

Wisconsin TAX BULLETIN

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Reminder: Filing Deadline is April 17

On January 24, 2007, the Internal Revenue Service announced that District of Columbia Emancipation Day, celebrated April 16, is a legal holiday for federal tax purposes. As a result, federal returns are due on Tuesday, April 17, 2007.

Generally, a due date for tax purposes that falls on a Saturday, Sunday, or legal holiday is delayed until the next day that is not a Saturday, Sunday, or legal holiday. Because April 15, 2007, is a Sunday and April 16, 2007, is a legal holiday, the due date is April 17, 2007.

The treatment of April 16 as a legal holiday also applies for Wisconsin tax purposes. Actions that qualify for the April 17 deadline include:

- 2006 state individual income tax returns, whether filed electronically or by paper (Forms 1, 1A, WI-Z, 1NPR).
- Requests for an automatic six-month tax-filing extension, whether filed electronically or by paper.
- Tax-year 2006 balance due payments, whether filed electronically or by paper.
- Tax-year 2006 contributions to a Roth or traditional IRA.
- Individual estimated tax payments for the first quarter of 2007, whether paid electronically or by check. [🔗](#)



Suggestions for Tax Forms?

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

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

Information or Inquiries?

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

The listing appears on pages 25 to 29 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. [🔗](#)

IPT Tax Seminar to Be Presented in Madison

The Institute for Professionals in Taxation (IPT), in cooperation with the Wisconsin Department of Revenue, is presenting a one-day tax seminar in Madison on August 30, 2007. The all-day seminar, which will be held at the Monona Terrace Community and Convention Center, will include primarily sales tax and property tax issues but will also touch on audit issues.

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

Additional information concerning this seminar, including the specific agenda and registration materials, will be available by July 1, 2007 on the Department of Revenue's website at www.revenue.wi.gov. [🔗](#)

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Collecting Sales Tax at Temporary Events

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


Vendors who make taxable sales (including the shipment of taxable merchandise into Wisconsin) of \$1,000 or more in a year are required to hold a Wisconsin seller's permit. They need to charge sales tax at a rate ranging from 5% to 5.6%, depending on the county in which the sale takes place. Exhibitors who only display goods or services do not have a registration requirement unless they subsequently make taxable sales in Wisconsin of \$1,000 or more within the same calendar year.

Out-of-state vendors are also required to file a Wisconsin individual income tax return if their gross receipts related to Wisconsin are \$2,000 or more in a year. This includes gross receipts while in Wisconsin and receipts related to orders taken for products while in Wisconsin, but shipped or delivered from a point outside the state.

Operators (organizers) of these temporary events are required by law to report to the Wisconsin Department of Revenue the name, address, and Tax Account Number (seller's permit) of each vendor selling merchandise at an event. A social security number or federal employer identification number is required if the vendor does not have a Tax Account Number. Form S-240, *Wisconsin Temporary Event Operator and Seller Information*, has been recently revised and

is available for operators to use to obtain the required information from their vendors. The form is available on the department's website at www.revenue.wi.gov/forms/sales/s-240f.pdf.

There is a temporary events page on the department's website, www.revenue.wi.gov. Click on "Businesses" and then "Temporary Events." The page has answers to Frequently Asked Questions (FAQs), links to forms, publications, and tax returns, as well as an e-mail address for any questions that an operator or vendor may have.

Questions about the responsibilities of operators or vendors at temporary events may also be referred to the department's Temporary Events Specialist, Cheryl Purath, at (920) 832-2910 or tempevtprg@dor.state.wi.us. 

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2007 Estimated Income Tax Requirements for Individuals, Estates, and Trusts


Individuals and fiduciaries that expect to owe \$200 or more of income tax (including alternative minimum tax and recycling surcharge) with their 2007 Wisconsin income tax return are required to pay 2007 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained in the next column. An estimated tax payment may be made either with a personalized 2007 Form 1-ES, *Wisconsin Estimated Income Tax Voucher*, or by Electronic Funds Transfer (EFT). (**Note:** Only individuals and fiduciaries making estimated **income** tax payments may file a Form 1-ES.) Personalized estimated tax vouchers are provided by software packages and tax preparers, or may be downloaded from the department's website or requested from any department office.

Individual and fiduciary income tax estimated tax payments are required to be made by EFT when the required estimated tax payments for the prior taxable year were \$40,000 or more. Even if it is not required, individuals and fiduciaries are encouraged to make their estimated payments using EFT. Making estimated tax payments by EFT eliminates the need to complete Form 1-ES. Also, EFT is quick, easy, and provides confirmation that a payment was received. For more information about EFT payments, call (608) 264-9918; write to Wisconsin Department of Revenue, P.O. Box 8949, Madison, WI 53708-8949; or visit the department's website, www.revenue.wi.gov.

For calendar year taxpayers, the first estimated income tax payment is due on April 17, 2007 (see related article titled "Reminder: Filing Deadline is April 17" on page one of this Bulletin). Installment payments are also due on June 15, 2007, September 17, 2007 (September 15 is a Saturday and September 16 is a Sunday), and January 16, 2008 (January 15 is a legal holiday). For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year. (**Note:** If any due date falls on a Saturday, Sunday, or legal holiday, use the next business day.)

Estates and grantor trusts that are funded on account of a decedent's death are only required to make estimated tax payments for taxable years that end two or more years after the decedent's death. For example, an individual died on March 28, 2006. A grantor trust that was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 28, 2008.


A trust that is subject to tax on unrelated business income is generally required to pay 2007 Wisconsin estimated income tax if it expects to owe \$500 or more (including recycling surcharge) on a 2007 Wisconsin franchise or income tax return (Form 4T). An estimated tax payment may be made either with a personalized 2007 Form 4-ES, *Wisconsin Corporation Estimated Tax Voucher*, or by EFT. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If estimated tax payments are not made when required or any installment is underpaid, interest may be assessed. 

Mailing of Form 1-ES to be Discontinued

Individuals, estates, and trusts who made estimated income tax payments for 2006 generally will receive estimated tax vouchers (Form 1-ES) by mail before the first estimated tax payment for 2007 is due. This automatic mailing will be discontinued for future tax years, as many taxpayers use the Form 1-ES provided by their software packages or from their tax preparers instead of the one provided by the department.

Individuals, estates, and trusts who did not receive Form 1-ES by mail and need to make estimated tax payments for 2007, as well as those who will need to make estimated income tax payments for 2008 and future years, may make their payments by any of the following methods:

- Electronic Funds Transfer (EFT). Making estimated tax payments by EFT eliminates the need to complete an estimated tax voucher. Also, EFT is quick, easy, and provides confirmation that a payment was received. For more information about EFT payments, call (608) 264-9918; write to Wisconsin Department of Revenue, P.O. Box 8949, Madison, WI 53708-8949; or visit the department's website, www.revenue.wi.gov.
- Using estimated tax vouchers provided by a software package or tax preparer.
- Using personalized estimated tax vouchers either downloaded from the department's website or requested from any department office. 

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

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

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

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

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

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

News and Reminders for Composite Return Filers

Estates and Trusts No Longer Eligible

A partnership, tax-option (S) corporation, or limited liability company treated as either a partnership or tax-option (S) corporation for Wisconsin tax purposes may file a composite income tax return (Form 1CNS or 1CNP) on behalf of its nonresident partners, shareholders, or members.

Beginning with 2006 returns due April 17, 2007, estates and trusts (including grantor trusts) are no longer eligible to participate in composite returns. Instead, estates and trusts must generally file Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trusts*. In prior years, only certain estates and trusts were eligible.

A nonresident may participate in a composite return if **all** of the following criteria are met:

- The nonresident is a natural person (not a partnership, corporation, estate, or trust).
- The nonresident does not derive Wisconsin taxable income in 2006 from any source other than his or her distributive share of income from **one** pass-through entity.
- The nonresident files his or her individual income tax return on a calendar year basis.
- The nonresident is not a resident of Wisconsin for any part of 2006.

- The nonresident does not claim any deductions or tax credits.

Pass-Through Entity Withholding

In general, pass-through entities are required to withhold Wisconsin income or franchise taxes on all income allocable to their nonresident shareholders, partners, members, or beneficiaries. This requirement also applies to composite return filers.

The withholding is paid with Form PW-1, *Wisconsin Nonresident Withholding on Pass-Through Entity Income*. The withholding is due in a single payment which covers the entire taxable year of the pass-through entity, and is due on the unextended due date of the pass-through entity's income or franchise tax return.

Form PW-1 replaces the composite return filers' obligation to make quarterly estimated payments. Thus, Form CN-ES has been discontinued. Composite return filers are **not** required to make quarterly estimated payments. Instead, the pass-through entity should make a single withholding payment with Form PW-1.

For further information about 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 (FAQs). Also, see articles that have appeared in *Wisconsin Tax Bulletins* 144 (page 23), 145 (page 18), 146 (page 11), 148 (page 18), and 150 (page 8). [✍](#)

Streamlined Sales Tax Project Update: 22 States Have Enacted Conforming Legislation

Wisconsin's Conforming Legislation Is Included in Governor's Budget Bill


As of January 1, 2007, 22 states have enacted the necessary changes to their laws to conform to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The states are: Arkansas, Indiana, Iowa, Kansas, Kentucky, Michigan, Minnesota, Nebraska, Nevada, New Jersey, North Carolina, North Dakota, Ohio, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Washington, West Virginia, and Wyoming.

On October 1, 2005, the Streamlined Sales Tax Governing Board was incorporated. At that time, 18 states had enacted all of the conforming legislation required by the SSUTA and those states organized themselves into the Governing Board. The Governing Board is responsible for managing the SSUTA based on

its by-laws and operating rules. It conducts its business through two councils: (1) State and Local Advisory Council (SLAC) and (2) Business Advisory Council (BAC).

As of January 1, 2007, over 1,000 businesses have registered through the Streamlined Sales Tax Registration System to voluntarily collect sales and use taxes in the states that have conformed their laws to the SSUTA.

The conforming legislation needed to allow Wisconsin to become part of the Governing Board and have these voluntary sellers also begin collecting Wisconsin sales or use tax has been drafted and is included in the Governor's Budget Bill (Senate Bill 40). If enacted, Wisconsin could become a part of the Governing Board on January 1, 2008.

If you would like additional information concerning the Streamlined Sales Tax Project, please visit the website at www.streamlinedsalestax.org. 



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

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

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

A "nonresident entertainer" is a nonresident person who furnishes amusement, entertainment, or **public speaking services**, or performs in one or more sporting events. This includes a foreign corporation, partnership, or other entity not regularly engaged in business in Wisconsin that derives income from any of these activities or from these services performed by a

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

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

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

Additional information is available in Publication 508, *Wisconsin Tax Requirements Relating to Nonresident Entertainers*. Publication 508 is available on the Department of Revenue's website at

www.revenue.wi.gov/pubs/pb508.pdf. Also see the article titled “Tax Publications Available,” on page 16 of this Bulletin, for methods of obtaining Publication 508. Additional information is also available by contacting the department by any of the methods listed below.

Using U.S. Postal Service:


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

Using another service:

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

By telephone: (608) 266-3645

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

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

Voluntary Disclosure Pays

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

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


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

- Pages 30 to 32, relating to additional taxes or excessive credits on previously filed returns.
- Pages 33 to 35, relating to unfiled returns.

There are no substantive changes to the policy relating to additional taxes or excessive credits on previously filed returns since it was last published in *Wisconsin Tax*

Bulletin 147 (April 2006). An example has been added to the policy relating to unfiled returns to clarify that the receipt of a nexus questionnaire constitutes the commencement of an office audit (see item II.A.4 on page 33). Therefore, if a business has received a nexus questionnaire from the department within the last six years, the business may not participate in the Voluntary Disclosure Program for that tax type.

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


Voluntary Disclosure Program
Wisconsin Department of Revenue
2135 Rimrock Road
Mail Stop 5-144
P.O. Box 8906
Madison WI 53708-8906 

Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available in March. 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 March 2007 *Sales and Use Tax Report* (1-07) include:

- Rock County Adopts County Tax;

- Do You Still Need Your Seller’s Permit?; and
- Fuel Surcharges, Energy Surcharges, and Mileage Charges Included in Amount Subject to Sales Tax.

A copy of the Report appears on pages 23 and 24 of this Bulletin. It is also available on the Department of Revenue’s website at www.revenue.wi.gov/ise/sales/07-1.pdf. 

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

(**Note:** The fiduciary income tax return filing requirements for estates are discussed in the article titled “Filing Wisconsin Tax Returns for a Deceased Taxpayer,” on page 9 of this Bulletin. Refer to the section in that article titled “Fiduciary Income Tax Return(s) for an Estate.”)

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

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

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

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

Wisconsin source income includes income or gain from:

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

Residency of a Trust

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

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

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

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

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

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

Examples:

Law prior to October 29, 1999:

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

- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is to be administered in Arkansas. The trust became irrevocable at his death on October 22, 1999. James was a Wisconsin resident at death. This trust will not be subject to Wisconsin income tax.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On October 22, 1999, she made an irrevocable gift to the trust of her company stock. The earnings on the stock, if taxable at the trust level, would not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust administered in Wisconsin in 1997. Martha moved to Florida on October 22, 1999, established Florida residency, and moved her trust to Florida. The trust would no longer be taxable to Wisconsin, as the trust would now be administered in Florida.

Law change effective on October 29, 1999:

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2006, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2006, in Florida that is to be administered in Florida. The trust will be taxable to Wisconsin. The trust will continue to be taxable to Wisconsin even if Jack Doe changes his domicile to another state.
- c. Mary Doe, a resident of Florida, set up an irrevocable trust on December 15, 2006, in Wisconsin to be administered in Wisconsin. The trust would not be taxable to Wisconsin since Mary Doe was not a Wisconsin resident at the time the trust became irrevocable.
- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is administered in Arkansas. The trust became irrevocable on James's death on December 15, 2006, and James was a Wisconsin resident at the time of death. The trust would be taxable to Wisconsin.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On December 15, 2006, she made an irrevocable gift to the trust of \$2 million of her company stock. The value of the assets in the trust is \$1.5 million before the gift, and \$3.5 million after. All income from the \$2 million that was placed in the trust on

December 15, 2006, will be taxable to Wisconsin. The assets put into the trust prior to October 29, 1999, will not be taxable to Wisconsin.

- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust in Wisconsin on December 15, 1999. In March 2006, Martha moved to Florida and became a Florida resident. The trust would remain taxable to Wisconsin since Martha Doe was a resident of Wisconsin at the time the trust became irrevocable.

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

Qualified Funeral Trust (QFT)

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

Electing Small Business Trust (ESBT)

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

Obtaining a Closing Certificate for a Trust

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

The following information should be enclosed with the certificate request:

- Payment of any tax due.

- A copy of the trust instrument and any amendments.
- Copies of the annual court accountings for the last three years. If annual accountings have not been filed with the court, verification that the court requires the certificate to close a proceeding.
- Copies of the annual accountings prepared for income tax filing or other purposes.
- A detailed statement of why the trust is closing.

- A completed Schedule CC, Part II.

The certificate request should be mailed to:

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

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return. [☞](#)

Reminder: Personal Representative Fees Taxable to the Recipient

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

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

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

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

Filing Wisconsin Tax Returns for a Deceased Taxpayer

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

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

Individual Income Tax Return

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

The filing requirements for tax years beginning in 2006 are as follows:

- a. Single person:
 - (1) Under age 65 - gross income of \$9,160 or more.
 - (2) Age 65 or over - gross income of \$9,410 or more.

- b. Married persons filing jointly - gross income of \$18,000 or more.
- c. Married person filing separately - gross income of \$9,000 or more (each spouse).
- d. Head of household:
 - (1) Under age 65 - gross income of \$11,630 or more.
 - (2) Age 65 or over - gross income of \$11,880 or more.
- e. Part-year resident or nonresident - gross Wisconsin income of \$2,000 or more.

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

The person who files the return must complete the “Special Conditions” section located to the right of the Filing Status section on page 1 of the return. If the return for the decedent is filed as single or head of household, “06” should be entered in the Special

Conditions box and the date of death should be indicated on the line provided. If a joint return is being filed and it is the husband who is deceased, “06” should be entered in the box and the date of death indicated on the line. If it is the wife who is deceased, “07” should be entered in the box and the date of death indicated on the line. If both spouses are deceased, “08” should be entered in the box and both dates of death indicated on the line.

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

If a surviving heir is filing a return claiming a refund on behalf of a person who died, they should complete Form I-804, *Claim for Decedent’s Wisconsin Income Tax Refund*, and enclose it with the return. This applies only if the refund is more than \$100. If the refund is \$100 or less, a note signed by the heir should be enclosed with the return. The note should list the heir’s name, address, social security number, and relationship to the decedent. If Form I-804 or a note is enclosed with the return, “10” should be entered in the Special Conditions box.

If a taxpayer’s spouse died during 2006 and the taxpayer did not remarry in 2006, a joint return may be filed. A joint return for 2006 may also be filed if a taxpayer’s spouse died in 2007 before filing a 2006 return. A joint return should show the deceased spouse’s 2006 income before death and the surviving spouse’s income for all of 2006. “Filing as surviving spouse” should be written in the area where the return is signed. If someone else is the personal representative, he or she must also sign.

If a refund is claimed by a surviving spouse filing a joint return with the decedent and the above instructions are followed, Form I-804 does not have to be filed.

If a taxpayer’s spouse died before 2006 and the taxpayer has not remarried, they must file as single or, if qualified, as head of household.

Fiduciary Income Tax Return(s) for an Estate

Resident Estate

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

Every personal representative or special administrator of a resident estate must file a *Wisconsin Fiduciary Income Tax Return*, Form 2, if the gross income of the estate is \$600 or more. Gross income means all income, before deducting expenses, reportable to Wisconsin that is

received in the form of money, property, or services. It does not include items that are exempt from Wisconsin tax.

Nonresident Estate

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

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

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

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

Obtaining a Closing Certificate for an Estate

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

Copies of the inventory and will including any codicils, should be included with the request. If these documents were previously submitted with a Wisconsin estate tax return, it is not necessary to submit them again. A completed Schedule CC, as well as the information

requested in Part I of Schedule CC, should also be included with the request.

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

If a *Wisconsin Estate Tax Return*, Form W706, is required to be filed (see the next section of this article titled “Estate Tax Return”), the Closing Certificate for Fiduciaries will not be issued until Form W706 is filed.

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

- a. Complete the top portion of Form 2, above line 1.
- b. Complete the “Special Conditions” section on page 1 of Form 2. If the estate has gross income of less than \$600 and federal Form 1041 is not required, fill in “13” in the Special Conditions box. If a first and final return will be filed upon closing the estate, fill in “12” in the box.
- c. Sign and date the Form 2.
- d. Complete Part I of Schedule CC.
- e. Enclose Schedule CC and copies of the inventory and will with Form 2.

Estate Tax Return

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

Wisconsin Estate Tax Basis

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

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

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

Wisconsin Estate Tax Filing Requirements

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

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

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

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

Since the Wisconsin estate tax for deaths occurring from October 1, 2002, through December 31, 2007, is based on the federal estate tax law in effect on December 31, 2000, the filing requirements for filing a *Wisconsin Estate Tax Return*, Form W706, differ from the federal filing requirements for those years. For example, the federal filing requirement is \$1,500,000 for 2005 and \$2,000,000 for 2006 and 2007. Therefore, there may be a Wisconsin filing requirement for those years, even though no federal estate tax return is required.

Wisconsin Estate Tax Forms

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

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

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

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

Examples:

1. Decedent A died April 15, 2006. An extension of time to file the federal estate tax return was obtained

from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on January 31, 2007, which was within the extension period. Tax of \$1,200 was due. The total amount due is \$1,314, computed as follows:

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

2. Decedent B died April 15, 2006, and did not obtain an extension to file from the IRS or from the Wisconsin Department of Revenue. The Wisconsin estate tax return was filed January 31, 2007, and showed no tax due. This estate owes the minimum penalty of \$25.

Copies of Form W706, instructions, Schedule TC, Form W4768, and Form 401T, as well as earlier versions of the forms, are available by accessing the department's website, www.revenue.wi.gov. Click on "Forms" and then "Estate" under the heading "Estate, Inheritance and Gift Tax."

Certificate Determining Estate Tax

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

Inheritance Tax Return

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

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



Wisconsin Tax Bulletin Annual Index Available

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

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

The latest *Wisconsin Tax Bulletin* index available appears in *Wisconsin Tax Bulletin* 150 (January 2007), pages 42 to 76. It includes information for issues 1 to 149 (through November 2006). [↗](#)

Tax Refund Interception Program


The Department of Revenue provides a service to other state agencies, counties, municipalities, and the Internal Revenue Service (IRS) where tax refunds are intercepted and sent to the other governmental entities. Debts are certified to the Department of Revenue for collection under the provisions of sections 71.93, 71.935, and 73.03(52), Wisconsin Statutes.

Refunds are first used to pay tax debts to the Department of Revenue. If there is money remaining, debt certified by other state agencies is paid next, then debt from counties and municipalities, and finally debt from the IRS.

Debts incurred during the course of a marriage, where no marital property agreement or pre-marital agreement exists, are considered marital debts and the entire refund is available to pay the debts certified by the governmental entities. Refundable credits, such as the homestead credit, are considered the property of both

spouses and are not prorated prior to application to the debt. In circumstances where the debtor or non-debtor spouse can show that either the debt was incurred prior to marriage or a marital property agreement exists, the intercepted refund will be prorated between the debtor and non-debtor spouses. The debtor's portion of the refund is available to pay the debts.

State agencies may decide whether they want refunds prorated prior to the department sending them the money. Refunds for county and municipal debts are prorated only if the debtor or non-debtor spouse requests the proration and submits information indicating the debt is non-marital. Debts to the IRS are prorated.

For additional information regarding the Tax Refund Interception Program, visit the refund interception Frequently Asked Questions (FAQs) on the department's website at www.revenue.wi.gov/faqs/ise/refintcp.html. You may also contact the department at (608) 266-7879 or delnqtax@dor.state.wi.us. 


Internet Page for Delinquent Tax Help

The Department of Revenue (DOR) has a web page, www.revenue.wi.gov/html/delhelp.html, to assist taxpayers in resolving their past due tax accounts. The site provides useful information regarding the delinquent tax process, the ability to submit online installment agreement requests, and answers to Frequently Asked Questions (FAQs). Some of the topics covered include:

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

- wage certifications;
- divorce decrees;
- credit card payments; and
- Internet posting of delinquent accounts.

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

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

To File or Not to File – Corporation Tax Returns

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

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

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

Circumstance	Filing Requirement
Activity in Wisconsin and elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T).
Activity in Wisconsin but not elsewhere	File the appropriate corporation tax form (5, 5S, 4I, or 4T).
No activity in Wisconsin, but activity elsewhere	File the appropriate corporation tax form and indicate no activity by entering zeros.
No activity in Wisconsin or elsewhere, but may become active in Wisconsin later.	File Form 4H, <i>Wisconsin Corporation Declaration of Inactivity</i> .
No activity in Wisconsin or elsewhere, and will not become active in Wisconsin later.*	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T), and check "Final return" in Box D.

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

Questions regarding incorporation or dissolution can be directed to:


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

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

Questions regarding corporation tax filing requirements can be directed to:

Wisconsin Department of Revenue
Corporation and Withholding Unit
Mail Stop 3-14
P.O. Box 8908
Madison WI 53708-8908

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

All corporation tax forms and instructions may be found on the Department of Revenue's website at www.revenue.wi.gov. 



Farmers Receive \$25.9 Million in Farmland Credits

Direct benefits of approximately \$25.9 million were distributed to Wisconsin farmers in 2006, primarily for the 2005 tax year, through the farmland preservation credit program and the farmland tax relief credit program.

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

Farmland Tax Relief Credit Program

It is not necessary for the farmland to be subject to agricultural zoning or a farmland preservation agreement to receive farmland tax relief credit. This program provides direct benefits to any qualifying farmland owner with 35 or more acres of farmland. About 54,000 farmers claimed farmland tax relief

credits totaling \$13.4 million in 2006, for an average credit of \$249.

The credit is computed as a percentage of up to \$10,000 of property taxes on farmland (exclusive of improvements), up to a maximum credit of \$1,500. The Department of Revenue calculates the percentage each year, based on the amount appropriated for the program. For the 2005 tax year (credits claimed in 2006), the credit was equal to 20% of the first \$7,500 of property taxes on farmland. For the 2006 tax year (credits claimed in 2007), the credit is equal to 23% of the first \$6,521 of property taxes on farmland.

Farmland Preservation Credit Program

About 19,000 farmers claimed farmland preservation credits totaling \$12.5 million in 2006. The credit averaged \$652 per claimant. About 35% of farm owners with 35 or more acres claimed the credit, which equaled about 19% of claimants' average property tax bills.

The goals of the farmland preservation credit program are twofold –

- To preserve Wisconsin farmland by means of local land use planning and soil conservation practices.

- To provide property tax relief to farmland owners.

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

conservation standards set by the state Land Conservation Board.

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

Question and Answer ?

Caution: The answer in this article is based on laws enacted by the Wisconsin Legislature as of the date of this Bulletin. It may be subject to change based on laws enacted after that date, new administrative rules, and court decisions.

(Sales and Use Tax)

Q Is the sale of a motor vehicle in Wisconsin that is purchased for use solely outside the United States subject to Wisconsin sales or use tax if it is delivered to a forwarding agent, export packer, or other person in the business of preparing goods for export?

A No, provided the purchaser does not take possession of the motor vehicle prior to the time it is delivered by the seller to the forwarding agent, export packer, or other person in the business of preparing goods for export.

Section 77.55(3) Wis. Stats. (2005-06), provides that an item of tangible personal property purchased for sole use outside this state which is delivered to a forwarding agent, export packer, or other person engaged in the business of preparing goods for export or arranging for their exportation, and actually delivered to a port outside the continental limits of the United States prior to making any use thereof is exempt from tax. This exemption does not apply if the purchaser takes possession of or makes any use of the property prior to the property's exportation.

Note: A nonresident of Wisconsin that takes possession of a motor vehicle or truck body that they intend to export may still be able to purchase the motor vehicle exempt from tax under sec. 77.54 (5)(a), Wis. Stats. (2005-06), which provides an exemption for a motor vehicle sold to a nonresident of Wisconsin who makes no use of the vehicle other than immediate removal from Wisconsin. [↗](#)



Administrative Rules in Process

Listed in the next column are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of April 1, 2007, and at each step where action occurred during the period from January 1, 2007, through April 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 36 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Scope Statement Published

- 1.12 Electronic funds transfer – A (January 15, 2007)
- 8.24 Reciprocal interstate shipments of wine – A (February 28, 2007)

Sent to Legislative Council Rules Clearinghouse

- 1.12 Electronic funds transfer – A

Sent for Legislative Committee Review

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

Adopted but Not Yet Effective (anticipated effective date May 1, 2007)

- 9.70 Cigarette and tobacco products tax bad debt deductions – NR [↗](#)

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 (2/07)
- 229* Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales (2/07)
- 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 (3/07)

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 (3/07)
- 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 (3/07)
- 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 (3/07)
- 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) [🔗](#)



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 36 of this Bulletin. The Index is also available on the department’s website at www.revenue.wi.gov. Just click on “Publications.”



Enforcement Report

Lake Geneva Man Convicted of Tax Fraud

A prominent Lake Geneva businessman was convicted in January 2007 in Dane County Circuit Court on state income tax fraud charges.

Richard F. Cucco, 51, pleaded guilty to filing a fraudulent 1998 Wisconsin income tax return and for failing to file state income tax returns for the years 1995 through 1997. Charges for 1999 were dismissed as part of the plea agreement.

According to the criminal complaint, Cucco, the owner of Imagetec, an Illinois based business, evaded almost \$100,000 in state taxes for 1998 and 1999 by underreporting more than \$2.2 million in income on his Wisconsin income tax returns by falsely claiming that he was an Illinois resident.

In 1989, Cucco and his wife, Martha, purchased a home on East Valley Park Road in Lake Geneva while Cucco was working for Camadon, Inc., a Wisconsin based company. In December 1990, the Cuccos sold the home they owned in Barrington, Illinois, while Cucco continued to work for the company in Pewaukee, WI.

In 1992, Cucco left Camadon to start his own copy machine business, Imagetec, while he continued to reside in Lake Geneva.

The Cuccos filed joint resident Wisconsin income tax returns for the years 1991 through 1994, according to the complaint.

In 1995, Cucco approached his payroll administrative manager and directed her to change his home address to Northbrook, Illinois for tax purposes, although he actually continued to live in Lake Geneva.

The Illinois address was actually the home of his father, Dr. Ulisse Cucco. Cucco further informed his accountant that he and his wife had separated and that he was living with his father in Northbrook.

Dr. Cucco stated in a 2002 interview that his son had not lived in the Northbrook home with him for more than twenty years. The investigation also revealed that one of Cucco’s siblings stated that Cucco had bragged about getting away with not paying Wisconsin taxes by making it look like he was living at his dad’s home in Illinois while he was actually living in Lake Geneva.

Cucco obtained a Wisconsin driver’s license in 1993 and renewed it again in 1997. Cucco also listed his Lake Geneva home as his address in traffic citations he received in 1999 and 2002. Wisconsin Department of Transportation records list several vehicles registered to the Cuccos at their Lake Geneva home in 1998 and 1999, including a 1991 Porsche, a 1999 Land Rover, a 1999 Volkswagen, and 1997 and 1998 Chevrolets.

In May 2002, the Cuccos sold their home on East Valley Park Road and purchased their current home on Basswood Drive in Lake Geneva for \$3.1 million.

In a plea agreement, Dane County Circuit Court Judge William Foust fined Cucco \$30,000 and ordered him to file correct Wisconsin income tax returns for the years 1995 through 1999 and pay all taxes, penalties, and interest due for those years.

This case was prosecuted by Ann Sayles, Assistant District Attorney with the Dane County District Attorney's Office, after an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

Eau Claire Businessman Pleads No Contest to Failing to Pay Sales Tax

Mohammad Y. Al-Hashlamoun, owner of Eau Claire Tobacco Shop, will perform 240 hours of community service for failing to pay more than \$6,000 in sales tax.

Al-Hashlamoun, 31, pleaded no contest in March 2007 in Eau Claire County Court to a misdemeanor count of failing to pay sales tax. Two additional counts of failing to pay sales tax, a count of knowingly submitting false

tax documents, and four counts of failing to file an income tax return were dismissed.

Judge William Gabler fined Al-Hashlamoun \$500 and ordered him to pay \$6,300 in restitution. As part of a plea agreement with prosecutors, Al-Hashlamoun also submitted state income tax returns for 2003 and 2004.

According to the criminal complaint, cash register tapes obtained from the business by an agent with the Wisconsin Department of Revenue showed Al-Hashlamoun reported gross receipts to be less than they actually were. He failed to pay the state \$6,300 in sales tax for November and December 2002, and March 2003.

Also according to the complaint, Al-Hashlamoun's 2002 state corporate income tax return understated his business' purchases and receipts. He also failed to file individual or corporate income tax returns in 2003 and 2004 despite having filed sales tax returns for the same two years showing gross receipts of over \$650,000 in 2003 and more than \$734,000 in 2004. [Ⓜ](#)



Report on Litigation

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

The following decisions are included:

Individual Income Taxes

Earned income credit

Tania Avila. 20

Sales and Use Taxes


Computer software – taxability (canned vs. custom programs)

Menasha Corporation. 20

Use tax – transfer of tangible personal property from related corporation

River City Refuse Removal, Inc...... 21

INDIVIDUAL INCOME TAXES

 **Earned income credit.** *Tania Avila vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 6, 2006). The issue in this case is whether the department properly disallowed the earned income credits claimed by the taxpayer.

The taxpayer was a resident of Wisconsin during the years 2000 through 2003, and for each of these years filed a Wisconsin income tax return on which the earned income credit was claimed.

By notice dated February 28, 2005, the department issued an income tax assessment against the taxpayer. The assessment disallowed certain items on the 2000 through 2003 returns, including the earned income credits. The taxpayer filed a timely petition for redetermination of the department's assessment, which was denied by the department by notice dated July 18, 2005. The taxpayer filed a petition for review with the Commission on September 20, 2005.

By letter dated May 3, 2006, the department asked the taxpayer to provide documentation to substantiate the income reported on her 2000 through 2003 returns. In response, the taxpayer provided the department with handwritten notes recording various dates and amounts

received during the years 2000 through 2003. Her notes were not made contemporaneously with the income and dates recorded therein, but rather were made in response to the department's letter.


At the hearing, the taxpayer testified that she had hired a professional preparer to prepare her 2000 through 2003 returns and that she had relied on her preparer's advice in preparing and filing the returns. Neither party was able to locate the preparer for a deposition, and the preparer did not testify at the hearing. The department contested only the taxpayer's eligibility for the earned income credits claimed on the 2000 through 2003 returns, and conceded the remaining issues.

Following the hearing, the department issued a revised assessment dated June 28, 2006 to the taxpayer consisting of the disallowed earned income credits and interest.

The Commission concluded that the taxpayer did not prove by clear and satisfactory evidence in what respects the department erred in its determination, and upheld the department's revised assessment.

The taxpayer has not appealed this decision. [!\[\]\(1f99bf65f43889da445ecc1fe8d9504f_img.jpg\)](#)

SALES AND USE TAXES

 **Computer software – taxability (canned vs. custom programs).** *Menasha Corporation vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, January 25, 2007). On October 26, 2004, the Circuit Court for Dane County reversed the Wisconsin Tax Appeals Commission's December 1, 2003 decision. See *Wisconsin Tax Bulletin* 141 (January 2005), page 25, and *Wisconsin Tax Bulletin* 137 (January 2004), page 29, respectively, for summaries of the Circuit Court and Commission decisions.

The issue in this case is whether computer software purchased by the taxpayer is tangible personal property and subject to sales or use tax.

The taxpayer is a corporation, based in Wisconsin, that provides products to a variety of industries, including paperboard, packaging, plastics, material handling, promotions, and printing. In 1993, the taxpayer hired a consulting company who concluded that it would be feasible for the taxpayer to transition to a global applica-

tion software system, provided that the new system allowed custom modification to meet the taxpayer's unique business needs. The taxpayer consequently selected a vendor for its new system, due to the flexibility and customization which the taxpayer required and which the vendor could provide.

In 1995, the taxpayer's Board of Directors approved the license of the software. The taxpayer then entered into an agreement to license the software. The vendor's customers who license this software system "almost always retain either (the vendor) or (the vendor's) designated consultants" to help customize the software modules to their businesses.

When the vendor was demonstrating the software to the taxpayer, it advised the taxpayer that it would have to retain either the vendor's consultants or consultants listed by the vendor as vendor-certified consulting partners or "logo" partners to implement the software with the custom features that the taxpayer required. The vendor also advised the taxpayer that since it could not supply all the consultants needed to install and customize the taxpayer's software, the taxpayer would have to work with one of the vendor's logo partners. As advised, the taxpayer hired one of the vendor's logo partners.

The software system consists of more than seventy software modules. Each module can provide a rudimentary business and accounting software system for a different segment of a client's business. The system is not usable to a client as sold; it must be modified to fit a client's business operations. It becomes usable for serving a client's business and accounting needs only after the modifications are completed.

The customization and testing of the software was done by an implementation team and a programming team consisting of employees of the taxpayer as well as the software vendor's representatives, the vendor's logo partner's representatives, and third-party consultants. Customization and installation of the taxpayer's software cost the company more than \$23 million, of which only \$5.2 million was for the core software.

The taxpayer filed a claim for refund for use tax paid on its acquisition of the software from the vendor and for payment of maintenance fees. The department denied the taxpayer's refund claim and its petition for redetermination.

Using six of the seven factors for determining whether a program is a custom program listed under sec. Tax 11.71(1)(e), Wis. Adm. Code, the Wisconsin Tax Ap-

peals Commission previously concluded the software was custom software, because there had been: (1) significant presale consultation, (2) extensive testing, (3) substantial training and written documentation, (4) enhancement and maintenance support, (5) a cost greater than \$10,000, and (6) the software was not "pre-written" software because of the significant efforts required to bring it online for the taxpayer under factors 1 - 4. The Commission determined that Factor 7 (pre-existing programs which need to be significantly modified by the vendor to be usable) was not applicable here, as the Commission already had concluded that the software was custom.

The Dane County Circuit Court reversed the Commission's decision.

The Court of Appeals concluded that the Commission reasonably interpreted and applied sec. Tax 11.71(1)(e) and (k), Wis. Adm. Code, in determining that the software was custom software. The Court of Appeals reversed the Circuit Court's decision and affirmed the Commission's decision granting a refund to the taxpayer for taxes paid on the software.

The department has filed a petition with the Wisconsin Supreme Court asking it to review this decision. [!\[\]\(4b7a79268f6ba26c1471d4232fffa85a_img.jpg\)](#)

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

Wisconsin Department of Revenue vs. River City Refuse Removal, Inc. (Supreme Court of Wisconsin, March 8, 2007). On February 2, 2006, the Court of Appeals reversed the Circuit Court for Dane County's August 2, 2004 decision reversing the Wisconsin Tax Appeals Commission's August 19, 2003 decision. See *Wisconsin Tax Bulletin* 147 (April 2006), page 19, *Wisconsin Tax Bulletin* 140 (October 2004), page 23, and *Wisconsin Tax Bulletin* 136 (October 2003), page 19, for summaries of the Court of Appeals, Circuit Court, and Wisconsin Tax Appeals Commission decisions, respectively.

The issues in this case are:

- A. Whether the fixed assets the taxpayer received through intercompany transfers with wholly-owned subsidiaries of its parent company are subject to Wisconsin use tax under sec. 77.53(1), Wis. Stats.
- B. Whether the taxpayer satisfied its burden to show that its nonpayment of taxes was due to good cause and not due to neglect, pursuant to sec. 77.60(3), Wis. Stats.

The taxpayer was primarily engaged in the business of collecting refuse and recyclables from Wisconsin residences and businesses and hauling those materials to landfills or recycling centers. During the period from October 1, 1993 through September 30, 1997, the taxpayer was a separately incorporated Wisconsin corporation and wholly-owned subsidiary of its parent company.

Other subsidiaries of the parent company transferred to the taxpayer items of tangible personal property such as motor vehicles and related assets. The assets transferred were valued at net book value (original purchase price less accumulated depreciation), entered into the taxpayer's financial records at that value, and depreciated on the taxpayer's income or franchise tax returns. The taxpayer paid no sales or use tax on these intercompany transfers. No money was exchanged or expected between the parent's subsidiaries and the taxpayer for the intercompany transfers. The taxpayer received no invoice or other bill in connection with the receipt of intercompany assets.

The Wisconsin Tax Appeals Commission determined that (1) the intercompany transfers of tangible personal property to the taxpayer from the parent's subsidiaries were not subject to Wisconsin use tax because there was no transfer for remuneration or consideration, and (2) the negligence penalty did not apply as the taxpayer's failure to report the use tax was "due to good cause and not due to neglect."

The Circuit Court, in a de novo review (giving the Commission decision no weight), reversed the Commission on both issues.

The Court of Appeals subsequently reversed the Circuit Court's order and reinstated the Commission's ruling and order.

The Wisconsin Supreme Court found that the intercompany transfers that the taxpayer participated in do not fall within Wisconsin's use tax statute. The subsidiaries of the parent company did not constitute retailers pursuant to sec. 77.51(13), Wis. Stats. The requisite consideration did not exist for the transfers to be considered purchases under sec. 77.51(12)(a), Wis. Stats. Therefore, the Wisconsin Supreme Court affirmed the decision of the Court of Appeals. [Ⓜ](#)