

Wisconsin TAX BULLETIN

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July 2007

New Tax Laws

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted changes to the Wisconsin tax laws pertaining to alcohol beverages. See page 3 for details. [🔗](#)

Sales and Use Tax Seminars to be Presented in Eau Claire, Appleton, and Madison

Tax Insight, LLC, in cooperation with the Wisconsin Department of Revenue, is presenting a series of sales and use tax seminars in October. The seminars will include an in-depth study of sales and use tax topics, as well as the latest developments in sales and use tax legislation, policy, rulings, and court cases.

The seminars are intended for tax practitioners who prepare sales and use tax returns or whose clients have sales and use tax questions, taxpayers who pay sales and use tax, or employees who prepare sales and use tax returns for their employer. All seminars are from 8:00 a.m. to 12:00 p.m., at the following locations:

October 23, 2007 – Eau Claire, Wisconsin
The Plaza Hotel and Suites
1202 West Claremont Avenue

October 25, 2007 – Appleton, Wisconsin
Wave Bar and Ballroom
2350 North Casaloma Drive

October 30, 2007 – Madison, Wisconsin
Sheraton Hotel
706 John Nolen Drive

Additional information concerning these seminars, including the specific agenda and registration, are available on Tax Insight's website at www.taxinsight.com or on the Department of Revenue's website at www.revenue.wi.gov. [🔗](#)

Tomah Office Closed

The Department of Revenue has closed its Tomah branch office, effective the end of June 2007. Customer services for persons in this location will be provided from the Baraboo, La Crosse, and Wisconsin Rapids branch offices and the Eau Claire district office.

The Department of Revenue remains committed to providing the best possible service to its customers in the Tomah area, as well as statewide. Customers in that location may contact any of the offices listed above, or the Madison headquarters office (telephone (608) 266-2772). Assistance and information are also available 24 hours a day, 7 days a week on the department's website, www.revenue.wi.gov. [🔗](#)

Reminder: IPT Tax Seminar to be Presented in Madison on August 30, 2007

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 and use tax issues and information related to the Main Street Equity Act (a/k/a the Streamlined Sales Tax Project), but will also cover some corporate income/franchise tax issues.

The presentations on the topics will be made by both Department of Revenue personnel and representatives from various businesses. Topics include updates on recent corporate franchise/income and sales and use tax law changes and litigation, as well as extensive discussions of the effects the Main Street Equity Act will have on various businesses and industries in Wisconsin.

Additional information concerning this seminar, including the specific agenda and registration materials, is posted on the Department of Revenue's website at www.revenue.wi.gov. The agenda also appears on pages 37 and 38 of this Bulletin. [🔗](#)

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Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will again present joint sales and use tax seminars in October. The seminars will include information on similarities and differences in the two states' sales and use tax laws. Both of the seminars are for general businesses.

You are invited to attend either of the following seminars, free of charge. Both 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.

October 16, 2007 – Hudson, Wisconsin
Hudson House
1616 Crestview Drive

October 23, 2007 – Onalaska, Wisconsin
Onalaska Omni Center
225 Rider Club Street [☞](#)

Can Retailers Absorb the Sales Tax for Their Customers?

Occasionally, retailers advertise that they will absorb or pay the sales tax for their customers. Some of these advertising phrases may state the following:

“Pay no sales tax!”

“We’ll pay your sales tax.”

“Receive a discount equal to the sales tax.”

This practice violates Wisconsin sales and use tax law, even if the retailer pays the correct amount of sales tax to the Department of Revenue.

Section 77.52(4), Wis. Stats. (2005-06), provides that “[i]t is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it, or any part thereof, will be refunded. Any person who violates this subsection is guilty of a misdemeanor.”

Retailers may, however, advertise that their prices “include sales tax.” [☞](#)

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New Tax Laws

Note: The Wisconsin Legislature has also enacted changes pertaining to individual income tax, homestead credit, and sales and use tax. These provisions are contained in 2007 Act 11 and become effective January 1, 2008. In addition, the Governor's 2007-2009 Budget Bill and other bills affecting Wisconsin taxes were still pending at the time this Bulletin went to print. The provisions of 2007 Act 11 affecting Wisconsin taxes, as well as any pending bills affecting Wisconsin taxes that become law, will be published in a special issue of the *Wisconsin Tax Bulletin*.

Underage Persons on Premises Operating Under an Alcohol Beverage License (2007 Act 8, create sec. 125.07(3)(a)14, effective May 18, 2007).

An underage person not accompanied by his or her parent, guardian, or spouse who has attained the legal drinking age may enter and remain on premises for which an alcohol beverage license is issued to the Wisconsin Renaissance Faire in the city of Chippewa Falls.

Provisions Relating to Taste Samples of Wine Revised (2007 Act 9, amend sec. 125.06(13)(a), effective May 18, 2007).

A Class "A" licensee may provide taste samples of wine only between the hours of 11:00 a.m. and 7:00 p.m. Under prior law, samples could only be provided between the hours of 10:00 a.m. and 6:00 p.m.

Taste Samples of Fermented Malt Beverages (2007 Act 9, amend secs. 125.25(1), 125.29(3), and 125.32(6)(a) and create secs. 125.28(1)(d) and 125.33(12), effective May 18, 2007).

A Class "A" license authorizes the licensee to provide free taste samples of fermented malt beverages to

customers and visitors who have attained the legal drinking age for consumption on the licensed premises. Samples may not exceed 3 fluid ounces each, and may not be in original packages, containers, or bottles. No more than 2 samples per day may be provided to any one person, and samples may only be provided between the hours of 11:00 a.m. and 7:00 p.m. All alcohol beverage provisions relating to retail sales of fermented malt beverages by a Class "A" licensee apply to the provision of taste samples of fermented malt beverages.

With the consent of a Class "A" licensee, a brewer or individual representing a brewer may provide free taste samples of fermented malt beverages purchased from the licensee to any person who has attained the legal drinking age for consumption on the licensed premises. Samples may not exceed 3 fluid ounces each, and may not be in original packages, containers, or bottles. No more than 2 samples per day may be provided to any one person. Samples may only be provided between the hours of 11:00 a.m. and 7:00 p.m. during which the retail sale of fermented malt beverages is permitted by municipal ordinance. **(Example:** Municipality A restricts the retail sale of fermented malt beverages to between the hours of 10:00 a.m. and 6:00 p.m. Samples of fermented malt beverages may only be provided between the hours of 11:00 a.m. and 6:00 p.m. in Municipality A.)

A wholesaler, employee of a wholesaler, or individual representing a wholesaler may not provide or participate in providing taste samples of fermented malt beverages. This restriction does not apply to a brewer holding a wholesale license or an individual representing a brewer who is not employed by or an agent of a wholesaler other than, if the brewer holds a wholesale license, the brewer. [!\[\]\(0d5ec72f61334709c3fc9450209b754f_img.jpg\)](#)

Treasury Offset Program Works for Wisconsin

The Department of Revenue (DOR) has collected over \$21.2 million in delinquent income taxes through the Treasury Offset Program, a federal offset program implemented in Wisconsin in February 2001.

Each year DOR certifies unpaid income taxes to Financial Management Services, the branch of the U.S. Treasury that disperses federal payments, including

federal income tax refunds. As a result of the program more than 32,000 federal refunds have been intercepted, either in whole or in part, on behalf of DOR.

The Treasury Offset Program, an off-shoot of a larger program that offsets most types of federal payments on behalf of federal agencies, was first opened to state revenue departments in January 2000. To date, thirty-eight states and the District of Columbia participate in the program. [!\[\]\(84f47badaad7772cd95667a7c387a639_img.jpg\)](#)

New Exemptions Related to Farming Effective July 1, 2007

2005 Wis. Act 366 (the Act) modified various statutory provisions relating to sales and use tax exemptions for farming, effective July 1, 2007.

The Act modified the exemption under sec. 77.54(3)(a), Wis. Stats. This statute, as of July 1, 2007, applies to tractors and machines, including accessories, attachments and parts, lubricants, nonpowered equipment, and other tangible personal property used exclusively and directly or which are consumed or lose their identities in the business of farming.


In addition, the Act also added “silviculture” as an activity which is “in the business of farming” for purposes of the following exemptions, effective July 1, 2007:

- Section 77.54(3)(a), Wis. Stats. (2005-2006) – Exemption for tractors and machines, including accessories, attachments and parts, lubricants, nonpowered equipment, and other tangible personal property used exclusively and directly, or are consumed or lose their identities in the business of farming.
- Section 77.54(3m), Wis. Stats. (2005-2006) – Exemption for various items if used exclusively in the business of farming.

- Section 77.54(30)(a)3, Wis. Stats. (2005-2006) – Exemption for electricity sold for use in farming.
- Section 77.54(30)(a)5, Wis. Stats. (2005-2006) – Exemption for fuel sold for use in farming.

Additional information concerning the exemptions for silviculture may be found in the tax release titled “Sales and Use Tax Exemptions for Silviculture” on pages 19 to 31 of this Bulletin.

Wisconsin Publication 221, *Farm Suppliers and Farmers, How Do Wisconsin Sales and Use Taxes Affect Your Operations?*, has been revised to reflect the above changes. Publication 221 is available on the Department of Revenue’s website at www.revenue.wi.gov/pubs/pb221.pdf. Also see the article titled “Tax Publications Available,” on page 11 of this Bulletin, for methods of obtaining Publication 221.

The Department of Revenue has also redesigned Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*, to reflect the above changes. The revised Form S-211 is available at any Department of Revenue office, or is available electronically from the department’s website at: www.revenue.wi.gov/forms/sales/s-211.pdf. 

Question and Answer




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

(Sales and Use Tax)

Q I am a contractor in Brown County. All of my work consists of real property improvements, and all of my materials are shipped to and stored in Brown County prior to installation. I know I am required to pay the 1/2% football stadium use tax on the cost of materials if stadium tax was not charged when I purchased them. If I do a job in Door County, do I also owe county use tax or since I paid the football stadium tax on the materials, do I get a credit against the Door County tax obligation?

A In your situation, both football stadium sales or use tax and county use tax would apply. Since the materials were first stored in Brown County, the stadium tax would be due. Since they were later installed in a taxable county, county use tax would also apply. There is no credit against county sales or use tax for stadium sales or use tax paid. Therefore, a total of 6% in tax is paid on the materials comprised of 5% state sales or use tax, 1/2% football stadium sales or use tax, and 1/2% county use tax.

Q I run a business where I pick up, shred, and dispose of confidential records. Is my charge to customers for this service subject to Wisconsin sales tax?

A No. Shredding confidential records is not a taxable service under Wisconsin sales and use tax law. 

Sales and Use Tax Treatment of Fees for Sports

Section 77.52(2)(a)2, Wis. Stats. (2005-06), imposes a sales or use tax on admissions to amusement, athletic, entertainment or recreational events or places. Admissions includes the furnishing for dues, fees, or other consideration, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic, or recreational devices or facilities.

League entry fees and/or registration fees to play baseball, basketball, volleyball, soccer, pool, bowling, and other sports are subject to Wisconsin sales and use tax. These fees provide access to, or the use of, facilities for amusement, entertainment, athletic, or recreational purposes. "Facilities" include, but are not limited to, baseball diamonds, football fields, tennis courts, gymnasiums, pool tables, dartboards, soccer fields, and bowling alleys.

Exception: Sales of tangible personal property, tickets, or admissions by any baseball team affiliated with the Wisconsin Department of American Legion baseball are exempt from sales and use taxes.

Example 1: A tavern charges customers \$100 to play in a volleyball league. The fee entitles the customer to play 20 games of volleyball at the tavern's facilities. Part of the fee paid to the tavern is used for referees, trophies, and maintenance of the facility. The entire \$100 fee charged by the tavern is subject to Wisconsin sales tax.

Note Regarding Purchases: The tavern is the consumer of the trophies that it purchases and provides incidentally to the league participants with its sale of the admissions. Therefore, the tavern is liable for Wisconsin sales or use tax on its purchase of the trophies.

Example 2: A city recreation department charges participants \$50 to register for the city softball league. The \$50 registration fee entitles each participant to a T-shirt and 10 games at city softball facilities. Part of the fee paid to the city recreation department is used for the T-shirts, field maintenance, and trophies. The entire \$50 fee charged by the city is subject to Wisconsin sales tax.

Note Regarding Purchases: The city is the consumer of the trophies that it purchases and provides incidentally to the league participants with its sale of the admissions. However, since purchases by a Wisconsin governmental unit are exempt from sales and use taxes, the city is exempt from sales or use tax on its purchase of the T-shirts and trophies.

Example 3: A youth baseball organization charges league entry fees of \$75 to play baseball. The league entry fee allows the player use of a uniform and equipment as well as 12 baseball games using the organization's facilities. A team coach may also organize periodic practices to help the players to develop their skills. The \$75 entry fee is subject to Wisconsin sales tax.

Note Regarding Purchases: If the youth baseball organization holds a Wisconsin Certificate of Exempt Status number, the youth baseball organization is exempt from sales and use tax on its purchase of the uniforms and equipment.

Caution: If fees are paid to a nonprofit organization, they may be exempt from Wisconsin sales and use taxes if the nonprofit organization meets certain conditions. (See Publication 206, *Sales Tax Exemption for Nonprofit Organizations*.) [☞](#)

Tax Shelter Participants: New Voluntary Compliance Program Pays

Wisconsin has joined a multistate effort to give taxpayers who have used tax shelters an opportunity to report those transactions without penalty. The Multistate Tax Commission (MTC) is coordinating the Multistate Tax Shelter Voluntary Compliance Program, which began May 1, 2007 and ends October 1, 2007.

Benefits of Program

The Department of Revenue will waive all civil and criminal penalties on tax that is attributable to tax

avoidance transactions disclosed in this program. **This waiver is only valid for transactions disclosed on or before October 1, 2007.**

Who is Eligible

Any taxpayer who has used a tax avoidance transaction to reduce or eliminate Wisconsin income or franchise tax liability for any tax year beginning before January 1, 2006 is eligible. A "tax avoidance transaction" is a plan or arrangement devised for the principal purpose of avoiding federal or state income tax (or similar state taxes based on income).

Additionally, a taxpayer must meet the following criteria to participate in the program:

- The taxpayer has not been informed by the department that an audit or criminal investigation is being conducted or will be conducted relating to the tax avoidance transaction.
- The taxpayer has not received a final federal audit report from the Internal Revenue Service (IRS), if the changes or corrections on that report relate to the tax avoidance transaction and are required to be reported to the department under sec. 71.76 or sec. 77.96(4), Wis. Stats. (2005-06).
- The taxpayer has not misrepresented facts relating to the tax avoidance transaction.

How to Participate

For each tax year beginning before January 1, 2006 the tax avoidance transaction was used, do the following:

- Complete an amended or original Wisconsin income or franchise tax return (an original return is permitted only when failure to file was due to the tax avoidance transaction).
- Write “MULTI-STATE VCP” boldly and conspicuously at the top of the first page of the return.
- Complete IRS Form 8886 (2005 or later version). If the transaction affected Wisconsin tax liability without affecting federal tax liability, complete Form 8886 as if the transaction affected federal tax liability.

- Complete Form VCP-1. Form VCP-1 is available on the MTC’s website at <http://www.mtc.gov/Resources.aspx?id=2394>. A copy of Form VCP-1 is also reproduced on page 39 of this Bulletin.
- Send all of the above items, with payment of the tax due (payable to the Wisconsin Department of Revenue), to the Multistate Tax Commission at the following address:

Multistate Tax Commission
Multistate Tax Shelter Voluntary
Compliance Program
444 North Capitol Street, NW, Suite 425
Washington, DC 20001

These items must be received by the MTC (not merely postmarked) on or before October 1, 2007. The MTC will then forward them to the Wisconsin Department of Revenue.

For More Information

The MTC’s website, at www.mtc.gov/Resources.aspx?id=2390, has further details of the program’s policies and procedures, a list of participating states, and the benefits offered by each state. Please review this information carefully before participating in the program.

If you have questions about the Multistate Tax Shelter Voluntary Compliance Program, please contact the MTC by e-mail at VCP@mtc.gov, or by telephone at (202) 624-8699. [☎](#)

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 July 5, 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. To date, over \$20 million has been collected through the issuance of warning letters and the posting of accounts.

The list of delinquent taxpayers is available either sorted alphabetically by name or by city. The Internet site also contains a separate list of the 100 largest delinquent accounts.

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

Streamlined Sales Tax Project Update: Will Wisconsin Become the Next Member?


The Joint Committee on Finance and the Wisconsin Senate both approved the necessary legislation and technical corrections to the Governor's budget bill to allow Wisconsin to become a full member of the Streamlined Sales Tax Governing Board. However, the Wisconsin Assembly removed the necessary conforming legislation from their version of the bill. The next step in determining whether or not Wisconsin will become a member of the Streamlined Sales Tax Governing Board is for a bi-partisan legislative conference committee to consider the conforming legislation while at the same time trying to reach an agreement on the 2007-09 state budget. It was unknown at the time this Bulletin went to print as to exactly when that conference committee will meet to consider this legislation.

If the conforming legislation is ultimately approved by the Wisconsin Legislature, Wisconsin will join 22 other states that have already enacted the necessary changes to their laws to conform to the provisions of the Streamlined Sales and Use Tax Agreement (SSUTA). The 22 states that have already enacted the necessary legislation 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, West Virginia, Washington and Wyoming. If approved, Wisconsin's conforming legislation is anticipated to become effective on January 1, 2008.

The Streamlined Sales Tax Governing Board, Inc. was originally incorporated in October, 2005, when the 18 states that had enacted all of the conforming legislation required by the SSUTA organized themselves into the Governing Board. The Governing Board is responsible for managing the SSUTA based on its by-laws and operating rules and conducts its business through two councils: (1) State and Local Advisory Council (SLAC) and (2) Business Advisory Council (BAC).

Recognizing the benefits of the SSUTA and the uniformity and fairness that the SSUTA is trying to foster, over 1,000 businesses have already 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. In addition, the number of voluntary registrants continues to grow.

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

Another Step Toward an Integrated Tax System

The Department of Revenue plans to continue the process of integrating its tax computer systems during 2007. The Wisconsin Income Processing and Audit System (WINPAS) was first put into production on December 31, 2005 for corporation income and franchise tax. It was expanded in 2006 to include premier resort area tax, local exposition center tax, state rental vehicle tax, individual income tax, and fiduciary income tax. In December 2007, sales and use tax, business tax registration, and occasional consumer use tax will all be rolled into WINPAS.

WINPAS supports a variety of processes for the taxes that it manages, including registration of taxpayers, processing of returns and payments, issuing bills and refunds, revenue accounting, auditing, and collection. Customers affected by the December rollout will notice the following changes:

- The look and content of permits, bills, notices, and letters will change;
- Customers will be assigned Wisconsin tax account numbers, which to protect privacy will be used in place of social security numbers or federal employer identification numbers on bills, notices, letters, and refund checks being sent out from WINPAS;
- Notices will be identified by a letter identification number, which will allow a customer service person to immediately access the text of the notice that a customer has received;
- Updated addresses for customers who have moved can be entered into the system more promptly, reducing the amount of undeliverable mail;
- Customers who have overdue tax liabilities for tax programs managed by WINPAS and other tax programs will receive separate monthly statements for WINPAS liabilities and the other tax programs.



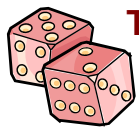
When Are Field Audits Scheduled?

If a person has filed Wisconsin tax returns, the Department of Revenue has four years from the due date of the person's franchise or income tax return or the date the return was filed, whichever is later, to provide notice of adjustments to the return as a result of an audit, with a few exceptions. The law provides that this four-year period, often referred to as the "statute of limitations," can be extended by agreement between the department and the person being audited. Note that there is no time limit for the department to make adjustments for periods in which a return was not filed.

When the department conducts a field audit, it will usually audit all years open to adjustment, which is generally four years. It is the department's practice to begin an audit well in advance of the expiration of the four-year period so that the audit can be completed and notice can be provided of any adjustment as required by law. There are occasionally situations that arise during the course of an audit that delay completion of the audit within this four-year period (e.g., records are not readily available; taxpayer wants more time to review proposed adjustments, etc.). In these situations, the auditor will ask that the person being audited agree to extend the period for making the adjustments.

It is not practical to establish a standard timeframe for setting up all field audits since what is reasonable for a very big field audit is very different than what is reasonable for a very small field audit. However, auditors are required to plan ahead when scheduling the start of a field audit to make sure sufficient time is allowed for its completion without an extension being necessary. The expectation is that all field audits will be completed to the point where the auditor will provide the taxpayer a Notice of Proposed Audit Report at least 90 days prior to the expiration of the statute of limitations. Therefore, the general rule is that auditors should schedule the start of a field audit for a date that allows sufficient time to complete the field audit and provide the taxpayer a Notice of Proposed Audit Report at least 90 days prior to the expiration of the statute of limitations.

Occasionally, circumstances may cause an auditor to start a field audit closer to the expiration of the statute of limitations than the guidelines indicated above. The department has discretion to start a field audit later and waive internal guidelines for submitting completed field audits but this is generally the exception and not the rule. [!\[\]\(c694a3ff3b077d76910920a6a1593ab4_img.jpg\)](#)



Tax Treatment of Gambling Winnings and Losses

All gambling winnings (such as winnings from casinos, horse or dog races, lotteries, raffles, etc.) must be included in income. In addition to cash winnings, the fair market value of bonds, cars, houses, and other noncash prizes must be included in income.

Gambling winnings must be included on federal Form 1040 as "other income." Wisconsin residents who have gambling winnings must file Wisconsin Form 1. Because the starting point on Form 1 is federal adjusted gross income, the amount of gambling winnings included in federal income will also be included in Wisconsin income.

The federal and Wisconsin treatment of gambling losses is as follows:

Federal Treatment

If you claim itemized deductions, you may deduct on federal Schedule A (as a miscellaneous itemized deduction) the amount of gambling losses you incur during the year, but only up to the amount of gambling winnings you report as taxable income. The

miscellaneous itemized deduction is not subject to the 2% of adjusted gross income limitation. (**Note:** If you claim the federal standard deduction, you are not allowed any deduction for gambling losses.)

Wisconsin Treatment

Wisconsin does not allow a subtraction for federal itemized deductions. Instead, a credit is allowed based on certain federal itemized deductions reported on federal Schedule A. Amounts allowed as miscellaneous itemized deductions on federal Schedule A, including gambling losses, may not be used in computing the Wisconsin itemized deduction credit. In addition, no deduction is permitted on the Wisconsin income tax return for gambling losses.

Example: You received a total of \$100 of gambling winnings, which you reported as taxable income. You also incurred \$200 of gambling losses. On Schedule A for federal income tax purposes, you may deduct \$100 of gambling losses (limited to the amount of the winnings) as a miscellaneous itemized deduction. You may not use the \$100 miscellaneous itemized deduction in computing your Wisconsin itemized deduction credit.





Free-File Continues as an Online Hit!

In its fifth year, the Department of Revenue's Free-File program was once again a success. Over 91,000 taxpayers took advantage of the Wisconsin Free-File program to file their 2006 Wisconsin income tax returns and homestead credit claims online, on time, and completely free of charge.

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

Free-File is available through the state government e-portal at www.wisconsin.gov or more directly at www.revenue.wi.gov.

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

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

Use Tax Calculator Available

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

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

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

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

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

www.revenue.wi.gov. Click on "Forms," then "Sales and Use Tax," and then scroll down to and click on "SU-102."

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

Any questions?

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

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

Telephone: (608) 266-2776

TTY: (608) 267-1049

Fax: (608) 267-1030

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

Website: www.revenue.wi.gov



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 151 (April 2007), pages 25 to 29.

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



Undeliverable Income Tax Refunds

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

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

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

Use Sufficient Postage

Every day, mail is sent to the Department of Revenue without sufficient postage affixed. Mailing an envelope with insufficient postage may result in the department not receiving it. The U. S. Post Office will return envelopes that do not have sufficient postage (for this reason, it is important to include your complete return address, so the envelope won't end up in the "dead-letter office").

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

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). [✎](#)



Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of July 1, 2007, and at each step where action occurred during the period from April 1, 2007, through July 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 40 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Sent to Legislative Council Rules Clearinghouse

8.24 Reciprocal interstate shipments of wine – A

Reviewed by Legislative Council Rules Clearinghouse

1.12 Electronic funds transfer – A

8.24 Reciprocal interstate shipments of wine – A

Sent to Revisor for Publication of Notice

1.12 Electronic funds transfer – A (published May 15, 2007)

8.24 Reciprocal interstate shipments of wine – A (published June 15, 2007)

Public Hearing Held

1.12 Electronic funds transfer – A (May 30, 2007)

8.24 Reciprocal interstate shipments of wine – A (June 28, 2007)

Adopted and in Effect (May 1, 2007)

9.70 Cigarette and tobacco products tax bad debt deductions – NR

Additional information concerning the rule that has been adopted and is effective May 1, 2007 may be found in the article titled “Recently Adopted Rule Summarized” on page 16 of this Bulletin. [☞](#)



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 40 of this Bulletin. The Index is also available on the department’s website at www.revenue.wi.gov. Just click on “Publications.” [☞](#)

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

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

concerning the Wisconsin sales and use tax treatment of computer hardware, software, and services appears on pages 32 to 36 of this Bulletin. These questions and answers may 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 “Computer – Hardware, Software, Services” under the heading “Other Issues.” [☞](#)

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 (1/06)
- 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? (4/07)
- 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? (7/07)
- 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 (1/07)
- 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) [↗](#)

WT-7 and W-2 Electronic Filing

Per Section Tax 2.04, Wisconsin Administrative Code, the Department of Revenue (DOR) requires Form WT-7, *Employers Annual Reconciliation of Wisconsin Income Tax Withheld from Wages*, to be filed electronically. An employer may request a waiver in a case where the requirement causes an undue hardship.

DOR will be developing a communication plan to notify all employers of the above requirement. For 2006 Forms WT-7, the focus was to work with payroll providers to support bulk filing of these forms. Payroll providers filed 26,935 Forms WT-7 electronically early in 2007. In addition, almost 10,500 employers e-filed their Forms WT-7 for free directly with DOR.

DOR launched **WT-7 Free-File** in January 2005. This application has many benefits for employers as well as DOR:

Employers


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

DOR

- Less paper to handle.
- It saves time and money!

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

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

As an alternative to filing Forms W-2 on magnetic media, you may **file them online** at www.dor.state.wi.us/eserv/w-2.html. For more information on filing wage statements, reference Publication 509, *Filing Wage Statements and Information Returns on Magnetic Media or by Electronic Transmission*, at: www.dor.state.wi.us/html/pubs.html. 



Enforcement Report

Green Bay Club Owner Pleads Not Guilty to Refilling Alcohol Bottles

Note: The information in the following section of this article was obtained from stories posted to the Green Bay Press Gazette website on March 24, 2007 and April 6, 2007.

Daniel Hakes, 42, owner of Confetti's Club in Green Bay, pleaded not guilty in April 2007 to misdemeanor charges of refilling or diluting alcohol bottles. The criminal complaint alleges Confetti's had open bottles of Captain Morgan spiced rum that contained a less expensive brand, Calico Jack, and were sold as Captain Morgan.

According to the complaint, the Alcohol and Tobacco Enforcement Unit of the Wisconsin Department of

Revenue received a written tip concerning Confetti's. Agents with the unit seized six open bottles of Captain Morgan in January 2006 and submitted two of them to a federal laboratory center for testing. A chemical analysis "strongly inferred" the two samples actually were Calico Jack rather than Captain Morgan.

Also according to the complaint, agents also found a large back stock of sealed cases of Calico Jack and a few sealed bottles of Captain Morgan. An employee at Confetti's told investigators that Calico Jack is inexpensive and was used in place of Captain Morgan on special promotion nights because rum and Coke is the most popular mixed drink ordered. But the employee said he had no knowledge of anyone refilling Captain Morgan bottles with Calico Jack.

A charge of possessing refilled or diluted alcohol bottles is a misdemeanor carrying a fine ranging from \$150 to \$500 and a jail term of 60 days to six months.

Milwaukee Men Charged With Failure to File Income Tax Returns

Criminal charges were filed in April 2007 by the Milwaukee County District Attorney's Office against two Milwaukee men for failure to file Wisconsin income tax returns.

Charged were Clifton G. Owens, 65, a Milwaukee area bankruptcy attorney, and Robert R. Raymond, 52, a roofing contractor from Shorewood. Both are accused of failing to file income tax returns for 2003 and 2004. Raymond was also charged with not filing a return for 2005.

According to the criminal complaint, Owens shared an office with an association of attorneys in Milwaukee. An analysis of Owens' bank accounts at US Bank, Associated Bank, and HSA Bank showed deposits of cash, checks, cashier's checks, and money orders totaling \$93,437 in 2003 and \$71,986 in 2004. Owens received these fees from a variety of individuals, businesses, and bankruptcy trustees.

The complaint also pointed out that Owens has had a long history of delinquent tax filings. During the 1980's, the Department of Revenue sent repeated and unanswered correspondence to Owens in attempts to get him to file returns. In 1994, Owens pled guilty to a criminal charge for not filing a 1990 Wisconsin income tax return. The criminal complaint also stated that Owens still owes over \$100,000 in delinquent taxes, interest, and penalties and that he has not filed income tax returns since 1996.

Robert R. Raymond has operated a self-employed roofing business since about 1980. According to the criminal complaint, Raymond hasn't filed income tax returns since 1994 and owes the State over \$49,000 in delinquent taxes, interest, and penalties.

An analysis of bank accounts used by Raymond to operate his business showed that he made deposits of customer checks and cash totaling \$181,523 in 2003, \$159,254 in 2004, and \$180,476 in 2005.

If convicted, Owens could face up to 18 months in jail and \$20,000 in fines, while Raymond could face up to 27 months in jail and \$30,000 in fines.

Both Owens and Raymond were prosecuted by the Milwaukee County District Attorney's Office after an investigation by the Criminal Investigation Section of the Wisconsin Department of Revenue.

Former Owner of Green Bay Restaurant Charged With Tax Crimes

Michael P. Dufresne, 52, former owner of the Pier 64 restaurant in Green Bay, was charged in April 2007 with five felony counts of theft in a business setting and two counts of failure to file income tax returns for the years 2003 and 2004. The charges were filed by the Brown County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Fraud Unit.

According to the criminal complaint, Dufresne operated Pier 64 from March 2003 through November 2004. Dufresne failed to file sales tax returns or remit any payments to the Department of Revenue during the period from March 2003 through June 2004. On December 2, 2004, Dufresne filed four sales tax returns for July 2004 through October 2004, but did not remit any payments. The complaint states that during this time period Dufresne collected and failed to remit over \$38,000 in sales tax.

The complaint also alleges that Dufresne failed to file 2003 and 2004 income tax returns and that his gross income was \$163,400 in 2003 and \$414,108 in 2004.

If convicted, Dufresne could face up to 109 years in jail and \$90,000 in fines.

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

Chippewa County Man Charged With Operating Without Alcohol Licenses or Seller's Permit

Benedict J. Lorenz, age 60, was charged in April 2007 in Chippewa County Circuit Court with selling intoxicating liquor and fermented malt beverages without holding valid retail liquor and beer licenses. Lorenz was also charged with operating his tavern/restaurant business without holding a valid Wisconsin Seller's Permit. The charges were filed by the Chippewa County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section and the Department of Revenue's Compliance Bureau.

According to the criminal complaint, Lorenz operated the Hill House Pub & Grill in Boyd, Wisconsin. The complaint alleges that from July 1, 2006, through September 20, 2006, Lorenz sold alcohol beverages

without holding the required retail licenses. The complaint further alleges that from April 15, 2006, through September 20, 2006, Lorenz made retail sales to consumers without holding a valid seller's permit.

During the course of the investigation, over 200 bottles of liquor were seized from Lorenz's business. On or about October, 2005, Lorenz stopped filing his monthly sales and use tax returns.

If convicted of all charges, Lorenz could face up to 18 months in jail and \$20,500 in fines.

Wisconsin law also provides for substantial civil penalties on any tax liabilities in addition to the criminal charges. Assessment and collection of taxes, penalties, and interest follows the conviction for criminal violations.

Milwaukee Man Charged With Filing False Homestead Credit Claims

Charges were filed in May 2007 by the Milwaukee County District Attorney's Office against a Milwaukee man for filing a false tax document.

Terry Potts, age 37, was charged with a felony for filing a false Wisconsin homestead credit claim for the year 2004.

According to the complaint, Potts also prepared 52 false Wisconsin homestead credit claims for other people who, if they received a refund check, paid him a fee of up to \$300 per claim. The claims contained false rent certificates, inflated rent amounts, and false claims of Wisconsin residency. The scheme was caught by the Department of Revenue's Homestead Credit Unit in Madison.

The complaint also refers to several other false claims Potts filed for earlier years. Potts prepared a statement in his own words summarizing his actions. He stated that he signed the claims knowing they were false in order to obtain money that he was not entitled to.

If convicted, Potts faces a maximum sentence of up to 6 years in prison and a fine of up to \$10,000.

The prosecution of Potts by the Milwaukee County District Attorney's Office resulted from an investigation by the Criminal Investigation Section of the Wisconsin Department of Revenue. [!\[\]\(fe3aebe81acea8d45108cd2768939da7_img.jpg\)](#)

Recently Adopted Rule Summarized

Summarized below is information regarding an administrative rule created effective May 1, 2007. Included is information relating to Tax 9.70, relating to cigarette and tobacco products tax bad debt deductions. In addition to a summary of the rule, the text of the rule is reproduced.

To order up-to-date administrative rules of the department, you can use the order blank that appears on page 40 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

Tax 9.70 Cigarette and tobacco products tax bad debt deductions. This proposed rule clarifies the following as to when and how a person who pays cigarette taxes or a distributor who pays tobacco taxes is to claim the deduction allowed under ss. 139.362 and 139.801, Stats., for cigarette and tobacco products tax attributable to bad debt:

- The deduction shall be claimed on the monthly tax report for the month in which the debt is written off as uncollectible and is eligible to be deducted as a bad debt under s. 166 of the Internal Revenue Code.

A claimant shall complete Form CT-117, *Cigarette Distributor Bad Debt Deduction for Uncollectible Wisconsin Cigarette Tax*, or Form TT-117, *Tobacco Products Distributor Bad Debt Deduction for Uncollectible Wisconsin Tobacco Products Tax*, for all amounts claimed.

- Payments and credits applied to a debt before it is written off as uncollectible shall be apportioned to the amount of such debt attributable to cigarette or tobacco products tax using the ratio of the total cigarette or tobacco tax to be paid per the invoice to the total amount to be paid per the invoice. The amount so apportioned shall reduce the amount of debt attributable to cigarette or tobacco tax to arrive at the amount of the deduction.
- If the deduction is claimed for a month when the cigarette or tobacco products tax rate is different from the rate in effect when the cigarettes or tobacco products were sold, the tax rate in effect when the cigarettes or tobacco products were sold shall be used to determine the deduction.

- A deduction shall not be allowed for cigarette and tobacco products tax attributable to bad debt incurred on illegal sales of cigarettes or tobacco products.
- A recovery of a bad debt for which a deduction was claimed shall be included in the monthly tax report for the month in which the recovery occurs, and the tax shall be paid with the report.

The text of Tax 9.70 is as follows:

Tax 9.70 Cigarette and tobacco products tax bad debt deductions. (1) **PURPOSE.** This section clarifies when and how a person who pays cigarette taxes or a distributor who pays tobacco taxes may claim a deduction under ss. 139.362 and 139.801, Stats., for cigarette and tobacco products tax attributable to bad debt.

(2) **DEFINITIONS.** In this section:

- (a) “Bad debt” has the meaning given in ss. 139.362(1) and 139.801(1), Stats.
- (b) “Cigarette” has the meaning given in s. 139.30(1m), Stats.
- (c) “Distributor” has the meaning given in s. 139.75(4), Stats.
- (d) “Tobacco products” has the meaning given in s. 139.75(12), Stats.

(3) **BAD DEBTS.** (a) *Deduction from measure of tax.* Using form CT-117, titled “Cigarette Distributor Bad Debt Deduction for Uncollectible Wisconsin Cigarette Tax,” or form TT-117, titled “Tobacco Products Distributor Bad Debt Deduction for Uncollectible Wisconsin Tobacco Products Tax,” a person who pays cigarette taxes or a distributor who pays tobacco taxes may claim a deduction on the monthly tax report for the cigarette and tobacco products tax attributable to bad debt that is written off as uncollectible in their books and records and that is eligible to be deducted as bad debt under s. 166 of the internal revenue code.

(b) *When to report the deduction.* The deduction under par. (a) shall be claimed on the monthly tax report that is submitted for the month in which the amount of the deduction is written off as uncollectible and in which such amount is eligible to be deducted as a bad debt under s. 166 of the internal revenue code.

Example: A distributor writes off a debt attributable to tobacco products tax on September 10, 2005. At the time the debt is written off it is eligible to be deducted as a bad debt under s. 166 of the internal revenue code. The distributor may claim a bad debt deduction by attaching a completed form TT-117 to the monthly tobacco products tax report filed for the month of September 2005.

(c) *Recovery of bad debt.* If a person who pays cigarette taxes or a distributor who pays tobacco taxes subsequently collects in whole or in part any bad debt for which a deduction is claimed under par. (a), they shall include the amount collected in the monthly tax report filed for the month in which the amount is collected and shall pay the tax with the report.

(d) *Payments and credits.* Payments and credits applied to a debt before it is written off as uncollectible shall be apportioned to the amount of such debt attributable to cigarette or tobacco products tax on the basis of the ratio of the cigarette or tobacco products tax to be paid per the invoice to the total amount to be paid per the invoice. The amount so apportioned shall reduce the amount of debt attributable to cigarette or tobacco products tax to arrive at the deduction under par. (a).

Examples: 1) At a time when the cigarette tax rate is 3.85¢ per stick, Person A sells cigarettes to Customer B. The amount of the invoice is \$10,000, consisting of cigarette tax of \$1,540, cost of cigarettes of \$6,000 and sundries of \$2,460. Customer B defaults and discontinues operations, leaving a balance due to Person A of \$2,100, which includes interest of \$200 not included in the original invoice amount. The deductible tax is \$292.60, computed as follows:

Tax per invoice	\$1,540.00
Invoice amount	\$10,000.00
Unpaid invoice amount –	<u>-1,900.00</u>
Paid invoice amount	\$ 8,100.00
Portion constituting tax*	<u>x.154</u>
Tax paid	- <u>\$1,247.40</u>
Tax that may be deducted	\$292.60

*\$1,540 tax ÷ \$10,000 invoice amount = .154.

2) At a time when the tobacco products tax rate is 25% of the manufacturer’s wholesale list price, Distributor A sells tobacco products to Customer B. The amount of the invoice is \$9,500, consisting of tobacco products tax of \$1,250, cost of tobacco products of

\$5,000 and sundries of \$3,250. Customer B defaults and discontinues operations, leaving a balance due to Distributor A of \$3,000, which includes interest of \$200 not included in the original invoice amount. The deductible tax is \$365.60, computed as follows:

Tax per invoice		\$1250.00
Invoice amount	\$9,500.00	
Unpaid invoice amount –	<u>-2,800.00</u>	
Paid invoice amount	\$6,700.00	
Portion constituting tax*	<u>x.132</u>	
Tax paid		- <u>\$884.40</u>
Tax that may be deducted		\$365.60

*\$1,250 tax ÷ \$9,500 invoice amount = .132.

(e) *Tax rate change.* If the deduction under par. (a) is claimed for a month when the cigarette or tobacco products tax rate is different from the tax rate in

effect when the cigarettes or tobacco products were sold, the tax rate in effect when the cigarettes or tobacco products were sold shall be used to determine the amount of the deduction.

(f) *Illegal sales.* No deduction under par. (a) shall be allowed for cigarette and tobacco products tax attributable to bad debt incurred on sales of cigarettes or tobacco products sold in violation of state or federal law.

Example: Sales of banned products sold in violation of the directory of certified manufacturers and brands, s. 995.12, Stats.

Note: Section Tax 9.70 interprets ss. 139.362 and 139.801, Stats.

Note: Sections 139.362 and 139.801, Stats., were created by 2005 Wis. Act 25, and took effect on September 1, 2005. [§](#)



Tax Releases

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

The following tax release is included:

Sales and Use Tax

1. Sales and Use Tax Exemptions for Silviculture..... 19

SALES AND USE TAX

1 Sales and Use Tax Exemptions for Silviculture

Statutes: Sections 77.51(14r), 77.52(2)(a)10 and 20, 77.54(3)(a) as amended by 2005 Wis. Act 366, (3)(b)3, (3m)(b), (g) and (d) as amended by 2005 Wis. Act 366, (30)(a)3 and 5 as amended by 2005 Wis. Act 366, and (39), and 77.57, Wis. Stats. (2005-06).

Wis. Adm. Code: Sections Tax 11.12(2)(b) and (f) and 6(a)1, Wis. Adm. Code (May 1999 Register).

Background: 2005 Wis. Act 366 amended secs. 77.54(3)(a) and (3m), and secs. 77.54(30)(a)3 and 5, Wis. Stats. (2005-06), effective July 1, 2007, to add “silviculture” to the list of those businesses specifically recognized under these sections as farming businesses. The Act also amended sec. 77.54(3)(a), Wis. Stats. (2005-06), to provide that the exemption will apply to tractors and machines, including accessories, attachments and parts, lubricants, nonpowered equipment, and other tangible personal property used exclusively and directly, or which are consumed or lose their identities in the business of farming.

This tax release: (1) explains how sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, is to be applied in order to determine if a purchase of property will qualify for exemption under that section, (2) describes the activities that qualify as silviculture for purposes of the sales and use tax farming exemptions, and (3) provides facts and questions to explain how these exemptions apply to commonly encountered situations.

Following is the definition of “silviculture” for purposes of the exemptions provided in secs. 77.54(3)(a) and (3m), and secs. 77.54(30)(a)3 and 5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366:

(NOTE: Section Tax 11.12(2), Wis. Adm. Code (May 1999 Register), which defines “farming” and various farming activities, has not yet been updated to reflect the changes to the statutes as a result of 2005 Wis. Act 366. The Department of Revenue is in the process of proposing changes to the administrative code which will reflect the statutory changes under 2005 Wis. Act 366. The proposals will include the definitions for “silviculture” and “logging” as described below.)

“Silviculture” means the business of raising trees for timber, lumber and other wood products. Silviculture includes the logging of timber when it is performed by a person engaged in the business of silviculture and the logging is conducted with respect to timber produced as a result of that person’s silviculture activity. Silviculture does not include pulp or sawmill operations.

“Logging,” as used above, includes the following activities which occur while in the field: (1) the felling of trees, (2) the delimbing of felled trees, (3) the cutting of felled trees into logs, poles, or other units, (4) the transportation of cut timber from the forest to a sawmill, and (5) activities conducted in the forest incidental to the felling, cutting, and removal of trees such as the clearing of the forest to allow access to and removal of the timber from the forest land.

Note: The logging of timber is a custom farming service when performed for a person engaged in the business of silviculture, for a fee. As provided in sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register), performing custom farming services is a farming

business activity for purposes of the sales and use tax farming exemptions.

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Introduction

- (1) Individual owns forest land devoted to the commercial production of timber and cuts the timber himself.
- (2) Same as (1), except individual also uses the equipment to cut firewood for personal use.
- (3) Same as (1), except individual also operates a sawmill and a solar kiln.
- (4) Same as (1), except individual contracts with a forester for consulting and maintenance services.
- (5) Individual purchases land and hires a forester to plan for commercial timber production. Individual hires a company to plant and maintain trees.
- (6) Same as (5), except individual will perform tree planting and maintenance herself. Also, repair of equipment used in farming.
- (7) Landowner contracts with logger to cut timber. Landowner sells timber to a sawmill.
- (8) Same as (7), except logger purchases standing timber from the landowner.
- (9) Same as (7), except landowner sells standing timber to a sawmill. Sawmill hires a logger to provide logging services.
- (10) Developer buys forested land and hires a logger to cut it.
- (11) Utility hires a company to provide utility right-of-way tree maintenance.
- (12) Modifications and repairs to heavy logging equipment before July 1, 2007, and after June 30, 2007.
- (13) Example to illustrate the July 1, 2007 effective date.

Introduction

Section 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, provides an exemption from Wisconsin sales and use taxes for the following:

The gross receipts from the sales of and the storage, use, or other consumption of tractors and machines, including accessories, attachments, and parts, lubricants, nonpowered equipment, and other tangible personal property that are used exclusively and directly, or are consumed or lose their identities, in the business of farming, including dairy farming, agriculture, horticulture, floriculture, silviculture, and custom farming services, but excluding automobiles, trucks, and other motor vehicles for highway use; excluding personal property that is attached to, fastened to, connected to, or built into real property or that becomes an addition to, component of, or capital improvement of real property; and excluding tangible personal property used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property, regardless of any contribution that that personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine, except as provided in par. (c).

Section 77.54(3)(b)3, Wis. Stats. (2005-06), provides that, in paragraph (a), “used exclusively” means used to the exclusion of all other uses except for other use not exceeding 5% of total use.

Under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, tractors and machines, including accessories, attachments and parts, lubricants, nonpowered equipment, and other tangible personal property will qualify for exemption if either of the following conditions are true:

- (1) such property is used exclusively and directly in the business of farming, or
- (2) such property is consumed or loses its identity in the business of farming;

AND such property meeting Condition (1) or (2) is **not** any of the following:

- (a) an automobile, truck, or other motor vehicle for highway use,
- (b) personal property that is attached to, fastened to, connected to, or built into real property or that becomes an addition to, component of, or capital improvement of real property, or,

(Note: There is an exception to the requirement in (b). Under Wisconsin law, the following items may qualify for exemption regardless of the extent to which they are fastened to, connected to, or built into real property: Auxiliary power generators; bale loaders; barn cleaners and elevators; conveyors; feed elevators and augers; grain dryers and grinders; milk coolers; milking machines, including piping, pipeline washers and compressors; powered feeders, excluding platforms and troughs constructed from ordinary building materials; and silo unloaders.)

- (c) tangible personal property used or consumed in the erection of buildings or in the alteration, repair, or improvement of real property, regardless of any contribution that that personal property makes to the production process in that building or real property and regardless of the extent to which that personal property functions as a machine.

Under Condition (1), “exclusively” means used to the exclusion of all other uses except for other use not exceeding 5% of total use (at least 95% of total use is use in the business of farming). Under Condition (2), “consumed in the business of farming” means the property is used 100% in the business of farming. Thus, property failing Condition (1) because it is not used directly in the business of farming may qualify for exemption as property consumed or losing its identity in the business of farming, provided it is used 100% in the business of farming.

Section 77.57, Wis. Stats. (2005-06), provides that, if a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted by this subchapter from the computation of the amount of the sales tax and uses the property in some other manner or for some other purpose, the purchaser is liable for the payment of sales tax. The tax shall be measured by the sales price of the property to the purchaser, but if the taxable use first occurs more than 6 months after the sale to the purchaser, the purchaser may use as the measure of the tax either that sales price or the fair market value of the property at the time of the first taxable use.

Facts (1): Individual B owns 200 acres of land, of which 150 acres is forested and devoted to the commercial production of timber. As part of Individual B’s management plan for the forest land, Individual B periodically cuts timber for sale. After

June 30, 2007, Individual B purchases the following: two gasoline-powered chain saws, chain saw files, metal tree wedges, and the following personal safety equipment: (1) hardhat with hearing protection and faceguard, and (2) protective chaps, shirt, and gloves. Individual B will use these items at all times in conducting silviculture operations on the 150 acres of forest land.

Questions (1): (a) Is Individual B engaged in the business of farming for purposes of the sales and use tax exemptions for farming in Chapter 77, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(b) May the items purchased by Individual B after June 30, 2007, be purchased exempt from sales or use tax under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

Answers (1): (a) Yes.

(b) Yes. The chain saws are machinery, and the wedges are nonpowered equipment which are used exclusively and directly in the business of farming. The chain saw files are nonpowered equipment which, while not used directly in the business of farming, are consumed or lose their identities in the business of farming. The personal safety equipment is other tangible personal property which, while not used directly in the business of farming, is consumed or loses its identity in the business of farming.

Facts (2): Same facts as (1), except Individual B will also use the chain saws, chain saw files, wedges, and personal safety equipment to cut slash and damaged trees that are not marketable as timber into firewood for use in heating his personal residence on the 200-acre parcel.

Question (2): (a) Is Individual B’s use of the chain saws, chain saw files, wedges, and personal safety equipment to produce firewood for use in his personal residence, from timber harvested from his 150-acre parcel of forest land, use in the business of farming?

(b): Does Individual B’s use of the chain saws, chain saw files, wedges and personal safety equipment to produce firewood for use in his personal residence, from timber harvested from his 150-acre parcel of forest land, invalidate the exemption for this property under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

Answer (2): (a) No. The business of farming does not include activities conducted for personal, rather than commercial, purposes.

(b) As long as Individual B's use of the chain saws and wedges for use other than in the business of farming does not exceed 5% of total use, the use other than in the business of farming will not invalidate the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, for these items.

The chain saw files and personal safety equipment must be used 100% in the business of farming to qualify for exemption. Use of this property other than in the business of farming will invalidate the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366.

If Individual B knows at the time of purchase that any of these items will not be used exclusively and directly or 100% in the business of farming, Individual B may not provide an exemption certificate to the seller at the time of purchase claiming the items are exempt from sales and use taxes under 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366.

If Individual B purchases property without tax by providing the seller with an exemption certificate claiming the purchase is exempt, and subsequently uses such property in a taxable manner, Individual B is liable for sales tax as provided in sec. 77.57, Wis. Stats. (2005-06).

Facts (3): Same facts as (1). After June 30, 2007, Individual B also purchases: (1) an electrically-operated sawmill to cut the logs harvested from his 150 acres of forest land into dimensional lumber for sale to customers, and (2) materials which Individual B will use to construct a solar kiln on his 200-acre parcel for drying the dimensional lumber he produces.

Questions (3): (a) Is Individual B engaged in the business of farming with respect to the activities of sawing logs produced from the timber harvested from his 150 acres of forest land into dimensional lumber or the drying of that lumber in his solar kiln?

(b) Is the purchase by Individual B of the sawmill exempt from Wisconsin sales and use tax under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(c) Is the purchase by Individual B of the materials he will use to construct the solar kiln on his 200-acre parcel exempt from Wisconsin sales and use tax under sec. 77.54(3), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(d) Is the electricity used by Individual B to operate the sawmill exempt from Wisconsin sales and use tax under sec. 77.54(30)(a)3, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

Answers (3): (a) No. Individual B is not engaged in the business of farming with respect to the sawing of logs or drying of lumber. Section Tax 11.12(2)(f), Wis. Adm. Code (May 1999 Register), provides that "farming" does not include sawmill operations.

(b) No. Silviculture does not include sawmill operations. Individual B's purchase of the sawmill may, however, qualify as exempt under sec. 77.54(6)(a), Wis. Stats. (2005-06) (exemption for machinery and processing equipment used exclusively and directly by a manufacturer in manufacturing tangible personal property).

(c) No. Silviculture does not include sawmill operations. Individual B's purchases of such materials may, however, qualify as exempt under sec. 77.54(6)(a), Wis. Stats. (2005-06) (exemption for machinery and processing equipment used exclusively and directly by a manufacturer in manufacturing tangible personal property).

(d) No. Silviculture does not include sawmill operations. Individual B's purchase of the electricity may, however, qualify as exempt under sec. 77.54(30)(a)6, Wis. Stats. (2005-06) (exemption for fuel and electricity consumed in manufacturing tangible personal property).

Facts (4): Same facts as (1). Individual B contracts with Forester D to provide consulting services with respect to the operation of his 150 acres of forest land. Forester D recommends that Individual B should perform the following operations with respect to a particular 20-acre tract of his forest land: (1) cut or girdle noncommercial tree species, and (2) remove or apply herbicide to undesirable undergrowth. Individual B enters into a contract with Forester D for Forester D to perform the recommended operations on the 20-acre tract. The maintenance services will be performed by Forester D after June 30, 2007.

Forester D will use the following items in performing the specified services for Individual B: gasoline-powered chain saws, herbicide, axes, backpack sprayers (manual pump operation), and a gasoline-powered brush cutter.

Questions (4): (a) Are the charges by Forester D to Individual B for the consulting services subject to tax?

(b) Are the charges by Forester D to Individual B for the maintenance services performed on Individual B's 20-acre tract subject to tax?

(c) Are the items used by Forester D in performing the services on Individual B's 20-acre tract used in the business of farming? Do the items qualify for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis Act 366, if purchased after June 30, 2007?

(d) Is the gasoline used by Forester D in the chain saws and brush cutter in performing the services on Individual B's 20-acre tract used in the business of farming? Does the fuel qualify for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis Act 366, if purchased after June 30, 2007?

(e) If Forester D purchased herbicide prior to July 1, 2007, properly paid Wisconsin sales or use taxes on the purchase, and applied this herbicide in performing the services for Individual B after June 30, 2007, is Forester D entitled to a refund of the sales or use taxes paid on this purchase of the herbicide?

Answers (4): (a) No. The charges by Forester D to Individual B for forestry consulting services are for custom farming services, as provided in sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). Custom farming services are not subject to tax as provided in sec. Tax 11.12(6)(a)1, Wis. Adm. Code (May 1999 Register).

(b) No. The charges by Forester D to Individual B to: (1) cut or girdle noncommercial tree species, and (2) remove or apply herbicide to undesirable undergrowth are for the performance of custom farming services for Individual B, as provided in sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). Charges for custom farming services are not subject to Wisconsin sales or use tax as provided in sec. Tax 11.12(6)(a)1, Wis. Adm. Code (May 1999 Register).

(c) Forester D is performing custom farming services for Individual B, as provided under sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). Forester D is engaged in the business of farming when performing custom farming services.

Forester D uses the gasoline-powered chain saws and brush cutter, axes, and manually-operated backpack sprayers directly in the business of farming. Provided Forester D uses these items exclusively in the business of farming, the items will qualify for exemption under sec. 77.54(3)(a), Wis. Stats.

(2005-06), as amended by 2005 Wis. Act 366, for purchases occurring after June 30, 2007.

The herbicide is used exclusively in the business of farming. Herbicide is specifically exempt under sec. 77.54(3m)(g), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as a spray, pesticide, or fungicide used exclusively by the purchaser in the business of farming. The herbicide is also exempt under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as other tangible personal property that is consumed or loses its identity in the business of farming. These exemptions apply to purchases made after June 30, 2007, for use in the business of silviculture.

(d) Yes. Forester D is performing custom farming services for Individual B, as provided under sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). Forester D is engaged in the business of farming when performing custom farming services.

The gasoline used by Forester D in the operation of the chain saws and brush cutter is used in the business of farming, and qualifies for the exemption under sec. 77.54(30)(a)5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as fuel sold for use in farming. The gasoline also qualifies for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-2006), as amended by 2005 Wis. Act 366, as other tangible personal property that is consumed or loses its identity in the business of farming. These exemptions apply to fuel purchased by Forester D after June 30, 2007, for use in performing custom farming services.

(e) No. At the time Forester D purchased the herbicide, Wisconsin sales or use tax was properly imposed. The changes made by 2005 Wis. Act 366 to the farming exemptions under Chapter 77, Wis. Stats. (2005-06), first apply to sales and purchases made after June 30, 2007, for use in the business of silviculture.

Facts (5): Individual A purchases a 40-acre parcel of land. The land has 30 acres forested in mixed hardwoods with the remaining 10 acres in ground cover suitable for planting and growing hardwood trees. Individual A is not otherwise engaged in any farming business. Individual A purchased the land for investment and recreational purposes.

After June 30, 2007, Individual A hires Forester B to develop a forestry plan for Individual A's 40-acre parcel. The plan is to reflect Individual A's objective for the long-term commercial production of timber on the parcel. Pursuant to the plan's recommenda-

tions, Individual A will plant the 10 acres currently in ground cover with black walnut and pine seedlings for the commercial production of black walnut and pine timber.

Individual A contracts with Company C to provide the materials and services to plant the 10-acre tract pursuant to Forester B's recommendations. Individual A also contracts with Company C to perform all necessary maintenance to the 10-acre tract for a period of one year from the date of planting the seedlings. All services performed by Company C are performed after June 30, 2007.

Questions (5): (a) Is Individual A engaged in the business of farming for purposes of the sales and use tax exemptions for farming in Chapter 77, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(b) Are the charges by Forester B to Individual A for Forester B's forest consulting services subject to sales or use tax?

(c) Are the charges by Company C to Individual A to plant and maintain the 10-acre tract for one year subject to sales or use tax?

(d) Is Company C engaged in the business of farming with respect to the planting and maintenance of Individual A's 10-acre tract?

Answers (5): (a) Yes. Individual A is engaged in the business of silviculture. Silviculture is included as a farming activity for purposes of the sales and use tax farming exemptions.

(b) No. The charges by Forester B to Individual A for forestry consulting services are for custom farming services, as provided in sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). Custom farming services are not subject to tax as provided in sec. Tax 11.12(6)(a)1., Wis. Adm. Code (May 1999 Register).

(c) No. The charges by Company C to Individual A to plant and maintain the 10-acre tract are for providing custom farming services as provided in sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). Custom farming services are not subject to the sales or use tax as provided in sec. Tax 11.12(6)(a), Wis. Adm. Code (May 1999 Register).

(d) Yes. A person who performs custom farming services is engaged in the business of farming when performing such services.

Facts (6): Same facts as (5), except Individual A will perform all planting and maintenance activities to the 10-acre tract herself.

Individual A purchases pine and black walnut seedlings, a tractor and attachments for mowing, spraying, and fertilizing. The tractor and attachments will be used exclusively by Individual A in planting and maintaining the 10-acre planting site and maintaining the remaining 30 acres of forest land. Individual A also purchases fertilizer and herbicide for pre and post-planting use on the 10-acre tract as well as on the remaining 30 acres of forest land. Individual A rents a tree planting attachment for the tractor for use in planting the pine and black walnut seedlings. Individual A will perform the pre-planting and planting activities, as well as the post-planting maintenance (mowing and herbiciding) on the 10-acre tract, as well as any maintenance on the remaining 30-acre tract. All of the purchases by Individual A occur after June 30, 2007.

While planting the trees, one of the tractor tires suffers damage. Individual A pays Tire Vendor D to come to the site with a new tire and replace the damaged tire.

Questions (6): (a) Is Individual A engaged in the business of farming for purposes of the farming exemptions for sales and use taxes in Chapter 77, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(b) Are Individual A's purchases of the tractor and attachments, seedlings, fertilizer, herbicides, the rental of the tree planting attachment, and the tractor tire and repair services subject to Wisconsin sales and use taxes?

(c) Are Individual A's purchases of fuel used to operate the tractor in the planting and maintenance operations subject to sales or use tax?

Answers (6): (a) Yes. Individual A is engaged in the business of silviculture, which is included as a farming activity for purposes of the sales and use tax farming exemptions.

(b) No. Individual A may purchase the tractor, the tractor tire, the mower, sprayer, and fertilizer attachments and rent the tree planter after June 30, 2007 without tax under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. Individual A will use these items directly and exclusively in the business of farming.

Individual A may purchase the services related to replacing the damaged tractor tire from Tire Vendor D without tax. Section 77.52(2)(a)10, Wis. Stats.

(2005-06), specifically provides that charges for service to tangible personal property are not taxable if, at the time of the service, a sale of that type of property to the customer would have been exempt from Wisconsin sales or use taxes (other than the exempt sale of a motor vehicle or truck body to a nonresident under sec. 77.54(5)(a), or nontaxable sales under sec. 77.51(14r)). Since, at the time of the repair to the tractor, a sale of the tractor to Individual A would be exempt from tax under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, Individual A may purchase the tire repair service without tax.

Individual A's purchase of the pine and black walnut seedlings is specifically exempt under sec. 77.54(3m)(b), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. Individual A's purchase of the fertilizer is specifically exempt under sec. 77.54(3m)(d), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. Individual A's purchase of the herbicide is specifically exempt under sec. 77.54(3m)(g), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. Individual A's purchases of the fertilizer and herbicide are also exempt under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as other tangible personal property which is consumed or loses its identity in the business of farming.

(c) No. The fuel used by Individual A to operate the tractor in the planting and maintenance operations is used in the business of farming. Individual A may purchase the fuel without tax under sec. 77.54(30)(a)5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. The fuel is also exempt from tax under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as other tangible personal property which is consumed or loses its identity in the business of farming.

Facts (7): Landowner C is engaged in the commercial production of timber (the business of silviculture) for purposes of the sales and use tax farming exemptions in Chapter 77, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. Logger T is engaged in the business of logging. Landowner C contracts with Logger T to fell, delim, cut to log size, and transport to a sawmill specified trees on Landowner C's property. Logger T is paid for its services based on a specified amount per board foot of logs which result from the timber harvest. Landowner C will sell the logs to Sawmill B at its sawmill. Sawmill B will cut the sawlogs into lumber for sale to customers.

Logger T owns and uses the following items in performing the services for Landowner C: (a) various chain saws, (b) wedges, (c) a hydraulic loader, (d) a forwarder, and (e) a timber trailer (used by Logger T to transport sawlogs to sawmills using public roads). The services are performed by Logger T after June 30, 2007.

Questions (7): (a) Is Logger T engaged in the business of farming for purposes of the sales and use tax exemptions for farming in Chapter 77, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, when performing the specified services for Landowner C?

(b) Are the charges by Logger T to Landowner C subject to Wisconsin sales or use tax?

(c) Will the purchases by Logger T, made after June 30, 2007, of the items used by Logger T in performing the services for Landowner C, qualify for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(d) Does the fuel purchased and used by Logger T to operate the chains saws, hydraulic loader, forwarder, and/or the timber trailer qualify for exemption under sec. 77.54(30)(a)5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as fuel sold for use in the business of farming?

(e) Is Logger T engaged in the business of farming when it transports Landowner C's sawlogs to Sawmill B?

(f) Are Landowner C's gross receipts from the sale of the sawlogs to Sawmill B subject to Wisconsin sales and use taxes?

(g) Is Sawmill B engaged in the business of farming as a result of purchasing the sawlogs from Landowner C, and subsequently cutting the sawlogs into lumber for sale to customers?

Answers (7): (a) Yes. Landowner C is engaged in the business of silviculture, which is included as a farming business activity for purposes of the sales and use tax farming exemptions. Logger T is performing a custom farming service for a farmer, for a fee, as required under sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). Custom farming services are included as a farming activity for purposes of the sales and use tax farming exemptions.

(b) No. The charges by Logger T to Landowner C are for custom farming services. Charges for custom farming services are not subject to tax, as provided in sec. Tax 11.12(6)(a)1, Wis. Adm. Code (May 1999 Register).

(c) When performing the logging services for Landowner C, Logger T is engaged in the business of farming. The chain saws, hydraulic loader, and forwarder are machinery used directly in the business of farming, and the wedges are nonpowered equipment used directly in the business of farming for purposes of sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. Assuming they are used exclusively in the business of farming, the items listed above which are used by Logger T in performing the services for Landowner C qualify for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, for purchases of such items occurring on or after July 1, 2007.

The timber trailer used by Logger T to transport Landowner C's sawlogs to Sawmill B's sawmill is used by Logger T in performing custom farming services for Landowner C. The timber trailer is an attachment to a machine which is a motor vehicle for highway use. The exemption for machines under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, does not apply to a machine which is a motor vehicle for highway use. The exemption for attachments under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, applies to attachments for a tractor or machine which itself is exempt under that section. Since the timber trailer is used as an attachment for a machine which is not exempt, the timber trailer is also not exempt under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366.

Note: The hydraulic loader and forwarder may also qualify for exemption under sec. 77.54(39), Wis. Stats. (2005-06), which exempts off-highway heavy mechanical equipment used exclusively and directly in the harvesting of raw timber products in the field by a person in the logging business. However, the exemption under this section does not apply to hand tools such as chain saws and wedges.

(d) Yes. The fuel purchased by Logger T on or after July 1, 2007 and used to operate the chain saws, hydraulic loader, and forwarder in performing the services for Landowner C qualifies as fuel sold for use in the business of farming. Logger T may purchase this fuel without tax under sec. 77.54(30)(a)3, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. The fuel also qualifies for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as other tangible personal property that is consumed or loses its identity in the business of farming.

(e) Yes. Landowner C is in the business of silviculture. The business of silviculture includes the transportation by Landowner C of the sawlogs produced by Landowner C's silviculture activity to a sawmill. Logger T is performing a custom farming service for Landowner C when Logger T transports Landowner C's sawlogs to a sawmill. Logger T is engaged in the business of farming when performing custom farming services.

(f) The sale of sawlogs is a sale of tangible personal property which is subject to Wisconsin sales and use taxes, unless an exemption applies. Sawmill B is purchasing the sawlogs for sale to customers. Sawmill B may furnish a properly completed exemption certificate to Landowner C, claiming its purchase is for resale.

(g) No. The business of silviculture does not include sawmill operations.

Facts (8): Same facts as (7), except Logger T purchases the standing timber from Landowner C for a lump sum (the selling price of the timber is determined prior to the cutting of the timber). Under the terms of the sales contract with Landowner C, Logger T is responsible for felling, delimbing, cutting the trees to log size, and removing the logs from Landowner C's property. Logger T takes possession of the sawlogs from Landowner C prior to Logger T removing the sawlogs from Landowner C's property. In a separate contract, Logger T agrees to sell the sawlogs to Sawmill B. Under the terms of the contract between Logger T and Sawmill B, Logger T is responsible for transportation of the sawlogs to Sawmill B's place of business. The sale will take place there. Sawmill B is purchasing the sawlogs for resale.

Questions (8): (a) Is Logger T engaged in the business of farming for purposes of the sales and use tax farming exemptions in Chapter 77, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366 when Logger T fells, delimbs, cuts the trees to log size, and removes the logs from Landowner C's forest?

(b) Is Logger T engaged in the business of farming for purposes of the sales and use tax farming exemptions in Chapter 77, Wis. Stats. (2005-2006), as amended by 2005 Wis. Act 366 when Logger T transports the logs to Sawmill B after removing the logs from Landowner C's property?

(c) Is the sale of the standing timber by Landowner C to Logger T subject to Wisconsin sales and use taxes?

(d) Will the purchases by Logger T, made after June 30, 2007, of the items used by Logger T in performing the services for Landowner C, qualify for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(e) Does the fuel purchased and used by Logger T to operate the chains saws, hydraulic loader, and/or the forwarder qualify for exemption under sec. 77.54(30)(a)5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as fuel sold for use in farming?

(f) Is the sale of the sawlogs by Logger T to Sawmill B subject to Wisconsin sales and use taxes?

Answers (8): (a) Yes. Landowner C is engaged in the business of silviculture, which is included as a farming activity for purposes of the sales and use tax farming exemptions. Logger T is performing a custom farming service for a farmer (a person engaged in the business of farming), for a fee, as required under sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register). This section also provides, in part, that "...The fee may include a cash payment, a share of the harvest, or other valuable consideration." Logger T has agreed to provide logging services to Landowner C, in part, to acquire its rights and interests in Landowner C's timber. The rights and interests that Logger T acquires in Landowner C's timber is "other valuable consideration" as provided under sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register).

(b) No. Logger T is not performing a custom farming service for Landowner C when Logger T transports the logs to the sawmill after removing the logs from Landowner C's property, as Landowner C no longer owns the logs. In this example, Logger T is transporting the logs to the sawmill on its own behalf, not on behalf of Landowner C.

(c) Landowner C has sold standing timber for removal to Logger T. The sale of standing timber for removal is subject to Wisconsin sales and use tax as provided in sec. Tax 11.12(7)(e), Wis. Adm. Code (May 1999 Register), unless an exemption applies. Logger T is purchasing the timber for resale. Logger T may purchase the timber from Landowner C without tax by furnishing Landowner C with a properly completed exemption certificate, claiming the purchase is for resale.

(d) Same answer as Answer (7)(c), except that the timber trailer used by Logger T to transport sawlogs owned by Logger T to Sawmill B is not used in the business of farming, as explained in Answer 8 (b).

(e) Same answer as Answer (7)(d).

(f) The sale of sawlogs is a sale of tangible personal property which is subject to Wisconsin sales and use taxes, unless an exemption applies. Sawmill B is purchasing the sawlogs for resale. Sawmill B may furnish a properly completed exemption certificate to Logger T, claiming its purchase is for resale.

Facts (9): Same facts as (7), except that Landowner C sells the standing timber to Sawmill B, retaining an economic interest in the timber (the final selling price of the timber will be determined based on scaling and grading of the sawlogs after they are cut and removed from the forest). Under the sales contract, Sawmill B is responsible for the logging of the timber. Sawmill B contracts with Logger T to fell, delimb, cut to log size, and transport to a location on Landowner C's property, the trees specified in the sales contract, for a specified amount per board foot of sawlogs produced. Logger T uses the same property as in Facts (7) in performing its logging services. The sale of the sawlogs takes place on Landowner C's property. Once the sawlogs are scaled and graded (and the final selling price determined), Logger T will load the sawlogs onto its trailer and transport the sawlogs to Sawmill B's sawmill.

Questions (9): (a) Is Logger T considered to be performing custom farming services with respect to the logging services it performs for Sawmill B, for purposes of the exemptions under secs. 77.54(3)(a) and (3m), and secs. 77.54(30)(a)3 and 5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(b) Are the charges by Logger T to Sawmill B for its logging services subject to Wisconsin sales or use tax?

(c) Is Logger T in the business of farming for purposes of the sales and use tax farming exemptions in Chapter 77, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366 when Logger T transports the logs from Landowner C's property to Sawmill B's sawmill?

(d) Is the sale of the standing timber by Landowner C to Sawmill B subject to Wisconsin sales and use taxes?

Answers (9): (a) Yes. Under the timber sales contract, Sawmill B is responsible for logging of the timber it is purchasing from Landowner C. A person providing custom farming services is considered to be a "farmer" with respect to providing such services. Sawmill B is providing a custom farming

service to Landowner C, as explained in Answer (8)(a). Thus, in providing its logging services to Sawmill B, Logger T is providing custom farming services to a farmer, for a fee, as required under sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register).

(b) No. Logger T is performing custom farming services. Charges for performing custom farming services are not subject to Wisconsin sales or use taxes, as provided in sec. Tax 11.12(6)(a)1, Wis. Adm. Code (May 1999 Register).

(c) No. Sawmill B is not providing a custom farming service to Landowner C with respect to the transportation of the sawlogs to its sawmill, as Landowner C no longer owns the sawlogs being transported. Sawmill B is having the logs transported on its own behalf and in conjunction with its sawmill operations. The business of farming does not include sawmill operations. As such, Logger T is not engaged in the business of farming when it transports sawlogs owned by Sawmill B to Sawmill B's sawmill.

(d) Landowner C has sold standing timber for removal to Sawmill B. The sale of standing timber for removal is subject to Wisconsin sales and use tax, unless an exemption applies. Sawmill B is purchasing the timber for resale. Sawmill B may purchase the timber from Landowner C without tax by furnishing Landowner C with a properly completed exemption certificate, claiming the purchase is for resale.

Facts (10): Landowner A is engaged in the business of farming. Developer M will purchase 400 acres of land from Landowner A for residential development. The sale will take place on August 15, 2007. The land is used by Landowner A in the business of farming. Landowner A's farming activities on the 400 acres include annual crop production, pasture land and the commercial growing of trees for timber. As part of the sale, Landowner A retains ownership of and the right to harvest the corn and soybean crops currently planted on the land.

Developer M contracts with Logging Company T to cut trees from the forested areas of the 400 acre site as part of clearing the land for development. Beginning no earlier than October 1, 2007, Logging Company T will fell, delimb, and cut the felled trees as appropriate for marketability (pulpwood, sawlogs, poles, firewood). The agreement between Developer M and Logging Company T is for Developer M to pay Logging Company T a negotiated

sum for Logging Company T's services. Logging Company T owns and uses the following items in performing the services for Developer M: (a) various chain saws, (b) chain saw files, (c) wedges, (d) a hydraulic loader, and (e) a forwarder. Developer M retains title to the cut timber and will sell it to various buyers.

Developer M contracts with Company L to clear the once forested land of the remaining trees, slash, stumps, and brush. Company L is to begin performing its services after Logging Company T completes its logging operations.

Questions (10): (a) Is Developer M engaged in the business of farming as a result of cutting and selling marketable timber resulting from clearing the site for development?

(b) Is Logging Company T engaged in the business of farming in performing the specified services for Developer M?

(c) Are the charges by Logging Company T to Developer M subject to Wisconsin sales or use taxes?

(d) Will the purchases by Logging Company T, made after June 30, 2007, of the items used by Logging Company T in performing the services for Developer M, qualify for the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366?

(e) Does the fuel purchased and used by Logging Company T to operate the chains saws, hydraulic loader, and/or the forwarder qualify for exemption under sec. 77.54(30)(a)5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, as fuel sold for use in the business of farming?

(f) Is Company L engaged in the business of farming when performing its services for Developer M?

(g) Are the charges by Company L to Developer M subject to Wisconsin sales or use taxes?

Answers (10): (a) No. Developer M is purchasing, cutting, and selling the timber in the business of real estate development, not in the business of silviculture.

(b) No. Logging Company T is not engaged in the business of farming with respect to the cutting of timber under contract for Developer M. Since Developer M is not engaged in the business of farming, Logging Company T is not performing a custom farming service for a farmer, for a fee, as required by sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register).

(c) No. The charges by Logging Company T to Developer M to cut standing timber in a forest for pulpwood, lumber, or other business purpose are charges for an exempt landscaping service.

(d) The chain saws, hydraulic loader, and forwarder are machinery used directly by Logging Company T in performing logging services. The wedges are nonpowered equipment used directly by Logging Company T in performing logging services. If Logging Company T expects that it will use this equipment at least 95% of the time in the business of farming, Logging Company T may purchase this equipment without tax, claiming the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. If Logging Company T expects that it will use the equipment less than 95% of the time in the business of farming, it may purchase the loader and forwarder without tax claiming the exemption under sec. 77.54(39), Wis. Stats. (2005-06), while the purchase of the chain saws and wedges will be subject to tax.

The chain saw files are used indirectly by Logging Company T in performing logging services. Under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, nonpowered equipment used indirectly in farming may qualify for exemption if it is consumed or loses its identity in the business of farming. This requires the equipment be used 100% in the business of farming. Since Logging Company T will use the chain saw files other than in the business of farming while performing logging services for Developer M, Logging Company T may not purchase the chain saw files without tax under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366.

(e) No. Logging Company T is not performing custom farming services for Developer M. As such, the fuel Logging Company T uses in performing logging services for Developer M is not sold for use in farming as required under sec. 77.54(30)(a)5, Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. In addition, the fuel does not qualify as other tangible personal property which is consumed or loses its identity in the business of farming under sec. 77.54(3)(a), Wis. Stats. (2005-2006), as amended by 2005 Wis. Act 366.

(f) No. Company L is performing landscaping services, not custom farming services.

(g) Yes. Company L is performing a landscaping service for Developer M. Charges for landscaping

services are specifically subject to tax under sec. 77.52(2)(a)20, Wis. Stats. (2005-06).

Facts (11): Utility P owns and operates overhead electrical power lines between points A and B. Utility P is responsible for maintaining the power lines. Utility P contracts with Company T to trim and/or cut trees along the utility's right-of-way in order to keep the trees from interfering with the power lines.

Questions (11): (a) Is Utility P engaged in the business of farming with respect to the trees it has control over in the utility's right-of-way?

(b) Is Company T engaged in the business of farming when it performs the tree maintenance operations for Utility P along the utility's right-of-way?

(c) Are the charges by Company T to Utility P for trimming and/or cutting trees Utility P has control over in its right-of-way subject to Wisconsin sales or use taxes?

Answers (11): (a) No. Utility P is not engaged in the business of raising trees for timber, lumber, or other wood products.

(b) No. Since Utility P is not engaged in the business of farming, Company T is not performing a custom farming service for a farmer, for a fee, as required by sec. Tax 11.12(2)(b), Wis. Adm. Code (May 1999 Register).

(c) No. Company T is not performing a landscaping service with respect to these services and the charges for this service are not otherwise subject to tax.

Facts (12): Logger G owns and uses various machinery and equipment in performing logging services to customers. Among these items are a diesel-powered feller buncher and a diesel-powered grapple skidder. Logger G uses Company Z to service and repair these items. On June 15, 2007, Company Z replaces a leaking hydraulic cylinder on the feller buncher. Company Z also sells and installs a global positioning system (GPS) device in the feller buncher. The feller buncher was not equipped with such a device when Logger G originally purchased it.

On July 15, 2007, Company Z sells and installs a set of new tires on the grapple skidder. At this time, Company Z also sells and installs a GPS device in the grapple skidder. The grapple skidder was not equipped with such a device when Logger G originally purchased it.

Logger G uses this equipment exclusively and directly in conducting logging operations in the field, as required by sec. 77.54(39), Wis. Stats. (2005-06) (exemption for off-highway heavy mechanical equipment used exclusively and directly in the harvesting of raw timber products in the field by a person in the logging business).

Logger G has determined that, as of July 1, 2007 and later, it will use the machinery and equipment at least 95% of the time to provide logging services which qualify as custom farming services.

Questions (12): (a) Are the charges by Company Z to Logger G for the hydraulic cylinder and the GPS device for the feller buncher subject to Wisconsin sales or use tax?

(b) Are the charges by Company Z to Logger G for the labor to replace the hydraulic cylinder and install the GPS device on the feller buncher subject to Wisconsin sales or use taxes?

(c) Are the charges by Company Z to Logger G for the tires and/or the GPS device for the grapple skidder subject to Wisconsin sales or use taxes?

(d) Are the charges by Company Z to Logger G for the service to install the new tires and/or the GPS device on the grapple skidder subject to Wisconsin sales or use taxes?

(e) Does the answer to (c) change if Logger G determined that, as of July 1, 2007 and later, it will not be using the logging machinery and equipment at least 95% of the time to perform custom farming services?

(f) Does the answer to (d) change if Logger G determined that, as of July 1, 2007 and later, it will not be using the logging machinery and equipment at least 95% of the time to perform custom farming services?

Answers (12): (a) Yes. While the feller buncher may be purchased by Logger G without tax under sec. 77.54(39), Wis. Stats. (2005-06), this section does not provide an exemption for repair parts or accessories for such equipment. As such, the sale of the hydraulic cylinder and the GPS device are subject to Wisconsin sales or use taxes.

(b) No. Logger G may purchase the services related to replacing the hydraulic cylinder and installing the GPS device from Company Z without tax. Section 77.52(2)(a)10, Wis. Stats. (2005-06), specifically provides that charges for service to tangible personal property are not taxable if, at the time of the

service, a sale of that type of property to the customer would have been exempt from Wisconsin sales or use taxes (other than the exempt sale of a motor vehicle or truck body to a nonresident under sec. 77.54(5)(a), or nontaxable sales under sec. 77.51(14r)). Since, at the time of the services to the feller buncher a sale of a feller buncher to Logger G would be exempt from tax under sec. 77.54(39), Wis. Stats. (2005-06), Logger G may purchase the services to install the hydraulic cylinder and the GPS device on the feller buncher without tax.

(c) No. Logger G may furnish Company Z with a properly completed exemption certificate, claiming its purchase of the tires and GPS device for the grapple skidder are exempt under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366. This section provides an exemption for tractors and machines, including accessories, attachments and parts, lubricants, nonpowered equipment, and other tangible personal property that are used exclusively and directly, or are consumed or lose their identities in the business of farming, including custom farming services. As of July 1, 2007, the grapple skidder qualifies as machinery used exclusively and directly in the business of farming. The GPS device qualifies as an accessory to, and the tires qualify as parts for, the grapple skidder under this section.

(d) No. Logger G may purchase the services provided by Company Z to install the new tires and the GPS device on the grapple skidder without tax, as explained in Answer (11)(b). Note that Logger G could purchase a grapple skidder exempt from tax on or after July 1, 2007 under sec. 77.54(39), Wis. Stats. (2005-2006), or under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366.

(e) Yes. If Logger G will not be using the logging machinery and equipment at least 95% of the time to perform custom farming services, Logger G's purchase of the tires and GPS device will be subject to Wisconsin sales or use tax.

(f) No. If Logger G will not be using the logging machinery and equipment at least 95% of the time to perform custom farming services, the answer to Question (12)(d) remains the same. Logger G may properly claim that he could purchase the grapple skidder exempt from tax on July 15, 2007 under sec. 77.54(39), Wis. Stats. (2005-06). As such, the services performed by Company Z to the grapple skidder may be purchased without tax.

Facts (13): Corporation T is engaged in the business of growing trees for sale as pulpwood, pole timber, and sawlogs to customers. Corporation T owns the land on which it grows the trees. In any given year, Corporation T is engaged in a variety of activities with respect to managing its forest lands including the planting of seedlings, thinning immature stands of trees, conducting controlled burnings, harvesting mature trees for sale to customers, and maintaining access roads and fire lanes in the forested areas.

Questions (13): (a) Corporation T purchased a tree planting machine on March 3, 2007. Corporation T used the planter to plant trees in its operations beginning in April 2007. Is Corporation T's purchase of the planter subject to Wisconsin sales or use tax?

(b) On June 15, 2007, Corporation T purchased a diesel-powered forwarder to be used directly and exclusively in its logging operations. Is Corporation T's purchase of the forwarder subject to Wisconsin sales or use tax?

(c) Corporation T places an order with Vendor X to purchase 24 gasoline-powered chain saws on June 27, 2007. Vendor X shipped the chain saws to Corporation T by common carrier. The common carrier delivers the chain saws to Corporation T's maintenance facility in Wisconsin on July 2, 2007. Corporation T will use the chain saws exclusively and directly in the business of silviculture. Is Corporation T's purchase of the chain saws subject to Wisconsin sales or use tax?

Answers (13): (a) Yes. The exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, first applies to purchases made after June 30, 2007. As the tree planting machine was purchased prior to this date, the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, does not apply. In addition, the exemption under sec. 77.54(39), Wis. Stats. (2005-06), does not apply. The tree planter does not qualify as off-highway, heavy mechanical equipment used exclusively and directly in the harvesting or processing of raw timber products in the field by a person in the business of logging.

(b) No. While the forwarder is purchased prior to July 1, 2007, and the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, does not apply, Corporation T may claim the exemption under sec. 77.54(39), Wis. Stats. (2005-06) (exemption for off-highway, heavy mechanical equipment used exclusively and

directly in the harvesting or processing of raw timber products in the field by a person in the business of logging).

(c) No. Corporation T's purchase of the chain saws was completed on July 2, 2007, the date Corporation T took possession of the saws from Vendor X's agent (the common carrier). Section 77.51(14r), Wis. Stats. (2005-06), provides that a sale or purchase involving the transfer of ownership of tangible personal property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or the seller's agent to the purchaser or the purchaser's agent, and that a common carrier or the U.S. Postal Service is deemed to be the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid. Since the purchase of the chain saws occurred after June 30, 2007, and Corporation T will use the chain saws exclusively and directly in the business of farming, the exemption under sec. 77.54(3)(a), Wis. Stats. (2005-06), as amended by 2005 Wis. Act 366, applies to this transaction.