the date of death.

9. Failing to complete the return or send it to the correct address. Be sure to complete the return and answer all questions; provide the correct address for mailing the Estate Tax Certificate or Closing Certificate for Fiduciaries; and send the return to the correct address.

Estate:

Wisconsin Department of Revenue
P.O. Box 8904
Madison, WI 53708-8904

Fiduciary:

Wisconsin Department of Revenue
P.O. Box 8918
Madison, WI 53708-8918

If you have questions about filing a return for a trust or estate, please call the department at (608) 266-2772 or send an e-mail to estate@dor.state.wi.us. 




Enforcement Report

Greenfield Man Sentenced in Milwaukee County

John K. Kosmatka was sentenced in January 2007 by Milwaukee County Circuit Court Judge Timothy Dugan. Mr. Kosmatka, age 54, of Greenfield, pleaded guilty to one felony count of theft involving sales taxes and three civil forfeitures related to the sale of motor vehicles. The criminal charges were brought by the Milwaukee County District Attorney's Office after an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

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

Mr. Kosmatka was sentenced to six years in prison. Judge Dugan stayed the prison term and sentenced Mr. Kosmatka to four years of probation. He was also ordered to make full restitution to the State of Wisconsin and pay the fines related to the civil forfeitures. 

Sales and Use Tax Can Be Reported on Income Tax Returns

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

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

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

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



Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars in March and April. 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. Although there is no charge to attend the seminars, in order to make sure there are sufficient materials **pre-registration is required**. To pre-register or for more information, call

the Minnesota Department of Revenue at (651) 297-4213.

March 13, 2007 – Duluth, Minnesota
Minnesota Department of Revenue Office
2711 West Superior Street

March 27, 2007 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Street

April 24, 2007 – Hudson, Wisconsin
Hudson House
1616 Crestview Drive



File Sales and Use Tax Returns Electronically

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

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

Sales TeleFile

You can file your Wisconsin sales and use tax return with any touch-tone telephone. To use TeleFile, obtain a TeleFile sales and use tax worksheet and payment voucher from the DOR website at www.revenue.wi.gov/eserv/e-sales.html. When you have completed the worksheet, call (608) 261-5340 in Madison or (414) 227-3895 in Milwaukee to actually file your return. You will be given a confirmation number at the end of the call, which assures that DOR has received your return. You will also be provided with information regarding the available methods of payment (Electronic Funds Transfer (EFT), credit card, check, or money order) if there is a tax due on your return.

Sales Internet Process

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

File Transmission

This program is a service for taxpayers using approved private vendors' software or who have the technical expertise to create a file in XML format. File Transmission places return data into a file format that can be directly processed into the DOR system. Using secure transmission over the Internet, you can submit an authorization for an EFT payment within the same file. You will receive an e-mail acknowledgement to confirm receipt of a successful file transmission. File Transmission may be found on the DOR website at www.revenue.wi.gov/eserv/file/index.html.

Electronic Payments

Please note that paying by EFT requires a separate registration. DOR accepts EFT for most types of tax payments. It is easy to use and you are issued an acknowledgement that your payment was received. EFT also enables you to “warehouse” your payment in advance until the actual due date. An EFT online registration form is provided on the DOR website at www.revenue.wi.gov/eserv/eft3.html. Complete the form and register by telephone at (608) 264-9918. Payments may be made either online or by telephone.

Questions?

More information on all of the above services may be found under the “Business” or “E-Services” sections of the DOR website at www.revenue.wi.gov. You may also contact DOR by any of the following methods:

Phone – (608) 266-2776

E-mail – sales10@dor.state.wi.us

Write – Technical Assistance Unit, Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949. [✉](#)

Question and Answer ?

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

(Sales and Use Tax)

Q I recently started buying items on the Internet. Why don't all retailers charge sales tax on my purchases?

A Mail order and Internet companies that advertise in Wisconsin, but do not have a physical presence in Wisconsin such as a store, salesperson, warehouse, etc., may not be required to register and collect Wisconsin sales tax. Some out-of-state businesses, however, voluntarily collect the tax as a courtesy to their customers.

Q If a retailer doesn't charge sales tax, do I still owe the tax?

A Yes, either sales tax or use tax needs to be paid on taxable items. A purchaser is subject to use tax, if the seller has not collected a sales tax. Use tax applies

to, but is not limited to, purchases of clothing, electronics, books, toys, computer hardware and software, etc., purchased via mail order, television shopping or auctions, toll-free “800” telephone, and Internet.

Q How do I pay use tax?

A Individuals have two options for paying Wisconsin use tax:

- You can pay use tax on your Wisconsin income tax return (Form 1, 1A, WI-Z, or 1NPR). A special line titled “Sales and use tax due on out-of-state purchases” is on Wisconsin income tax returns to allow you to report your annual use tax liability, or
- You can report and pay use tax quarterly on the Wisconsin Form UT-5, *Consumer Use Tax Return*. This form can be accessed at www.revenue.wi.gov/forms/sales/su-050.pdf.

Additional information on use tax for individuals can be found in Publication 205, *Use Tax Information For Individuals*. This publication can be found at www.revenue.wi.gov/pubs/pb205.pdf. [✉](#)

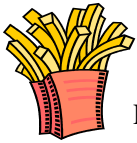
Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available in December. The *Sales and Use Tax Report* contains summaries of recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the December 2006 *Sales and Use Tax Report* (4-06) include:

- Rock County Adopts County Tax;
- Your Filing Frequency May be Changed;

- Sales of Property to be Exported May be Exempt; and
- Burglar Alarms, Fire Alarms, and Security Cameras.

A copy of the Report appears on pages 34 to 37 of this Bulletin. It is also available on the Department of Revenue's website at www.revenue.wi.gov/ise/sales/06-4.pdf.



Is French Fry Oil Subject to Motor Fuel Tax?

Recently, numerous newspaper and magazine articles have been written about the entrepreneur who obtains used cooking oil from various restaurants, cleans it up, and places it into the fuel tank of his diesel-powered vehicle. Questions have resulted as to whether the use of that oil as motor fuel is subject to the Wisconsin motor vehicle fuel excise tax.

The Wisconsin motor vehicle fuel tax and petroleum inspection fee are imposed when petroleum products are withdrawn and metered out at the terminal or refinery rack. However, some untaxed products are blended with taxed motor vehicle fuel after the terminal or refinery rack. These untaxed ("below-the-rack") products can include biodiesel and recycled vegetable oil, which often are also classified as biodiesel products.

Generally, biodiesel is a domestic, renewable fuel for diesel engines derived from natural oils like soybean oil, and which meets the specifications of ASTM D 6751, the standard for biodiesel fuel published by ASTM International. Technically, it is defined as a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats, designated B100, and meeting the requirements of ASTM D 6751.

Is recycled vegetable oil the same thing as biodiesel? No, raw vegetable oil cannot meet biodiesel specifications and it is not registered with the Environmental Protection Agency as a legal motor fuel. A good source of information concerning biodiesel is the National Biodiesel Board's website at www.biodiesel.org.

Biodiesel and recycled vegetable oil sold or used in powering a motor vehicle is subject to Wisconsin excise tax because it is a motor vehicle fuel. Motor vehicle fuel is defined to mean gasoline and diesel fuel. "Diesel fuel" is any liquid fuel capable of use in discrete form or

as a blended component in the operation of diesel-type engines in motor vehicles, except that kerosene is not "diesel fuel" unless it is blended with diesel fuel for use in motor vehicles that have a diesel-type engine (sec. 78.005(5) and (13), Wis. Stats.).

Biodiesel and vegetable oil blended with diesel fuel at the terminal or refinery rack would also be subject to the motor vehicle fuel tax at that time. However, where biodiesel or vegetable oil is not withdrawn or metered at a terminal or refinery rack, the questions are who reports the tax and how is it reported.

The motor vehicle fuel tax on "below-the-rack" biodiesel and vegetable oil used in powering a motor vehicle should be reported on the Blender's Fuel Report (Form MF-017) by the person who either (1) places the oil in the supply tank of a licensed motor vehicle or (2) blends the oil with diesel fuel. For reporting purposes, it should be categorized on the Form MF-017 as biodiesel.

Example 1: Individual A obtains used vegetable oil from restaurants. Individual A puts the oil through a refining process. Individual A uses the recycled vegetable oil in powering Individual A's licensed motor vehicle. Individual A would report and remit the Wisconsin motor vehicle fuel tax on Form MF-017, line 3, Column 2, based on the number of gallons of recycled vegetable oil placed in the licensed motor vehicle.


Example 2: Company B obtains used vegetable oil from restaurants. Company B puts the oil through a refining process. Company B dispenses the recycled oil into Individual A's licensed motor vehicle for use in powering it. Company B would report and remit the Wisconsin motor vehicle fuel tax on Form MF-017, line 1, Column 2, based on the number of gallons of recycled vegetable oil dispensed.

Example 3: Same facts as Example 2, except that rather than dispensing the oil into Individual A's licensed motor vehicle, Company B sells the oil in 55-gallon drums to Individual A. Individual A dumps the oil from the drum into Individual A's undyed diesel fuel bulk storage tank for use in powering Individual A's motor vehicle. Individual A would report and remit the Wisconsin motor vehicle fuel tax on Form MF-017, line 4, Column 2, based on the number of gallons of recycled vegetable oil blended.

Example 4: Farmer C operates a mashing unit to manufacture biodiesel from Farmer C's harvested soybeans. Farmer C uses some of the biodiesel in powering Farmer C's licensed motor vehicles. Farmer C would report and remit the Wisconsin motor vehicle fuel tax on Form MF-017, line 3, Column 2, based on the number of gallons of biodiesel placed in the licensed

motor vehicles. Farmer C also uses some of the biodiesel in Farmer C's farm tractors. Farmer C should report these gallons on Form MF-017, line 10, Column 2.

Note: Biodiesel and recycled vegetable oil used in powering mobile machinery and equipment (e.g., a farm tractor) is not subject to the motor vehicle fuel tax. It is, however, subject to the petroleum inspection fee and reported on Form MF-017, line 10, Column 2.

Form MF-017 is available from the department's web site at www.revenue.wi.gov. To print the form, click on "Forms," go to Excise Tax, click on "Fuel," and select Form MF-017. The instructions are on the reverse side of the form. For further information, contact the department's Excise Tax Section at (608) 266-0064 or excise@dor.state.wi.us. 

Corporation E-Filing Is Available, Partnership E-Filing to Begin in 2007

Corporations can electronically file both their federal and Wisconsin corporation franchise and income tax returns together through a program developed with the cooperation of the Wisconsin Department of Revenue (DOR), the Internal Revenue Service (IRS), and the Federation of Tax Administrators (FTA). This federal/state e-filing service permits taxpayers and tax professionals to prepare the returns using certain third-party private vendor software packages. In addition, electronic filing of Wisconsin partnership returns is scheduled to begin by July 2007, using this same program (look for updates on DOR's website at www.revenue.wi.gov and in future issues of the *Wisconsin Tax Bulletin*). Here's how the program works:

- The return is prepared using an approved vendor's tax preparation software.
- Returns for the IRS and participating states are securely transmitted to the IRS.
- DOR automatically retrieves the Wisconsin returns from the IRS on a daily basis.
- The e-filing generates an acknowledgement back to the originator when each of these transmissions is completed.

- After the tax return is processed, a direct deposit refund or an electronic payment submission to the designated financial institution occurs if this information is included with transmission.
- State only and amended returns can also be filed through this method.

Electronic filing saves time and is more convenient and accurate than paper filing. Confidential information is just as secure as it is with paper filing, plus there is no postage.

The IRS has regulations in place requiring that certain corporations and tax-exempt organizations electronically file their federal returns. More information concerning these requirements, as well as other information concerning electronically filing federal returns, may be found on the IRS's website at www.irs.gov. Although the electronic filing of Wisconsin corporation franchise and income tax returns is currently not required, corporations filing their federal returns electronically are encouraged to also file electronically for Wisconsin.

For more information regarding this and other services provided by DOR, visit www.revenue.wi.gov. 

Reminder: Estate Tax Filing Requirements

Persons handling the affairs of deceased individuals (such as a personal representative, special administrator, trustee, distributee, or a friend or family member of the decedent) should be aware of the requirements for filing a Wisconsin estate tax return (Form W706). Listed below is general information concerning these requirements for deaths occurring in 2007.

Wisconsin Estate Tax Filing Requirement

Form W706 is required to be filed for a decedent whose gross estate plus adjusted taxable gifts and specific exemption is \$675,000 or more. If a federal estate tax return (Form 706) is not required to be filed, the gross estate is the date of death value of the decedent's property, not reduced by mortgages and liens. If a federal estate tax return is required to be filed, the gross estate is as reported on federal Form 706, not reduced by mortgages and liens, or as determined by a final federal audit.


Due Date of the Estate Tax Return

Form W706 is due nine months after the date of death or when the federal estate tax return is required to be filed, as extended, whichever is later. An extension of time obtained for filing the federal estate tax return also extends the time for filing Form W706, provided a copy of the approved federal extension is attached to Form W706 at the time it is filed. If a federal estate tax

return is not required, a Wisconsin-only extension may be requested using Form W4768, *Application for Extension of Time to File a Wisconsin Estate Tax Return (W706)*. If the return is filed after the due date, as extended, there is a penalty equal to 5% of the tax. The minimum penalty is \$25 and the maximum penalty is \$500.

Due Date of the Payment of Tax

Regardless of when Form W706 is due, the tax is due nine months after the date of death. There is no provision for extending the time to pay the Wisconsin estate tax, even though an extension is available for paying the federal estate tax. If the tax is not paid within nine months of the date of death, interest is imposed at 1% per month **from the date of death**. If an advance payment of Wisconsin estate tax is to be made (before Form W706 is filed), it should be submitted with a completed Form 401T, *Report of Estate or Inheritance Tax Payment*.


Additional information concerning estate tax filing requirements, as well as other Wisconsin returns that may be required to be filed for a deceased individual, may be found on the department's website at www.revenue.wi.gov. Click on "FAQs," then "Individuals," and then "Estates and Fiduciaries." Additional information is also available by contacting the department at (608) 266-2772 or estate@dor.state.wi.us. 

Reminder: Internet Posting of Delinquent Tax Accounts

2005 Act 25 requires 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 will not 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 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. The most recent quarterly update to the site took place on January 3, 2007.

Approximately 60 days before each quarterly update to the Internet site, taxpayers eligible for posting are contacted by letter. They are notified that to avoid posting they must resolve their account balances with DOR within 30 days. As of the end of November 2006, \$15.7 million had been collected through the issuance of warning letters and the posting of accounts.

The Internet site also contains a separate list of the 100 largest delinquent accounts. The list may be sorted alphabetically by name or by city.

Information about Internet posting of delinquent accounts may be obtained by visiting DOR's website at www.revenue.wi.gov or by calling the Central Collection Section at (608) 266-7879. 

Tax Compromises

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

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

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

Compromise amounts must be paid in a lump sum or, if the department agrees, through installments. Accepting installment payments to satisfy a compromise amount is at the department's discretion; no installment

arrangements will be accepted if the department believes the acceptance would jeopardize the state's revenues.

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

Publication 124, *Petition for Compromise of Taxes*, offers more information on this topic. Both Form A-212 and Publication 124 are available on the department's website, www.revenue.wi.gov. See the article titled "Tax Publications Available" on page 28 of this Bulletin, for other methods of obtaining Publication 124. [↗](#)



A Message to Persons Preparing Form WT-7

Reminders

- ❑ **Form WT-7, Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages, should be filed electronically.** For more information, see the Department of Revenue's (DOR's) website at: <https://ww2.revenue.wi.gov/GenericFile/application?interview=1119640>.

The department is beginning a new requirement for employers registered to withhold Wisconsin income tax to file their annual reconciliation (Form WT-7) electronically. The department will notify employers subject to the requirement at least 90 days prior to the due date of the first Form WT-7 required to be filed electronically. A waiver may be requested in writing if the requirement to file electronically causes an undue hardship.

- ❑ **A check digit is required on all paper Forms WT-7.** The check digit is required as the seventh digit of the Wisconsin Employer Identification Number (WEIN). The WEIN is six digits long, followed by a single space, and then the check digit (for example: 123456 7). The check digit formula is available at:

<http://www.revenue.wi.gov/taxpro/ckdigit.html>

- ❑ **Address changes may be done online.** For more information, see DOR's website at: <https://ww2.revenue.wi.gov/GenericFile/application?interview=1086489>

General Information

- ❑ Remember to use the 6-digit WEIN on Form WT-7 and all Forms W-2, not the 15-digit ITS number.
- ❑ If you must file on paper, please file with your pre-printed Form WT-7, or use the online fill-in Form WT-7 at: <http://www.revenue.wi.gov/forms/with/w-107f.pdf>.
- ❑ Remember to verify that all the taxpayer information printed on Form WT-7 is correct. If there has been a name or address change, check the appropriate box on Form WT-7 to indicate this.
- ❑ Any business change resulting in the requirement to obtain a new Federal Employer Identification Number (FEIN) may also require a new WEIN be obtained. Call (608) 266-2776 for assistance if you have a new FEIN.

- ☐ For the quickest service on refunds or payments due, be sure to use the appropriate mailing address shown on Form WT-7.
- ☐ If you cannot file Form W-2 electronically, DOR is requesting that employers NOT use carbon copied Forms W-2, including NCR. Carbon and NCR copied Forms W-2 do not scan well. The preferred format for a Form W-2 is the IRS approved format, which may be viewed on the IRS web page at www.irs.gov.
- ☐ More information on submitting Forms W-2 electronically is available at: <http://www.revenue.wi.gov/eserv/w-2.html>

Amending Form WT-7

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

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



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

The Department of Revenue mailed over 860,000 federal Forms 1099-G and Forms 1099-INT in January 2007. Federal law provides that the department must furnish 2006 Forms 1099-G to persons who received or received benefit of a Wisconsin income tax refund in 2006. Forms 1099-INT must be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue in 2006.

Regardless of whether a taxpayer receives a Form 1099-INT, all interest received from the department in 2006 must be reported as income on the taxpayer's 2006 federal and Wisconsin income tax

returns. In addition, all or a portion of a state income tax refund from Form 1099-G may be includable in federal taxable income if state income tax payments were claimed as an itemized deduction on the federal tax return for the year to which the refund applies.

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



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 77 of this Bulletin. The Index is also on the department's Internet website at www.revenue.wi.gov. Just click on "Publications." [✉](#)


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

When taxpayers filed their 2005 Wisconsin personal income taxes in 2006, 1,643,875, or 61.3%, chose to file electronically – either through a professional tax preparer or tax preparation software, via TeleFile, or online from their personal computer through the www.wisconsin.gov website.

With more taxpayers choosing to file electronically every year, if you have not already you should consider making it available to your clients. Filing electronically offers many advantages, including the following:

- Both state and federal income taxes can be e-filed at the same time from one location.
- The computer software does the math.
- An immediate confirmation that a return has been received.
- A direct deposit option for refunds.

- Taxpayers can get their refunds in five business days, no matter when the return is filed (if the direct deposit option is chosen and the return needs no additional review), even if the return is filed right on the April 15 deadline. (Paper returns filed on the deadline typically require from 10 to 12 weeks.)
- Electronically filed returns are more accurate (a 1% error rate compared to 10% for paper forms).
- Homestead credit can also be applied for electronically when an income tax return is filed using either the federal/state e-file program or the Wisconsin Free-File program (see the related article regarding Wisconsin Free-File, on page 23 of this Bulletin).
- Payment can be made by credit card. The federal/state e-file program also provides the option of including an electronic payment along with the return.

In these and other ways, electronic filing can make the tax filing experience easier and less stressful for both you and your clients. 

Electronic Filing is Available for Wage Statements and Information Returns

Persons that file Forms W-2, W-2G, 1099-MISC, and 1099-R on magnetic media with the Wisconsin Department of Revenue have the option of electronically transferring data through the department's website, rather than submitting physical media. Using this file transfer option requires no additional computer programming, as the file format is the same as files transferred using magnetic media. The only change from magnetic media is that files transferred via the Internet must be in ASCII format. The file transfer site is available by accessing the department's website at www.revenue.wi.gov. Click on "Businesses," then on "Withholding Tax," and then on "W-2 & 1099 File Transmission" under the heading "E-Filing Information."

For those who prefer to continue to file using magnetic media, the department will accept cartridges (IBM 3480/3490 compatible), diskettes, or CD-ROM. **The department does not accept 9-track magnetic reel tape.**

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

Additional information is available in Publication 509, *Filing Wage Statements and Information Returns on Magnetic Media or by Electronic Transmission*, and Publication CO-001, *Annual W-2, 1099-R, 1099-MISC and W-2G Reporting*. See the article titled "Tax Publications Available" on page 28 of this Bulletin, for methods of obtaining Publications 509 and CO-001. Additional information is also available by contacting the department at:

ATTN: Magnetic Media Coordinator
Audit Bureau
Wisconsin Department of Revenue
2135 Rimrock Rd Mail Stop 5-257
Madison WI 53708-8906

608-267-3327

w2data@dor.state.wi.us.



File Schedules 3K-1 on Magnetic/Electronic Media

Partnerships with 100 or more partners may file their Wisconsin Schedules 3K-1, *Partner's Share of Income, Deductions, etc.*, on magnetic/electronic media. The types of magnetic/electronic media allowed include cartridge, CD, and diskette. The Department of Revenue (DOR) does not accept 9-track magnetic reel tape.

If your Schedules 3K-1 are prepared by software, ask your software company if they can provide these documents on magnetic/electronic media rather than on paper. Filing on magnetic/electronic media will save both preparers and DOR valuable resources, such as paper, shipping costs, and processing time. It's another

way DOR is streamlining the process of filing tax returns.

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

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

Phone: (608) 267-3327

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



Electronic Filing Free and Online


The Wisconsin Department of Revenue is committed to serving taxpayers in the most efficient manner possible. The department strives to continually use technology to streamline methods for filing individual income tax returns. Four years ago the result was the introduction of a new way to file, Wisconsin Free-File. Over 100,000 2005 Wisconsin income tax returns were filed using this program, and it will be available again this year for filing 2006 returns.

Wisconsin Free-File is an online, fill-in-the-blank personal income tax return that can be filed with the Department of Revenue at the click of a computer mouse. No charge! It is an electronic tax filing option available for taxpayers of every income category. It works for anyone filing Form WI-Z, Form 1A, Form 1 with federal 1040 (but Free-File does not file your federal return with the Internal Revenue Service), and a homestead credit claim (Schedule H or H-EZ). Certain federal Schedules C-EZ and D, and Wisconsin Schedule WD are also supported by Free-File.

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

Wisconsin Free-File is available online by accessing the Wisconsin state government portal at www.wisconsin.gov using the "State Tax Information" link, or at www.revenue.wi.gov. Click on "Individuals," then select the Wisconsin Free-File link to access the application. The application can be used by taxpayers as well as tax professionals. It works with a standard modem and web browsers Netscape 3.0 or Internet Explorer 3.0 or higher.

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

Wisconsin Free-File is not available for first-time filers or for those claiming certain credits (such as taxes paid to other states). Nor is it available for federal Schedules C, E, or F, or Wisconsin Schedules 2440W, DI, FC, MS, MT, RS, T, or Form I-804. It cannot accept Schedule H or H-EZ with more than 4 rent certificates or 6 tax bills, more than 4 separate rental amounts on lines 11a and 11b of the rent certificate, or tax bills for adjoining property where the owner name and type are different than what is on the home tax bill OR where taxes are greater than \$1,450. 

Negligence Penalties May Be Imposed in Field Audits

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

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

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

- Taxpayer's awareness of the taxability of the items adjusted.
- Certainty or uncertainty of the taxable status of the items adjusted.

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

Field audit negligence penalties imposed:

Fiscal Year Ending June 30	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Number of Audits With a Negligence Penalty Imposed	489	420	418	475
Total Number of Audits	1978	1758	1949	1865
Percentage	24.7%	23.9%	21.4%	25.5%



How to Obtain Copies of Your Tax Returns

What Is Available

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

Who May Request Copies

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

Fees

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

How to Request

All requests for copies of returns or information must be made in writing or in person. Requests by telephone or fax will **not** be accepted. Requests must include the following:

1. Name on the requested tax return.
2. Social security number (including spouse's social security number, if applicable) or other identification number of the taxpayer.
3. Type of return and year(s) or period(s) of the tax return(s) being requested.
4. Name and address to which the copies are to be mailed.
5. Signature of the taxpayer, partner, corporation officer, or authorized representative.
6. If the request is from an authorized representative, the documentation specified at left under "Who May Request Copies."
7. Photocopy of legal photo ID, or have the request notarized.

8. Payment of appropriate fees for requested information.
9. A daytime telephone number in case DOR has any questions.

Another option for requesting copies is to go to the department's website, www.revenue.wi.gov, and click on "Forms" and then "Tax Return Information." Complete the fill-in form, Form P-521, *Request for Copy of Tax Returns(s)*. Mail the completed form, along with payment, to the address listed on the form.

Where to Direct Requests

Written Requests: Mail your request to

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

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

Note: Although every effort is made to fulfill same day requests, there are times when copies of returns will have to be mailed or picked up later (for example, when returns are located at an office outside Madison or are kept on microfiche or microfilm). Also, copies of partnership, corporation, trust, and estate returns are not available same day and will be mailed to the requestor.

It is recommended that same day requests be made before 2:00 p.m., as this will increase the likelihood that the request will be fulfilled.

Questions

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

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

Returns/Information	Available #of Years
Alcohol beverage tax returns.....	4
Cigarette tax returns.....	4
Tobacco products tax returns.....	4
Fuel tax returns.....	4
Corporation tax returns.....	6
Gift tax reports.....	5
Homestead credit claims.....	5
Individual income tax returns.....	4
Insurance tax returns.....	6
Partnership tax returns.....	4
Sales/use tax returns.....	10
Trust and estate fiduciary returns.....	4
Withholding statements.....	4
Microfilmed withholding tax deposit reports...	10
Real estate transfer fee returns.....	10



Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of January 1, 2007, and at each step where action occurred during the period from November 1, 2006, through January 1, 2007.

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

Sent to Revisor for Publication of Notice (published November 30, 2006)

- 9.70 Cigarette and tobacco products tax bad debt deductions – NR

Public Hearing Held (December 15, 2006)

- 9.70 Cigarette and tobacco products tax bad debt deductions – NR

Adopted and in Effect (December 1, 2006)

- 1.15 Enforcement of rules and guidelines as they apply to a small business – NR
- 2.39 Apportionment method – A

Additional information concerning the rules that have been adopted and are effective December 1, 2006 may be found in the article titled "Recently Adopted Rules Summarized" on page 26 of this Bulletin. [\[Link\]](#)

Recently Adopted Rules Summarized

Included below are summaries of two administrative rules that have been adopted by the Department of Revenue (DOR) and are effective December 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 website at www.revenue.wi.gov. 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 77 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

Tax 1.15 Enforcement of rules and guidelines as they apply to a small business. Tax 1.15 is created to disclose that the enforcement of rules or guidelines as they apply to a small business shall be done on a case-by-case basis. Each case shall be determined on its merits as evaluated by the department, taking into consideration all relevant factors. Factors may include, but are not limited to:

- History of compliance with the rule or guideline.
- The extent to which the rule or guideline allows for discretion in its enforcement.
- Voluntary disclosure.

Tax 2.39 Apportionment method. Tax 2.39 is amended as follows to prescribe the method to be used for apportioning the apportionable income of multistate businesses:

1. Tax 2.39(1) is amended to clarify that the apportionment formula applies only to apportionable income and to conform language, style, and format to Legislative Council Rules Clearinghouse standards.
2. Tax 2.39 (2)(a), (b), and (e) are amended to conform language, style, and format to Legislative Council Rules Clearinghouse standards.
3. Tax 2.39(3) is repealed and recreated to do all of the following:
 - Reflect the phase-in of an apportionment formula consisting solely of a sales factor, as provided by 2003 Wisconsin Act 37.

- Prescribe the weight to be given to the other apportionment factors for taxable years beginning before January 1, 2008, if a factor is omitted.
- Reflect the computation of the sales factor if the numerator or denominator of the factor is a positive number, zero, or a negative number, as provided by 2003 Wisconsin Act 37.
- List specialized industries that are not subject to the standard apportionment formula, as provided by 2003 Wisconsin Act 37.

4. Tax 2.39(6)(a) is amended to conform language, style, and format to Legislative Council Rules Clearinghouse standards.
5. Tax 2.39(6)(b)4.a. is amended to remove obsolete language. Tax 2.39(6)(b)4.b. is repealed because it is no longer needed. Tax 2.39(6)(b)4.c. is renumbered Tax 2.39(6)(b)4.b. and amended to remove obsolete language.
6. Tax 2.39(6)(c) is repealed and recreated to do all of the following:
 - Change the way that receipts from the use of computer software and from services are attributed to Wisconsin, as prescribed in 2005 Wisconsin Act 25, effective for taxable years beginning on or after January 1, 2005.
 - Clarify when receipts from the lease, rental, licensing, or other use of tangible personal property are attributed to Wisconsin.
 - Add a note about the Wisconsin Tax Appeals Commission's decision in *The Hearst Corporation vs. Wisconsin Department of Revenue*, Docket No. I-8511, May 15, 1990. The Commission decided that the income-producing activity with respect to certain income from broadcasting network programming and national advertising occurred in Wisconsin.
7. Tax 2.39(7) is repealed because it is obsolete. The treatment of partnerships was revised by 2001 Wisconsin Act 16, which amended s. 71.22 (1r) and created s. 71.25 (15), Stats., effective for taxable years of partnership partners or limited liability company members beginning on or after January 1, 2001. [✎](#)

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



Withholding Tax Update Sent to Employers


The annual Withholding Tax Update was sent in December 2006, along with Forms WT-7, *Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update appears on pages 38 and 39 of this Bulletin. It is also available on the department's website at:

www.revenue.wi.gov/ise/with/index.html. 




Wisconsin Tax Bulletin Annual Index Included

This issue of the Wisconsin Tax Bulletin includes (on pages 42 to 76) the annual index of articles, tax releases, court case summaries, private letter rulings, and other materials that have appeared in past Bulletins. The index includes information for issues 1 to 149 (through November 2006). 

Clearance Certificates and Successor Liability

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

A copy of frequently asked questions (FAQs) and answers concerning clearance certificates and successor liability appears on pages 40 and 41 of this Bulletin. These questions and answers can also be found on the department's website at www.revenue.wi.gov. Click on "FAQs" and then "Sales and Use Tax," and then see "Clearance Certificates & Successor Liability" under the heading "Permits/Certificates." 

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 website at www.revenue.wi.gov, 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 (11/06)
- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/06)
- 104 Wisconsin Taxation of Military Personnel (10/06)
- 106 Wisconsin Tax Information for Retirees (11/06)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2006 (11/06)
- 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 (11/06)
- 116 Income Tax Payments are Due Throughout the Year (1/06)

- 119* Limited Liability Companies (LLCs) (12/06)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/06)
- 121 Reciprocity (10/06)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2004 (11/06)
- 123* Business Tax Credits for 2006 (12/06)
- 125 Credit for Tax Paid to Another State (11/06)
- 126 How Your Retirement Benefits Are Taxed (11/06)
- 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 (12/06)
- 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 (12/06)
- 400* Wisconsin's Recycling Surcharge (12/06)
- 403 Premier Resort Area Tax (7/06)
- 410 Local Exposition Taxes (3/06)

- 503* Wisconsin Farmland Preservation Credit (12/06)
- 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 (11/06)
- 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 (10/06)
- 115* 2007 Handbook for Federal/State Electronic Filing (11/06)
- 117 Guide to Wisconsin Information Returns (11/06)
- 124 Petition for Compromise of Taxes (8/06)
- 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 (12/06)
- 700 Speakers Bureau presenting . . . (1/06) [!\[\]\(564903337f30b845a5f6979939a95fe6_img.jpg\)](#)



How to Obtain Wisconsin Tax Forms

To Receive Forms Via the Internet

The fastest way to obtain Wisconsin tax forms is to download and print them from the forms page of the department's website at www.revenue.wi.gov, just click on "Forms." As an alternative to downloading forms, you may scroll down to the bottom of the forms page and link to the department's Online Forms Ordering System. This system allows you to order most Wisconsin tax forms and publications.



To Pick Up Forms at a Department of Revenue Office or Public Library

You may pick up forms at any of the department's local offices. The office locations and hours of service are listed in the article titled "Department Offers Taxpayer Assistance" on page 9 of this Bulletin (assistance is also available at these offices). The quantity of forms that may be obtained from a department office is limited to 6 of any one form or a total of 15 forms.

Some libraries have forms during the filing season, including Wisconsin Package WI-X. Package WI-X contains most Wisconsin tax forms, many of which may be photocopied. Package WI-X is also available as a zip file on the department's website at www.revenue.wi.gov.



To Receive Forms in the Mail

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

- Mailing an Order Blank to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949. An Order Blank may be obtained by writing to the above address, calling or faxing the numbers below, or using the Online Forms Ordering System;
- Calling the department in Madison at (608) 266-1961;
- Faxing your request to the department at (608) 267-1030; or
- Placing an order on the Online Forms Ordering System at www.revenue.wi.gov.



To Receive Forms Via Your Fax Machine

You can receive forms via your fax machine by using the department's Fax-A-Form system. Individual income tax, homestead credit, farmland preservation credit, corporation franchise and income tax, estate tax, fiduciary income tax, and partnership forms and instructions for 1999 through 2006 are available via Fax-A-Form. For sales/use, withholding, and alcohol beverage taxes, only 2006 forms and instructions are available. In addition, 1999 through 2006 amended individual income tax forms and instructions are available, as well as publications published by the department (see the article titled "Tax Publications Available" on page 28 of this Bulletin).

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

Fax-A-Form is available 24 hours a day, 7 days a week. The department does not charge a fee for this service (though you will have to pay your normal telephone charges and fax machine operating costs). If you have questions, you may write to: Wisconsin Department of Revenue, Fax-A-Form Coordinator, Mail Stop 5-77, P.O. Box 8949, Madison, WI 53708-8949, or call (608) 266-1961. [☞](#)



Report on Litigation

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

The following decisions are included:

Sales and Use Taxes

Admissions

Milwaukee Symphony Orchestra..... 31

Bad debts

DaimlerChrysler Services North America LLC..... 32

Telecommunications services – refund requested by a class of purchasers

Steven G. Butcher, Randy Meicher and Anthony F. Coffaro, on behalf of themselves and the class they represent..... 33

SALES AND USE TAXES

Admissions. *Milwaukee Symphony Orchestra vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 15, 2006). The issues in this case are (1) whether revenues received by Milwaukee Symphony Orchestra (MSO) from admissions to its concerts are subject to Wisconsin sales tax under sec. 77.52(2)(a)2., Wis. Stats., which imposes Wisconsin sales and use tax on the sale of admissions to amusement, athletic, entertainment, or recreational events or places; and (2) whether the admission receipts are nontaxable under appellate precedent creating an exception from sales tax for sales that are not made by retailers engaged in mercantile transactions. (See pages 13-15 of *Wisconsin Tax Bulletin* 28 (April 1982) for a summary of the precedent case of *Sister Mary Joanne Kollasch, et. al. and Sisters of St. Benedict, of Madison, Wisconsin vs. David W. Adamany, Secretary of the Department of Revenue* (Wisconsin Supreme Court, December 1, 1981), 104 Wis. 2d 552, 313 N.W.2d 47.)

The Department of Revenue conducted a field audit of MSO for September 1, 1992 through August 31, 1996. During the audit, MSO filed amended sales tax returns for the audit period, claiming a refund of \$719,456.69 in sales tax that it had previously paid on its sales, including all of its ticket sales. The Department granted a

portion of MSO's refund claim and denied the remainder of the claim, which denial MSO contests.

MSO was a professional full-time orchestra. Its musicians had written contracts and were paid at the union wage for all rehearsals and performances. MSO brought in and contracted with as many as 95 guest artists per year, paying as much as a total of \$566,823 per year plus expenses of as much as \$62,002. MSO operated in a businesslike manner with a form and structure comparable to for-profit businesses. MSO developed ambitious ticket revenue goals, and MSO's overall operating revenues consisted almost entirely of revenues from the sale of tickets to its performances.

Both MSO and the Department of Revenue agreed that, pursuant to sec. 77.52(2)(a)2., Wis. Stats., the event must be *primarily* amusement, entertainment, and/or recreational in nature and that "primarily" means anything more than 50%. Both parties also agreed that reliance on dictionary definitions is appropriate here. It was the assertion of MSO that its purpose of performing was *primarily* educational in nature. The Department of Revenue contended that MSO's performances were *primarily* entertainment in nature.


The Commission held that (1) MSO's performances were properly characterized as entertainment events for purposes of imposing sales tax under sec. 77.52(2)(a)2., Wis. Stats.; and (2) sales of admissions to MSO's performances are not immune from sales tax under *Kollasch* and its progeny.

Entertainment Events: The Commission concluded that the concerts at issue are not primarily educational events. MSO's concerts are not a formal course of study, instruction, or training, nor offered by an institution, and attending them is not the act or a process or course of learning, instruction, or training. MSO had no structured instructional curriculum or specific instructional course and did not give its concerts in a classroom or learning center setting, and no skill or knowledge was obtained or developed by attending concerts such as there would be by taking music lessons or attending a college music history or theory course. There is no direct or concrete correlation between attending a concert and learning. Even if some educational value flowed from MSO's concerts, that would be insufficient to classify the concerts as primarily educational.

The Commission rejected MSO's argument that whether an event is primarily entertaining, amusing, or recreational in nature is dependant only upon the sponsor's motivation in presenting the event. The Commission stated that the better approach is to look not only at the motivation or purpose of the sponsor in presenting the event, but also at the nature of the event itself and the audience's motivation in attending, and its reaction to, the event. Therefore, the Commission clarified that the sponsor's motivation is only one factor in the analysis and that a sponsor's statements that its events have an educational purpose might be undermined by other evidence showing that its purpose was otherwise.

Mercantile Transactions: The Commission held that MSO's sales of concert tickets were mercantile transactions, consistent with other Commission cases. MSO's annual receipts from its concerts were in the millions of dollars in each of the audit years and constituted at least 90 percent of its revenues. Its ticket sales were voluminous and were a means of supporting MSO. MSO made enormous efforts to sell tickets and spent considerable funds on its marketing activities. MSO used many different forms of commercial advertising, which included printed materials prepared by its own marketing department; advertisements in newspapers, on TV, and over the radio; flyers, brochures, and multiple different types of mailings; as well as telephone calls directly to its patrons. To hold that the transactions involved in this case were nonmercantile would be to stretch *Kollasch* beyond recognition. The Commission stated that it declined to expand *Kollasch* that far.

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

 **Bad debts.** *DaimlerChrysler Services North America LLC vs. Wisconsin Department of Revenue* (Court of Appeals, November 22, 2006). See *Wisconsin Tax Bulletin* 141 (January 2005), page 25, and *Wisconsin Tax Bulletin* 148 (July 2006), page 30, for summaries of the Wisconsin Tax Appeals Commission and Dane County Circuit Court decisions, respectively.

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.

The transactions underlying the taxpayer's claim are motor vehicle sales during the years of 1997, 1998, and 1999. At the time of each sale, the vehicle purchaser financed the vehicle by entering into an installment contract with a vehicle dealership. The amount financed included the sales tax.

At or shortly after the time of sales, the dealers sold or assigned the installment contracts to the taxpayer by executing assignment provisions. In exchange for the assignments, the taxpayer paid the dealers the full amounts financed, including amounts attributable to sales tax financed as a part of the installment contracts. The dealers paid the appropriate sales tax to the Department of Revenue.

The purchasers in these particular transactions defaulted on their installment contracts. To the extent the taxpayer was unable to recoup the balances due on the contracts, it claimed the debts uncollectible for purposes of federal and state income taxes. The unpaid balances included a proportional share of the sales tax on the vehicles. The taxpayer filed a claim with the department seeking a deduction for those proportional shares of the sales tax.

The department denied the taxpayer's claimed deduction, and the taxpayer sought review before the Commission. The Commission ruled in favor of the department, concluding that the taxpayer was not entitled to a deduction because it was not the retailer who previously paid the sales tax to the department. The Commission further concluded that the taxpayer was not entitled to a tax deduction as an assignee under the contracts at issue. The taxpayer petitioned the Circuit Court for review of the Commission's decision, and the Circuit Court affirmed the Commission.

The Court of Appeals concluded that the Commission reasonably determined that the taxpayer was not entitled to a deduction under the bad debt deduction statutes because the taxpayer was not the retailer that previously paid the sales tax to the Department of Revenue. The Court further concluded that the Commission reasonably determined that the taxpayer was not entitled to the deduction as an assignee. The taxpayer's interpretations of the bad debt statutes were not more reasonable than the Commission's interpretations; therefore, the Court of Appeals affirmed the Circuit Court's order upholding the Commission.

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

**Telecommunications services – refund requested by a class of purchasers.**

Steven G. Butcher, Randy Meicher and Anthony F. Coffaro, on behalf of themselves and the class they represent vs. Ameritech, a foreign corporation, Michael Morgan as Secretary of the Wisconsin Department of Revenue and Wisconsin Bell, Inc., a Wisconsin corporation (Court of Appeals, District IV, December 21, 2006). The Circuit Court's prior decision was not summarized in the *Wisconsin Tax Bulletin*. The issue in this case is whether the Circuit Court properly exercised its discretion in dismissing the claims for monetary relief, denying the motion to amend, and dismissing the amended complaint.

Ameritech, a retailer of telecommunications products in Wisconsin, has been collecting sales tax from its Wisconsin customers on services that it provides. The complaint alleges that certain services that were taxed are not subject to taxation, because the services do not come within the definition of "telecommunications services" as defined in sec. 77.51(21m), Wis. Stats. On behalf of the class of Ameritech customers who have paid the allegedly unauthorized taxes, the complaint seeks monetary and injunctive relief for claims of breach of contract, money had and received, unjust enrichment, and violation of the tax statute and the Wisconsin Constitution. The amended complaint also names the secretary of the Wisconsin Department of Revenue (DOR) as a defendant because, the complaint asserts, DOR may have an interest in the litigation.

At the Circuit Court, both Ameritech and DOR moved to dismiss the complaint, arguing failure to state a claim and failure to exhaust administrative remedies; Ameritech also argued that the case should be dismissed based

on the doctrine of primary jurisdiction. The Circuit Court denied these motions. Ameritech filed another motion to dismiss, providing additional arguments for its position that the complaint did not state any claim on which relief could be granted. Ameritech also argued in this motion that all claims were barred by the voluntary payment doctrine. The Circuit Court denied the motion as to all claims except the quantum meruit claim, which it ordered dismissed. The Circuit Court concluded that the voluntary payment doctrine was inapplicable because it did not apply if there was a mistake of fact and the plaintiffs here may have paid the disputed tax because of a mistake of fact. After the Circuit Court made this decision, the Wisconsin Supreme Court decided *Putnam*, (255 Wis. 2d 447), which addressed the voluntary payment doctrine. On Ameritech's motion for reconsideration in light of *Putnam*, the Circuit Court concluded that the voluntary payment doctrine did apply and dismissed all the claims for monetary relief.

The plaintiffs contend that the Circuit Court erred when it dismissed their claims for monetary relief.

The Court of Appeals affirmed the Circuit Court's order to dismiss the amended complaint. The Circuit Court correctly determined that the voluntary payment doctrine barred the monetary claims; did not erroneously deny the plaintiffs' permission to file a second amended complaint; and properly exercised its discretion in dismissing the claims for injunctive and declaratory relief on the basis of the primary jurisdiction doctrine.

It was not known at the time of publication whether the taxpayer would appeal this decision.