

# Wisconsin TAX BULLETIN

[www.revenue.wi.gov](http://www.revenue.wi.gov)


Number 155

January 2008



## Wisconsin Tax Bulletin to Go Paperless in 2009

It's an idea whose time has come. Effective with the January 2009 issue, the *Wisconsin Tax Bulletin* (WTB) will no longer be printed. Current subscribers to the WTB whose subscriptions expire this year will not be receiving renewal notices, and new subscriptions are not being offered.

The Internet version of the WTB will continue to be available through the Department of Revenue's website. Those of you who haven't already (you know who you are) can go to [www.revenue.wi.gov/ise/wtb/index.html](http://www.revenue.wi.gov/ise/wtb/index.html) to experience this or any other issue online. 




## Department Offers Taxpayer Assistance

Department of Revenue (DOR) personnel will be available through April 15, 2008, to provide taxpayer telephone and walk-in assistance. Assistance is provided Monday through Friday in many of the larger offices, and Mondays only in most other offices. A complete schedule of office hours and telephone numbers is available on DOR's website at [www.revenue.wi.gov/faqs/ise/address.html](http://www.revenue.wi.gov/faqs/ise/address.html).

In addition, the department will maintain office hours at the La Crosse Public Library, located at 800 Main Street. The assistance will be available 9:00 a.m. to 4:30 p.m. on the following Mondays:

- January 28
- February 11
- February 25
- March 10
- March 24
- April 14

Taxpayer assistance is also available at Volunteer Income Tax Assistance (VITA) sites across the state and via DOR's website at [www.revenue.wi.gov](http://www.revenue.wi.gov). 

## Filing Delays Due to Federal Alternative Minimum Tax Changes

Federal legislation relating to the federal alternative minimum tax was enacted on December 26, 2007. Because this legislation was enacted late in the year, the Internal Revenue Service (IRS) announced that there will be a delay in processing certain 2007 federal income tax returns.

The IRS was able to begin processing most tax returns on January 14, 2008. However, for returns including one or more of the following five forms, processing has been delayed until **February 11, 2008**. The **affected forms** are:

Form 8863 – Education Credits (Hope and Lifetime Learning Credits)

Form 5695 – Residential Energy Credits

Form 8396 – Mortgage Interest Credit

Schedule 2 of Form 1040A – Child and Dependent Care Expenses for Form 1040A filers\*

Form 8859 – District of Columbia First-Time Homebuyer Credit

*(continued on page 2)*

## Look-Up of Estimated Tax Payments

A new application is available on the Department of Revenue's website, [www.revenue.wi.gov](http://www.revenue.wi.gov), which allows individuals, corporations, trusts, estates, and practitioners to verify estimated tax payments when completing a tax return. The application will only display available payment amounts, so that the correct payment total can be entered on the return.

In addition, credit carryforwards, extension payments, W-200 payments (pre-payments of tax), and WT-11 payments (nonresident entertainer deposits) may be looked up to determine if they are available to be claimed on a return that has yet to be processed by the department.

*(continued on page 3)*

**In This Issue****Articles –**

Paperless in 2009 .....	1
Taxpayer Assistance.....	1
Filing Delays Due to AMT Changes .....	1
Estimated Tax Look-Up.....	1
New for E-Filers: Schedule OS-E .....	2
Federal Law Changes Do Not Apply.....	3
Mark Your Calendar.....	4
New Pass-Through Withholding Exemption .....	5
Filing Requirements: Form PW-1 .....	7
Tax Shelters Voluntary Compliance Program.....	8

**Disclosure Requirements –**

Reportable Transactions.....	9
1NPR E-Filing Expanded.....	13
ERO Workshops a Success.....	13
Sales Tax on Income Returns.....	13
Dairy Manufacturing Facility Investment Credit .....	14
Injured Spouse Allocation .....	14
Medical Care Insurance Subtraction Expanded.....	15
Sourcing of Franchise and Royalty Fees.....	15
Wisconsin/Minnesota Sales Tax Seminars.....	15
Tips for 1NPR.....	16
Requesting Closing Certificates .....	16
ETC Pre-Refund Review.....	17

**Reminder: Electronic Filing**

Required .....	18
New and Updated Publications .....	18
Submitting a Power of Attorney .....	19
Filing Estate and Trust Returns .....	19
Enforcement Report .....	20
<b>Sales and Use Tax Report</b> Available .....	22
Administrative Rules in Process.....	22
Report on Litigation .....	24
Tax Releases .....	28
<b>Attachments –</b> Special Bulletin: Tax Shelters Program .....	31
Form WI-VCP .....	37
Bulletin Index .....	40
Order Blank.....	77

**Filing Delays Due to Federal Alternative Minimum Tax Changes***(continued from page 1)*

Returns that do not include any of the five forms may be electronically filed (e-filed) or mailed at any time. This applies to both the federal and Wisconsin income tax returns.

The IRS has advised that returns including any of the five forms listed on page 1 should **not** be submitted, either by e-filing or paper filing, **before February 11, 2008**. E-filed returns submitted before the IRS systems are able to process them will be rejected. This includes a Wisconsin return that is filed under the federal/state program. (Note: A “state only” return e-filed under the federal/state program will be forwarded to Wisconsin.)

\*Individuals who would generally file federal Form 1040A and complete Schedule 2 may be able to avoid the delay in the processing of the return. This can be done by filing federal Form 1040 instead of Form 1040A. Form 1040 requires that Schedule 2441 (Child and Dependent Care Expenses) be completed instead of Schedule 2. Because Schedule 2441 is not one of the five listed forms, you may e-file or paper file your federal return without delay.

For Wisconsin taxpayers, the federal delays will not affect those who use Free-File. It is suggested that taxpayers whose returns include one or more of the five forms simply wait until February 11 to file their return. If you e-file at that time and request direct deposit, you will generally receive any refund due within 5 working days. [☞](#)

**New Electronic Schedule for Tax Paid to Other States**

A new schedule, Schedule OS-E, is available for electronic filers claiming the credit for net tax paid to another state (TPOS) on their 2007 returns. Unlike Schedule OS, Schedule OS-E requires income information from the other state tax return and the federal return. It also allows up to five states per schedule as opposed to just one.

One significant advantage to Schedule OS-E is that a paper copy of the other state’s tax return is not required to be submitted to the department. Also, because of the additional information provided on Schedule OS-E the department anticipates seeing fewer errors in the computation of the TPOS credit and sending far fewer letters to clarify the credit computation.

Paper filers and those using software for electronic filing that does not support the new Schedule OS-E will still be able to claim the TPOS credit using Schedule OS. They will, however, be required to submit a copy of the other state’s tax return to the department.

[☞](#)**Wisconsin Tax Bulletin***Published quarterly by:*

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

**Look-Up of Estimated Tax Payments***(continued from page 1)****How the Estimated Payment Look-Up Application Works***

An individual, corporation, trust, estate, or practitioner must first authenticate themselves by providing the Social Security Number (SSN), Federal Employer Identification Number (FEIN), or Wisconsin Tax Number (WTN) of the individual, corporation, trust, or estate for whom they wish to look up payments. In addition, the amount of one of the last three payments made or the amount of the Wisconsin income from the prior year's return must be entered.

If authenticating using the income option, one of the following lines from a prior year's return must be used:

Form 1, line 13 (Individual Income)  
 Form 1A, line 11 (Individual Income)  
 Form WI-Z, line 1 (Individual Income)  
 Form 1X, line 1 (Individual Income)

Form 1NPR, line 32 (Individual Income)

Form 2, line 5 (Trust or Estate)

Form 4, line 13 (Corporation)

Form 4I, line 17 (Corporation)

Form 4T, Line 3 (Corporation)

Form 5, Line 7 (Corporation)

Form 5S, Line 3 (Corporation)

When looking up estimated payments for a married couple, either SSN can be used. However, it is necessary to check under both numbers in case the payment was made under only one spouse's SSN.

Once a taxpayer or practitioner successfully authenticates themselves, estimated payments that have not been claimed on a processed return will be displayed.

If you have questions, contact the department at (608) 266-2772 for fiduciary or individual income tax or (608) 266-0800 for corporation franchise or income tax. [☎](#)

**Recent Federal Law Changes Do Not Apply for Wisconsin**

For taxable years beginning in 2007, Wisconsin generally follows the Internal Revenue Code enacted as of December 31, 2006. Unless later adopted by the Wisconsin Legislature, changes to federal law enacted after December 31, 2006, do not apply for Wisconsin. Taxpayers must use 2007 Wisconsin Schedule I to adjust for Wisconsin and federal differences in the definition of the Internal Revenue Code. Schedule I provides a listing of the various items that must be adjusted.

Additional federal laws were enacted after the 2007 Schedule I was sent to the printer. Listed in the next column and on page 4 are additional changes to federal law that must be considered when completing Schedule I. These law changes were made by Public Law 110-140, enacted December 19, 2007, Public Law 110-141, enacted December 19, 2007, Public Law 110-142, enacted December 20, 2007, and Public Law 110-172, enacted December 29, 2007.

**1. Amortization of Geological and Geophysical Expenditures for Certain Major Integrated Oil Companies**

- a. Federal – In the case of a major integrated oil company, any geological and geophysical expenses paid or incurred after December 19, 2007, in connection with the exploration for, or development of, oil or gas within the United States shall be allowed as a deduction ratably over a 7-year period. (Public Law 110-140)
- b. Wisconsin – Amortization is determined under the provisions of the Internal Revenue Code in effect on December 31, 2000.

**2. Exclusion from Income for Payments from the Okie Spirit Memorial Fund**

- a. Federal – Gross income does not include any amount received from the Virginia Polytechnic Institute & State University, out of amounts transferred from the Hokie Spirit Memorial Fund if such amount is paid on account of the events on April 16, 2007, at such university. (Public Law 110-141)

- b. Wisconsin – Amounts received from the Virginia Polytechnic Institute & State University, out of amounts transferred from the Hokie Spirit Memorial Fund, are included in gross income.

### 3. Discharges of Indebtedness on Principal Residence

- a. Federal – Gross income does not include any amount which would be includible in gross income by reason of discharge of indebtedness if the indebtedness discharged is qualified principal residence indebtedness which is discharged before January 1, 2010. (Public Law 110-142)
- b. Wisconsin – The exclusion from gross income for income from discharge of indebtedness on a qualified principal residence does not apply for Wisconsin.

### 4. Exclusion for Certain Post-Marriage Sale of Principal Residence by Surviving Spouse

- a. Federal – In the case of a sale or exchange of property after December 31, 2007, by an unmarried individual whose spouse is deceased on the date of such sale, the amount of gain excluded from gross income with respect to any sale or exchange of the property shall not exceed \$500,000 if such sale occurs not later than two years after the date of death of the spouse and all other requirements were met before such date of death. (Public Law 110-142)
- b. Wisconsin – The exclusion of gain on the sale of a principal residence by a surviving spouse is determined under the provisions of the Internal Revenue Code in effect on December 31, 2006.

### 5. Distribution of Stock and Securities of a Controlled Corporation

- a. Federal – For purposes of distributions of stock and securities of a controlled corporation, special rules are provided for determining active conduct of a trade or business in the case of affiliated groups. (Public Law 110-172)
- b. Wisconsin – The treatment of distributions of stock and securities of a controlled corporation is determined under the provisions of the Internal Revenue Code in effect on December 31, 2006.

**Note:** The following provisions affect the computation of itemized deductions.

#### 1. Mortgage Insurance Premiums

- a. Federal – The treatment of certain mortgage insurance premiums as interest is extended to apply to amounts paid or accrued through December 31, 2010. (Public Law 110-42)
- b. Wisconsin – Mortgage insurance premiums cannot be treated as interest and cannot be used in the computation of the Wisconsin itemized deduction credit.

#### 2. Cooperative Housing Corporation

- a. Federal – The definition of a cooperative housing corporation is revised for purposes of allowing a deduction to a tenant-stockholder for interest and real estate taxes. (Public Law 110-42)
- b. Wisconsin – The definition of a cooperative housing corporation is as provided under the provisions of the Internal Revenue Code in effect on December 31, 2006. [☞](#)

### Mark Your Calendar...

Wisconsin invites you to Madison for the 48th Annual Midwestern States Association of Tax Administrators Conference (MSATA), August 17 - 19, 2008. The conference will be held at the Madison Concourse Hotel, putting you within walking distance of many of the city's finest attractions. Look for more information in the April issue of the *Wisconsin Tax Bulletin*. [☞](#)





## New Exemption for Pass-Through Entity Withholding

A new withholding exemption is available for pass-through entities otherwise required to pay withholding tax on Wisconsin income distributable to a nonresident partner, member, shareholder, or beneficiary.

Section 71.775(3)(a)3., Wis. Stats., as enacted by 2007 Act 20, provides that a nonresident's share of distributable income from a pass-through entity is not subject to withholding if the nonresident files an affidavit with the Department of Revenue, in the form and manner prescribed by the department. Nonresidents who may file an affidavit include individuals, corporations, tax-option (S) corporations, partnerships, limited liability companies, estates, and trusts. The exemption is effective retroactively to taxable years beginning on or after January 1, 2006.

This article explains how to file an affidavit, how the department will approve the affidavit, situations when no affidavit is needed, and the transitional rules the department is using to apply this exemption on a retroactive basis.

### How to File an Affidavit

To file the affidavit, the nonresident partner, member, shareholder, or beneficiary must use Wisconsin Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit*. This form is available on the department's website at [www.revenue.wi.gov](http://www.revenue.wi.gov). For each taxable year of the nonresident, a separate Form PW-2 is required for each pass-through entity for which the nonresident wishes to claim the withholding exemption.

Form PW-2 must be completed and filed with the department on or before the filing deadline to be valid. The filing deadline depends on the type of pass-through entity for which the nonresident is claiming the exemption:

- For tax-option (S) corporations, the nonresident must file Form PW-2 with the department by the last day of the first month following the close of the S corporation's taxable year. For example, for a shareholder of a calendar year S corporation, Form PW-2 for the 2007 taxable year is due **January 31, 2008**.

- For partnerships, LLCs taxed as partnerships, estates, or trusts, the nonresident must file Form PW-2 with the department by the last day of the second month following the close of the entity's taxable year. For example, for a partner of a calendar year partnership, Form PW-2 for the 2007 taxable year is due **February 29, 2008**.

The department will then approve Form PW-2 (see explanation below) and return it to the nonresident within approximately 30 days. To obtain the withholding exemption, the nonresident must present a copy of Part 2 of Form PW-2 to the pass-through entity. The pass-through entity must maintain this copy in its records as documentation for why it did not pay withholding tax on income allocable to that nonresident.

If a nonresident claims this exemption, the pass-through entity must still file Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, to report that nonresident. For more information regarding when Form PW-1 is required, see the article titled "Filing Requirements for Pass-Through Entity Withholding," on page 7 of this Bulletin.

### Approval of Affidavit by Department of Revenue

The department must approve a nonresident's affidavit for the affidavit to be valid. The affidavit must be prepared based on the amounts known or reasonably estimated by the nonresident as of the date the affidavit is filed. The check boxes on Form PW-2 enumerate the criteria the department will use to approve the affidavit. Only one box needs to be checked. An explanation of the criteria for approval follows:

**Box 1:** The department will approve the affidavit if the nonresident has paid or carried forward Wisconsin estimated tax payments equal to or greater than 90 percent of the nonresident's estimated tax (net of credits) attributable to the pass-through income from the entity for the current taxable year. However, if the nonresident's estimated payments are less than 90 percent of this amount, the department may approve the affidavit if the nonresident provides an explanation of the difference. Explanations that the department will generally approve include, but are not limited to:

- The nonresident has Wisconsin losses from another activity which partially offset the nonresident's share of income from the pass-through entity.

- The nonresident has Wisconsin credits from a source other than the pass-through entity which partially offset the estimated tax attributable to the pass-through entity.
- The nonresident is below the filing threshold for Wisconsin income taxes. This may occur because the threshold for pass-through entity withholding is \$1,000 of Wisconsin income while the filing threshold for Wisconsin individual income taxes for nonresidents is generally \$2,000 of Wisconsin income.

The department will not consider the current year's estimated payments compared to the prior year's reported tax liability to be a determining factor in approving the affidavit.

If the nonresident will be participating in a composite return (Form 1CNS or 1CNP), but has not made estimated payments with an individual estimated payment voucher (Form 1-ES), Box 1 does not apply because the pass-through entity is required to pay the withholding instead of composite estimated payments.

**Box 2:** The department will approve the affidavit if the nonresident has a Wisconsin net operating loss carryforward which exceeds the amount of Wisconsin income from the pass-through entity, provided the department can verify that the nonresident has filed Wisconsin income or franchise tax returns for all years required.

**Box 3:** The department will approve the affidavit if the nonresident has Wisconsin losses in the current taxable year from sources other than the pass-through entity which exceed total Wisconsin income from all sources.

**Box 4:** The department will approve the affidavit if the nonresident has Wisconsin credits or credit carryforwards from sources other than the pass-through entity which exceed the Wisconsin tax liability (before credits) attributable to the nonresident's total Wisconsin income.

If a combination of losses and credits from sources other than the pass-through entity offset the Wisconsin tax liability from the pass-through entity, but neither the losses alone nor the credits alone are sufficient to offset the tax liability, the nonresident should check both Box 3 and Box 4.


**Box 5:** The department will approve the affidavit if the nonresident is itself a partnership, limited liability company treated as a partnership, tax-option (S) corporation, estate, or trust and the nonresident will withhold taxes on its Wisconsin income (including income passed through to it from the lower-tier pass-through entity) allocable to its nonresident partners, members, shareholders, or beneficiaries, as required by sec. 71.775, Wis. Stats. (2005-06).

### When an Affidavit Is Not Needed

If a pass-through entity is not otherwise required to withhold on the distributable income allocable to a nonresident because of another exemption, the nonresident does not need to file Form PW-2. For example, if the nonresident's share of Wisconsin income allocable from the pass-through entity is less than \$1,000, Form PW-2 is not required for that exemption to apply. Also, see the transitional rules below.

### Transitional Rules

For a pass-through entity's taxable year that began before January 1, 2007, if the pass-through entity did not withhold, it is not liable for interest or penalties if the nonresident partner, member, shareholder, or beneficiary has already filed a Wisconsin income or franchise tax return reporting the income allocable from the pass-through entity. Under this transitional rule, the nonresident does not have to file Form PW-2. However, if the nonresident does not file a Wisconsin income or franchise tax return reporting the income, the pass-through entity is liable for any tax, interest, and penalties otherwise assessable to the nonresident on the income from the pass-through entity.

For a pass-through entity's taxable year that began on or after January 1, 2007, the pass-through entity may be liable for a penalty for failure to withhold if it does not withhold on the Wisconsin income allocable to a nonresident, does not obtain Form PW-2, and no other exemption applies. The penalty for failure to withhold is 5% of the amount of tax required to be withheld if the failure is for not more than one month, with an additional 5% for each additional month or fraction thereof during which the failure continues, not to exceed 25% of the amount of tax required to be withheld. This penalty may apply even if the nonresident files a Wisconsin income or franchise tax return reporting the income allocable from the pass-through entity. 

## Filing Requirements for Pass-Through Entity Withholding

With the enactment of a new exemption for pass-through entity withholding (see the article titled “New Exemption for Pass-Through Entity Withholding” on page 5 of this Bulletin), Form PW-1, *Wisconsin Nonresident Income or Franchise Tax Withholding on Pass-Through Entity Income*, has been updated. Also, the federal/state e-file program is now available for Form PW-1, which is generally required to be filed electronically. This article explains when a pass-through entity is required to file Form PW-1 and how to file Form PW-1 electronically.

### Who Must File Form PW-1

Form PW-1 is required whenever a pass-through entity has Wisconsin income for the taxable year that is allocable to a nonresident partner, member, shareholder, or beneficiary and that income is Wisconsin income to the nonresident partner, member, shareholder, or beneficiary. The withholding applies regardless of whether the income is actually distributed by the pass-through entity. Form PW-1 is due on the unextended due date of the pass-through entity’s Wisconsin income or franchise tax return.

A “pass-through entity” means a partnership, limited liability company, tax-option (S) corporation, estate, or trust that is treated as a pass-through entity for federal income tax purposes.

The following types of entities are not required to file Form PW-1:

- An entity that is disregarded for federal income tax purposes.
- A grantor trust that is not required to file a federal income tax return.
- A publicly traded partnership as defined under section 7704(b) of the Internal Revenue Code, provided the partnership files a Wisconsin Schedule 3K-1 for each partner.
- A joint venture that has elected not to be treated as a partnership under section 761 of the Internal Revenue Code.

Additionally, if a pass-through entity has nonresident partners, members, shareholders, or beneficiaries but none of those nonresidents are required to be reported on Form PW-1 (as explained in the next section), the pass-through entity is not required to file Form PW-1.

### Nonresidents Who Must Be Reported on Form PW-1

A “nonresident” means an individual who is not domiciled in Wisconsin; a partnership, limited liability company, or corporation whose commercial domicile is outside Wisconsin; and an estate or trust that is nonresident under sec. 71.14(1) to (3m), Wis. Stats.

If a nonresident claims exemption by filing Form PW-2, *Wisconsin Nonresident Partner, Member, Shareholder, or Beneficiary Withholding Exemption Affidavit* (as described on page 5), the pass-through entity is still required to report that nonresident on Part 2 of Form PW-1 and check the box indicating that the nonresident filed the affidavit.

If a nonresident will be participating in a composite Wisconsin income tax return (Form 1CNS or 1CNP), the pass-through entity must still report that nonresident on Form PW-1 and pay the withholding accordingly. For nonresidents participating in a composite return, the pass-through entity pays the withholding with *one* Form PW-1, due on the unextended due date of the pass-through entity’s Wisconsin income or franchise tax return, instead of with quarterly composite estimated payments.

Notwithstanding the requirements above, a nonresident partner, member, shareholder, or beneficiary is not required to be reported on Form PW-1 if either of the following apply:

- The nonresident is exempt from Wisconsin income or franchise taxation.
- The nonresident’s share of pass-through income attributable to Wisconsin is less than \$1,000.


### How to File Form PW-1 Electronically

Form PW-1 is now available through the federal/state e-file program. Additionally, the department offers two electronic filing programs on its website at no cost. An explanation of each program follows:

- **Federal/State E-File Program.** Using purchased software from approved vendors, you may electronically file Form PW-1 along with your federal and Wisconsin income (or franchise) tax returns. Using this software, you can electronically file Form PW-1 as a separate submission or together with other forms. For more information, see the department's website at [www.revenue.wi.gov/eserv/corp/index.html](http://www.revenue.wi.gov/eserv/corp/index.html).
- **Online E-Filing.** Online E-Filing is offered by the department at no cost and is available to pass-through entities reporting up to 200 nonresidents. To use Online E-Filing, go to the department's pass-through entity withholding page at [www.revenue.wi.gov/eserv/pw/index.html](http://www.revenue.wi.gov/eserv/pw/index.html). Click the link for Online E-Filing. The program will guide you through the fields of Form PW-1 that must be entered.
- **E-File (XML) Transmission.** E-File Transmission (also called "XML" Transmission) is also offered at no cost and is available to pass-through entities reporting up to 3,000 nonresidents. To use E-File Transmission, go to the department's pass-through entity withholding page at [www.revenue.wi.gov/eserv/pw/index.html](http://www.revenue.wi.gov/eserv/pw/index.html). Click the link for E-File Transmission. You will find E-File Transmission instructions and a link to a Microsoft Excel spreadsheet that will allow you to create an .xml file to submit to the department.

As with Online E-Filing, if a tax preparer uses E-File Transmission to prepare Form PW-1 on behalf of a client, the tax preparer may submit the return directly to the department with payment information, or the preparer may complete the return and provide it electronically to the client so the client can enter payment information and submit the return to the department. The E-File Transmission instructions provide further information.

If a tax preparer uses Online E-Filing to prepare Form PW-1 on behalf of a client, the tax preparer may submit the return with payment information directly to the department, or the preparer may complete the return and provide it electronically to the client so the client can enter payment information and submit the return to the department. To do the latter, the preparer would use the "Save Filing" button. Then, upon receiving the file, the client would go to the department's pass-through entity withholding web page (referenced above), click the link for Online E-Filing, and use the "Restore Saved Information" button to retrieve the file and submit the return electronically with payment.

All three of these programs enable a pass-through entity to pay the withholding amount electronically. For pass-through entities that have not registered with the Department of Revenue for electronic funds transfer (EFT), all three programs also accept payments by direct debit, which does not require registration with the department. For more information on registering for EFT, visit the department's website at [www.revenue.wi.gov/eserv/eft3.html](http://www.revenue.wi.gov/eserv/eft3.html). 

## Wisconsin Announces Tax Shelters Voluntary Compliance Program

In the 2007-09 Budget Bill (2007 Act 20), Wisconsin enacted the Tax Shelters Voluntary Compliance Program to encourage taxpayers to pay taxes they may have avoided by using tax avoidance transactions. The program runs from January 1, 2008 through May 31, 2008. During this period, Wisconsin will waive all penalties relating to tax avoidance transactions for taxpayers who voluntarily disclose their participation in those transactions.

The program also phases in new requirements to specifically disclose "reportable transactions" to Wisconsin whenever those transactions are required to be specifically disclosed to the Internal Revenue Service

(IRS). See the article titled "Wisconsin Requirements to Disclose Reportable Transactions," on page 9 of this Bulletin, for further details on these new disclosure requirements.

### Who Is Eligible for the Program

Any taxpayer who has used a "tax avoidance transaction" to reduce Wisconsin income or franchise tax liability or avoid the obligation to file Wisconsin returns for any taxable year beginning on or after January 1, 2001 and before January 1, 2007, is eligible. This may include corporations, individuals, limited liability companies, partnerships, estates, or trusts.



A “tax avoidance transaction” is a transaction, plan, or arrangement devised for the principal purpose of avoiding federal or Wisconsin income or franchise tax, including:

- A “listed transaction” as provided under U.S. Department of the Treasury Regulations. (Listed transactions are those that the IRS has identified as abusive tax shelters.)
- A transaction devised for the principal purpose of avoiding Wisconsin income or franchise taxes, without providing a similar benefit for federal income tax purposes.

A taxpayer who is currently under audit or has been contacted by the Department of Revenue or IRS about the tax avoidance transaction may still participate in this program.

### How to Participate

Taxpayers eligible to use this program should do the following:

- Complete an amended (or original) Wisconsin return for each year in which the tax avoidance transaction reduced Wisconsin income or franchise tax liability or caused nonfiling of Wisconsin returns.

- If the tax avoidance transaction required Form 8886 (Reportable Transaction Disclosure Statement) for federal income tax purposes, submit a copy of federal Form 8886 and provide details of the transaction. If the tax avoidance transaction did not require Form 8886 for federal income tax purposes, provide details of the transaction.
- Complete Wisconsin Form WI-VCP (available on the Internet at [www.revenue.wi.gov](http://www.revenue.wi.gov)).
- Enclose a check for full payment of the unpaid tax and interest.
- Send the above items to: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958.

### Limitation

A taxpayer who uses this program may not file an appeal or claim for refund regarding the tax avoidance transaction, except in cases where the appeal or claim for refund corresponds to an appeal or claim for refund granted by the IRS regarding the tax avoidance transaction.

### For More Information

On pages 31 to 36 of this Bulletin is a Special Bulletin that answers frequently asked questions about the Tax Shelters Voluntary Compliance Program and the new reportable transaction disclosure requirements. There you will also find a copy of Form WI-VCP and department contact information. [\[Link\]](#)

## Wisconsin Requirements to Disclose Reportable Transactions

Wisconsin has adopted requirements for taxpayers and their advisors to specifically disclose certain transactions that have affected their Wisconsin income or franchise tax liability. These new requirements are provided in sec. 71.81, Wis. Stats., as enacted by 2007 Act 20.

For taxable years beginning on or after January 1, 2001, whenever a taxpayer or material advisor is required to disclose a “reportable transaction” (including a “listed transaction”) to the Internal Revenue Service (IRS), the taxpayer or material advisor must disclose that transaction to Wisconsin. This requirement also applies to reportable transactions which were entered into before January 1, 2001 but which affected Wisconsin tax liability for a taxable year beginning on or after January 1, 2001.

These disclosure requirements apply to taxpayers who are required to file Wisconsin income or franchise tax returns and to the material advisors of those taxpayers.

### What are “Reportable” and “Listed” Transactions?

Under current law, Wisconsin defines “reportable” and “listed” transactions in the same manner as for federal purposes.

A “reportable transaction” is one described in section 1.6011-4 of the U.S. Treasury Regulations. For federal income tax purposes, reportable transactions must be disclosed on federal Form 8886, *Reportable Transaction Disclosure Statement*. These transactions are described in detail in the Form 8886 instructions, which are available on the IRS website at [www.irs.gov](http://www.irs.gov).

A “listed transaction” means the IRS has identified the transaction as an abusive tax shelter (also called a “tax avoidance transaction”). The IRS has identified listed transactions in several notices and Internal Revenue Bulletins and maintains an updated list of these transactions on its website at [www.irs.gov/businesses/corporations](http://www.irs.gov/businesses/corporations), in the section for “Abusive Tax Shelters.”

### Who is a “Material Advisor?”

A “material advisor” is any person who provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction and who, directly or indirectly, derives income (for example, fees) from these services in an amount that exceeds the following amounts:

- If the services are provided to an individual, \$50,000. This threshold reduces to \$10,000 if the reportable transaction is a listed transaction.
- If the services are provided to an entity and not an individual, \$250,000. This threshold reduces to \$25,000 if the reportable transaction is a listed transaction.

### What Taxpayers Must Do

If you are, or were, required to file federal Form 8886 (or, for tax years before 2003, a similar form prescribed by the IRS) to disclose a transaction to the IRS for any taxable year beginning on or after January 1, 2001, you are required to submit a copy to the Wisconsin Department of Revenue. This requirement also applies to transactions which were entered into before January 1, 2001 but which affected Wisconsin tax liability for a taxable year beginning on or after January 1, 2001.

Details of the Wisconsin filing deadlines and procedures follow:

- **For taxable years beginning before January 1, 2007:** If you have already filed Form 8886 (or, for tax years before 2003, a similar form prescribed by the IRS) with your federal income tax return, and you also submitted the form to the Wisconsin Department of Revenue as part of your Wisconsin return, you do not need to take any further action.

If you were required to file Form 8886 (or, for tax years before 2003, a similar form prescribed by the IRS) with your federal income tax return and did not include the form in the supporting documentation submitted with the Wisconsin return, you must do one of the following no later than **May 31, 2008**:

- Participate in the Tax Shelters Voluntary Compliance Program described in the article titled “Wisconsin Announces Tax Shelters Voluntary Compliance Program,” on page 8 of this Bulletin.
- If the reportable transaction is not a listed transaction and you do not believe you owe any additional tax attributable to the transaction, submit a copy of the federal Form 8886 (or similar form) to: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958.

- **For taxable years beginning on or after January 1, 2007:** If you were required to file Form 8886 with your federal income tax return, submit a copy of Form 8886 to the Wisconsin Department of Revenue no later than **60 days** after the due date of your federal income tax return (including extensions). Send the copy to: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958.

### What Material Advisors Must Do

If a material advisor was required to make a disclosure to the IRS under section 6111 of the Internal Revenue Code regarding a reportable transaction carried out by a taxpayer who is required to file a Wisconsin income or franchise tax return, the material advisor must submit a copy of the disclosure to the Wisconsin Department of Revenue.

This requirement applies to reportable transactions required to be disclosed for federal income tax purposes after October 27, 2007 if they are not listed transactions, and to listed transactions which were required to be disclosed to the IRS on or after January 1, 2001. The requirement also applies to a listed transaction required to be disclosed to the IRS before January 1, 2001 if the transaction affected a taxpayer’s Wisconsin tax liability for a taxable year beginning on or after January 1, 2001.

For federal income tax purposes, the IRS currently requires material advisors to make these disclosures by the last day of the month following the end of the applicable calendar quarter. The federal form used for this disclosure may be Form 8264, *Application for Registration of a Tax Shelter*, or Form 8918, *Material Advisor Disclosure Statement*, depending on when the transaction took place. The federal due date may be January 31, April 30, July 31, or October 31.

The due dates for Wisconsin material advisor disclosures are shown below:

- **For material advisor forms due to the IRS on October 31, 2007:** The deadline for disclosing the transaction to Wisconsin is **March 31, 2008**.
- **For material advisor forms due to the IRS before October 31, 2007:** The deadline for disclosing the transaction to Wisconsin is **May 31, 2008**.
- **For material advisor forms due to the IRS on or after January 31, 2008:** The deadline for disclosing the transaction to Wisconsin is **60 days** after the date the material advisor is required to disclose it for federal purposes.

The Department's mailing address for material advisor disclosures is: Wisconsin Department of Revenue, Tax Shelters Program, P.O. Box 8958, Madison, WI 53708-8958.

A material advisor must also maintain a list identifying each Wisconsin taxpayer for whom the person provided services as a material advisor with respect to a reportable transaction. Upon the Wisconsin Department of Revenue's written request, any material advisor required to maintain this list must provide it within 20 days. A material advisor must retain the information contained in this list for seven years.

### Statute of Limitations

If a taxpayer fails to timely disclose a reportable transaction, the statute of limitations is extended as follows:

- For undisclosed listed transactions, the statute of limitations is extended to the latest of the following dates:

- 6 years after the filing date of the return for the taxable year in which the undisclosed listed transaction took place.
  - 12 months after the taxpayer discloses the listed transaction to Wisconsin.
  - 12 months after the taxpayer's material advisor provides, at the department's request, a list of taxpayers including that taxpayer regarding the listed transaction.
  - 4 years after the date on which the Wisconsin Department of Revenue discovers an undisclosed listed transaction.
- For other undisclosed reportable transactions, the statute of limitations is extended to 6 years after the filing date of the return for the taxable year in which the undisclosed reportable transaction took place.

A taxpayer or material advisor is not required to disclose a reportable transaction for any period for which, as of December 26, 2007, the taxpayer's statute of limitations has expired.

### Penalties

If a taxpayer or material advisor does not comply with the reportable transaction disclosure requirements, or used a reportable transaction that constitutes a tax avoidance transaction and does not participate in the Tax Shelters Voluntary Compliance Program, specific penalties may apply. These penalties and their effective dates are shown in the table on page 12.

**NOTE:** All penalties listed on page 12, in addition to other civil and/or criminal penalties, are waived for any transaction that is disclosed in the Tax Shelters Voluntary Compliance Program.

### For More Information

On pages 31 to 36 of this Bulletin is a Special Bulletin that answers frequently asked questions about these disclosure requirements and the Tax Shelters Voluntary Compliance Program. There you will also find information about how to contact the department if you have further questions. [☞](#)

<b>Penalty</b>	<b>Listed Transactions</b>	<b>Other Reportable Transactions</b>
Taxpayer's failure to disclose a reportable transaction	<ul style="list-style-type: none"> <li>• \$30,000</li> <li>• Effective retroactively for taxpayer's tax years beginning on or after 1/1/2001</li> </ul>	<ul style="list-style-type: none"> <li>• Lesser of \$15,000 or 10% of tax benefit obtained</li> <li>• Effective for taxpayer's tax years beginning after 10/27/2007</li> </ul>
Material advisor's failure to disclose a reportable transaction, or disclosure containing false or incomplete information	<ul style="list-style-type: none"> <li>• \$100,000</li> <li>• Effective retroactively for taxpayer's tax years beginning on or after 1/1/2001</li> </ul>	<ul style="list-style-type: none"> <li>• \$15,000</li> <li>• Effective for material advisor services provided after 10/27/2007</li> </ul>
Material advisor's failure to provide required list of taxpayers within 20 days upon Department's written request	<ul style="list-style-type: none"> <li>• \$10,000 for each day the material advisor does not provide the list, beginning with 21st day after receipt of Department's request</li> <li>• Effective retroactively for taxpayer's tax years beginning on or after 1/1/2001</li> </ul>	<ul style="list-style-type: none"> <li>• \$10,000 for each day the material advisor does not provide the list, beginning with 21st day after receipt of Department's request</li> <li>• Effective for material advisor services provided after 10/27/2007</li> </ul>
Understatement of tax resulting from a reportable transaction	<ul style="list-style-type: none"> <li>• 20% of understatement if transaction disclosed</li> <li>• 30% of understatement if transaction not disclosed</li> <li>• Effective retroactively for taxpayer's tax years beginning on or after 1/1/2001</li> </ul>	<ul style="list-style-type: none"> <li>• 20% of understatement if transaction disclosed</li> <li>• 30% of understatement if transaction not disclosed</li> <li>• Effective retroactively for taxpayer's tax years beginning on or after 1/1/2001</li> </ul>
Understatement of tax resulting from a reportable transaction if not disclosed in Tax Shelters Voluntary Compliance Program	<ul style="list-style-type: none"> <li>• 50% of interest assessed on additional tax if taxpayer amends returns after Tax Shelters Voluntary Compliance Program ends</li> <li>• 100% of such interest if IRS or Department of Revenue discover the understatement on audit</li> <li>• Effective retroactively for taxpayer's tax years beginning on or after 1/1/2001</li> </ul>	<ul style="list-style-type: none"> <li>• 50% of interest assessed on additional tax if taxpayer amends returns after Tax Shelters Voluntary Compliance Program ends</li> <li>• 100% of such interest if IRS or Department of Revenue discover the understatement on audit</li> <li>• Effective retroactively for taxpayer's tax years beginning on or after 1/1/2001</li> </ul>



## Electronic Filing of Form 1NPR Expanded

Wisconsin has expanded its federal/state e-filing program to include most nonresidents and part-year residents filing a 2007 Form 1NPR with the following basic income, deductions, and credits:

### Income

- Line 1, Wages, Salaries, Tips, Etc.
- Line 2, Taxable Interest
- Line 3, Ordinary Dividends

### Deductions

- Line 36, Standard Deduction
- Line 38, Exemption Deduction

### Credits

- Line 42, School Property Tax Credit (part-year and full-year residents only)
- Line 48, Armed Forces Member Credit (full-year residents only)
- Line 50, Working Families Credit (full-year residents only)
- Line 55, Married Couple Credit
- Line 65, Wisconsin Withholding
- Line 66, Estimated Tax Paid and Amount Applied from Prior Year Return

Last year only full-year residents of reciprocal states (Illinois, Indiana, Kentucky, Michigan, and Minnesota) that had withholding paid to Wisconsin in error were able to electronically file Form 1NPR. [✎](#)

## ERO Workshops a Success

The Internal Revenue Service (IRS) once again sponsored the annual Fall Electronic Return Originators (EROs) E-File Workshops with the Department of Revenue (DOR) this year. This year's theme was "Working Together," and that is exactly what happened as tax professionals took a more active role this year in all five sessions. Based on the evaluations from last year, a change in format was in order. This was accomplished with IRS, DOR, and practitioners participating together in a Tax Gap Panel discussion. The discussion revolved around issues impacting how practitioners interact with their clients and tax agencies to partner in the administration of and compliance with both federal and state tax laws. Session evaluations included repetition of this sentiment: "It was very helpful to hear other practitioners' experiences and how they handle certain situations."

Two sessions and a "live broadcast" were held at DOR's Madison office. The other sessions took place in New Berlin, Wausau, and Appleton. Over 500 tax professionals attended the workshops. The agenda, handouts, and a link to the "live" media site broadcast are available on DOR's website at [www.revenue.wi.gov/training/ero/index.html](http://www.revenue.wi.gov/training/ero/index.html).

Notice for these sessions was sent out through DOR's tax practitioner electronic mailing list. This list, approaching 3,000 tax professionals, is comprised of registered EROs and others who have signed up at DOR's website. If you are not receiving e-mail communications and updates from DOR through this mechanism, please visit [www.revenue.wi.gov/html/lists.html](http://www.revenue.wi.gov/html/lists.html) and sign up today. DOR hopes to use its mailing list more frequently in the future to share specific information of interest to practitioners. [✎](#)

## Report Sales and Use Tax on Income Tax Returns

Do your clients owe sales or use tax on out-of-state purchases? If you don't know, please take the time to ask. By using the designated line on their Wisconsin income tax returns to report any sales or use tax owed, you could be saving them money in the long run.

The department conducts various audit projects designed to identify individuals who may not be properly reporting sales or use tax due on out-of-state purchases of tangible personal property or taxable

services. Failure to report use tax is one of the main reasons a penalty may be imposed if a person is audited.

Not sure what purchases are subject to sales or use tax or have other questions? Additional information is available at [www.revenue.wi.gov/faqs/ise/usetax.html#use8](http://www.revenue.wi.gov/faqs/ise/usetax.html#use8) or by contacting the Department of Revenue at (608) 266-2776 or [sales10@revenue.wi.gov](mailto:sales10@revenue.wi.gov). [✎](#)

## How to Apply for the Dairy Manufacturing Facility Investment Credit

Effective for taxable years beginning on or after January 1, 2007, a dairy manufacturing facility investment credit is available to individuals and corporations who modernize or expand a dairy manufacturing operation in Wisconsin. The credit may also be computed by and passed through a tax-option (S) corporation, partnership, limited liability company, estate, or trust.

This credit was enacted by 2007 Wisconsin Act 20. Details of the activities qualifying for the credit and the credit computation were provided in the December 2007 issue of the *Wisconsin Tax Bulletin*.

For the State of Wisconsin's fiscal year 2007-08, the total credit that may be claimed for all taxpayers is limited to \$600,000. (This cap increases to \$700,000 for the fiscal year 2008-09 and subsequent years.) The Department of Commerce is responsible for allocating this amount to qualifying claimants. To receive the dairy manufacturing facility investment credit, a claimant must first apply to the Wisconsin Department of Commerce. Following is a summary of how to apply for the credit:


1. Contact the Department of Commerce for the application materials. The individual responsible for providing the applications is Irv Possin, Executive Director of the Dairy 2020 Initiative. You may reach him at (920) 322-1888. You may also reach him by e-mail at [irv.possin@Wisconsin.gov](mailto:irv.possin@Wisconsin.gov).
2. As part of your application, complete Wisconsin Schedule DM, Dairy Manufacturing Facility Investment Credit, lines 1a through 1j, and provide

it to the Department of Commerce. You may obtain Schedule DM from the Wisconsin Department of Revenue's website at [www.revenue.wi.gov](http://www.revenue.wi.gov).

3. Submit your completed application to the Department of Commerce by March 31, 2008 for any taxable year that began on or after January 1, 2007 and ended before March 31, 2008.

If your taxable year that began in 2007 does not end until after March 31, 2008, the application deadline for the credit for your 2007 taxable year will be March 31, 2009. As a result, you may need to file an amended Wisconsin income or franchise tax return to claim the credit for your 2007 taxable year.

4. You will receive an award letter from the Department of Commerce notifying you of the amount of credit for which you are eligible, along with a verification form you will need to file with your Wisconsin income or franchise tax return as described in 5. below.
5. File your Wisconsin income or franchise tax return with the Department of Revenue, using Schedule DM to claim the dairy manufacturing facility investment credit. Enclose a copy of the verification form from the Department of Commerce with the Schedule DM you file with the Department of Revenue.

As this issue of the *Wisconsin Tax Bulletin* goes to print, the Department of Commerce is working on administrative rules to provide further guidance. If you have questions about this credit, you may contact Steven Sabatke, Economic Development Consultant, Wisconsin Department of Commerce, at (608) 267-0762 or by e-mail at [steven.sabatke@Wisconsin.gov](mailto:steven.sabatke@Wisconsin.gov). 


---

## Injured Spouse Allocation

A person may be an injured spouse if he/she files a joint tax return and all or part of their portion of any overpayment was, or is expected to be, applied to their spouse's legally enforceable past-due debts, such as for past-due state or federal income tax, child support, or other obligations.

For federal tax purposes, an injured spouse must complete Form 8379. This form provides information on the allocation of income between the injured spouse and the other spouse.

The injured spouse provisions also apply for Wisconsin. An injured spouse should complete the federal Form 8379 and submit it to the Department of Revenue. This will enable the department to determine the amount of tax owed and overpayment due to each spouse.

Form 8379 may be enclosed with the Wisconsin income tax return when filed. If this is the case, the code numbers "05" should be entered in the Special Conditions box in the heading area of the tax return, Form 1, 1A, WI-Z, or 1NPR. 

## Medical Care Insurance Subtraction for Medicare Premiums

For taxable years beginning in 2007, the Wisconsin subtraction for the amount paid for medical care insurance is expanded to include individuals who had no employer and who were not self-employed. Such individuals may subtract 33.4% of the cost of their medical care insurance on their Wisconsin income tax returns (Form 1). This percentage will increase to 66.7% for taxable years beginning in 2008 and to 100% thereafter.

This subtraction for medical care insurance will now apply to many retired individuals who pay premiums for Medicare Part B (medical services) and Part D (prescription drug coverage). Premiums paid for

Medicare Part B and Part D coverage are payments for medical care insurance and can be used in the computation of the subtraction.

There generally is no premium for Medicare Part A (hospital insurance). However, certain persons who are not covered under social security may voluntarily enroll in Medicare Part A. In this situation, the premiums paid for Medicare Part A are also payments for medical care insurance and can be used in the computation of the subtraction.

**Caution:** Medicare tax withheld from an individual's wages (see Box 6 of Form W-2) or paid by a self-employed individual is not considered a payment of medical care insurance and may not be used in the computation of the subtraction. [!\[\]\(e474458956c9a37fbf9586ddb60a7fa1\_img.jpg\)](#)

## Sourcing of Franchise Fees and Related Royalty Fees for Purposes of the Sales Apportionment Factor

A franchise is an agreement or license between two parties which gives a person or group of people (the franchisee) the rights to market a product or service using the trademark of another business (the franchisor).

The franchisor derives its income by charging the franchisee an initial franchise fee and an ongoing royalty fee.

### Question:

Are the initial franchise fee and ongoing royalty fee paid by a Wisconsin franchisee included in the numerator and denominator of the sales factor of a franchisor company headquartered outside of Wisconsin?

### Answer:

To determine if the initial franchise fee and ongoing royalty fee are included in the numerator of the franchisor company's sales factor, it must be determined if the income producing activity for each of the fees is

performed entirely in Wisconsin or whether it is performed both in Wisconsin and outside Wisconsin based on sec. 71.25(9)(d), Wis. Stats. (2005-06), and *The Hearst Corporation v. Wisconsin Department of Revenue* (WTAC, May 15, 1990).

If the income producing activity for the initial franchise fee is performed entirely in Wisconsin, then the entire initial franchise fee would be included in the numerator of the sales factor. Likewise, if the income producing activity for the ongoing royalty fee is performed entirely in Wisconsin, then the ongoing royalty fee would be included in the numerator of the sales factor.

If the income producing activity for a fee is performed both in Wisconsin and outside Wisconsin, then the fee would be divided between each state having jurisdiction to tax such fee in proportion to the direct costs of performance incurred in each such state.

Both the initial franchise fee and ongoing royalty fee would be included in the denominator of the franchisor company's sales factor based on sec. 71.25(9)(e)10. and 11., Wis. Stats. (2005-06). [!\[\]\(28f72b996fc97883dfd9d4e8b1b16b4e\_img.jpg\)](#)




## Wisconsin/Minnesota Sales Tax Seminars

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

The specific dates, times, and locations of the seminars, as well as registration information, is available on the "Training" page of the Department of Revenue's website at [www.revenue.wi.gov/training/events.html](http://www.revenue.wi.gov/training/events.html). [!\[\]\(1ed10657a19f9137278430c48fd18626\_img.jpg\)](#)

## Tips for Successful Preparation of Form 1NPR


The following tips are offered to help you avoid the significant processing delays that can be created by the most common errors in preparing Form 1NPR:

1. **Include all required enclosures.** Copy of the federal return, withholding statements, Legal Residence (Domicile) Questionnaire, etc.
2. **Verify your client's current mailing address.** Do not use the former Wisconsin address if your client has moved out of state, as their account will be updated with the address on the return and a refund check or bill will be sent to that address.
3. **Only claim the credit for net tax paid to another state when it is allowed.** The credit is not allowed when the income taxed by the other state is not included in Wisconsin income or when the income was received while a nonresident of Wisconsin.
4. **Verify the accuracy of state wage information provided on Form(s) W-2.** A taxpayer may not provide timely notification to their employer of a change in residency to or from Wisconsin, which may result in incorrect state wage information on Form W-2.
5. **Only claim Wisconsin withholding on line 65.** Check the state abbreviation on each wage statement to ensure that withholding paid to other states is not included in the Wisconsin withholding claimed.
6. **Enter withholding and estimated tax payments on the correct lines.** This is a common error, as the estimated tax payments line is directly below the withholding line.
7. **If each spouse has a different residency status, check two resident status spaces on the return.** Some software does not allow more than one space to be selected. This is an error that should be reported to the software developer.
8. **Do not claim a change of resident status for a temporary absence.** Taxpayers who live outside Wisconsin for the winter months or have relocated from Wisconsin to another state temporarily for work are generally considered full-year Wisconsin residents.
9. **Do not claim a subtraction on line 15 for income not reportable to Wisconsin.** This income should not be included in the Wisconsin column on lines 1 through 14, so it should not be subtracted.
10. **Avoid common mistakes in preparing returns for members of the military:**
  - Report to Wisconsin all of the income of a military member who was stationed in another state but was still a Wisconsin resident.
  - If claiming an exemption for the military pay of a National Guard or Reserve member, include an explanation with the return as to why the wages are not included in Wisconsin income.
  - If excluding the wages of a nonresident military member from federal adjusted gross income for Wisconsin tax purposes, include a copy of the federal return or wage statement to verify the amount of nonresident wages. 

## Change in Requesting Closing Certificates for Fiduciaries

In order to facilitate the processing of fiduciary income tax returns and expedite the issuing of Closing Certificates for Fiduciaries, the Department of Revenue has changed the process for requesting a closing certificate. The request for a closing certificate is no longer made using Form 2. Instead, the request for a closing certificate is made by filing Schedule CC with the other required documents.

Schedule CC has been revised in order to be processed separately from Form 2. As such, it is very important to use the most current version of Schedule CC (revision date 11/07) and to **not** attach Schedule CC to Form 2. However, if Form 2 is being filed at the same time that the closing certificate is being requested it should be sent in the same envelope as Schedule CC.

Additional information concerning the revised process for requesting a closing certificate may be found in the instructions for the 2007 Form 2. Questions may be directed to the department at (608) 266-2772 or [estate@revenue.wi.gov](mailto:estate@revenue.wi.gov). 



## Earned Income Tax Credit Pre-Refund Review

Each tax season, the Department of Revenue (DOR) conducts a pre-refund review of selected returns where the Earned Income Tax Credit (EITC) is claimed. The following questions and answers provide additional information about this process and its potential affect on you and your clients.

### *Why Does DOR Conduct a Pre-Refund Review?*

DOR conducts a pre-refund review of EITC for several reasons:

- To educate EITC filers about the eligibility criteria for EITC.
- To attain DOR's goal of issuing EITC refunds as quickly and efficiently as possible while maintaining or improving voluntary compliance for the benefit of all taxpayers.
- To correct invalid or incorrect claims filed, ensuring that the correct amount of EITC is issued to all claimants. (For the 2006 tax year, there were approximately 228,000 EITC claims filed. Credits of more than \$3 million were claimed incorrectly.)

### *How are Returns Selected for Review?*

Based on more than 15 years of experience administering the EITC, DOR selects only those returns on which errors may be likely. The following errors occur most often:

- *Improper qualifying children claimed* - Children should only be claimed as qualifying children for EITC purposes if they meet qualifying criteria regarding relationship, age, and residency.
- *Wisconsin EITC claimed by nonresidents or part-year residents of Wisconsin* - Only full-year residents of Wisconsin are eligible to receive the Wisconsin EITC.
- *Filing as single or head of household when married* - If the taxpayer is married and does not qualify to file as head of household, they must file as married filing jointly or married filing separately. This results in a different adjusted gross income limit, above which the EITC is not available.
- *Improper earned income claimed* - To be eligible to claim the EITC, the taxpayer must have earned income. Only income properly categorized as earned income should be used in the EITC computation.

### *What Information May be Requested During a Pre-Refund Review? Why Does DOR Need This Information?*

- **Children's birth certificates and social security cards:** This information establishes the relationship of the child to the claimant and verifies the biological mother and/or biological father of the child. The social security card is required to determine that the child has a valid social security number and is authorized to work in the United States.
- **Foster care placement papers:** These documents are used to verify when the child was placed by an authorized agency, the dates the placement began and ended, and the amount of foster care payments received.
- **Kinship care papers:** This is necessary to show the dates a child lived with a related non-parent.
- **School/daycare records:** The residency test requires that the child actually live with the taxpayer. School/daycare records establish the dates the child was enrolled and the home address of the child while enrolled. If the child is over age 19, a school transcript showing the above information as well as the number of credits/classes the child completed during the tax year verifies residency.
- **Lease/rental agreement, housing assistance agreement, and notarized landlord statement:** These documents verify all of the residents of the household during the tax year. These documents also confirm the amount of rent paid during the tax year.
- **Divorce decree or separation agreement:** For cases where the physical placement and/or custody of the children may be shared between ex-spouses, these legal documents aid in substantiating the exact days the child(ren) lived with each parent.

The above list is not meant to be all-inclusive. Unique situations may require the reviewer to ask for other verification.

All of the information requested is necessary to complete the pre-refund review of the EITC claimed. Providing only part of the information results in additional delays in issuing a refund, as another request for the missing information will be made. [!\[\]\(95b425611cbd2b8716a140cf67c81822\_img.jpg\)](#)


## Reminder: Electronic Filing Required for Certain Practitioners

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

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

mailing a letter to Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8903, Madison, WI 53708-8903. The request should clearly indicate why the e-filing requirement causes an undue hardship.

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

For more information about registering to submit individual income tax returns electronically through the federal/state e-file program, go to [www.revenue.wi.gov/eserv/e-ero.html](http://www.revenue.wi.gov/eserv/e-ero.html) or contact the department by e-mail at [efiling@dor.state.wi.us](mailto:efiling@dor.state.wi.us) or by phone at (608) 266-2772. 

---

## New and Updated Publications

Since the last issue of the *Wisconsin Tax Bulletin*, the following Department of Revenue publications have been revised:

### Income and Franchise Taxes

- 103 Reporting Capital Gains and Losses for Wisconsin (11/07)
- 104 Wisconsin Taxation of Military Personnel (11/07)
- 106 Wisconsin Tax Information for Retirees (12/07)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2007 (11/07)
- 113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (11/07)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/07)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2007 (11/07)
- 126 How Your Retirement Benefits are Taxed (11/07)

### Sales and Use Taxes

- 205 Use Tax Information for Individuals (11/07)
- 210 Sales and Use Tax Treatment of Landscaping (12/07)

- 214 Businesses: Do You Owe Use Tax? (11/07)


### Other Taxes and Credits

- 125 Credit for Tax Paid to Another State (11/07)
- 127 Wisconsin Homestead Credit Situations and Solutions (12/07)
- 503 Wisconsin Farmland Preservation Credit (11/07)

### Other Topics

- 115 2008 Handbook for Federal/State Electronic Filing (11/07)
- 117 Guide to Wisconsin Information Returns (11/07)

In addition, a new excise tax publication became available in October. Publication MF-109, *Biodiesel, Vegetable Oil and the Wisconsin Excise Tax*, explains how Wisconsin fuel tax applies to the production and sale of biodiesel and recycled vegetable oil used as motor vehicle fuel. It is available on the Department of Revenue’s website at [www.revenue.wi.gov/pubs/mf-109.pdf](http://www.revenue.wi.gov/pubs/mf-109.pdf).

All of the Department of Revenue’s publications may be downloaded or ordered online at [www.revenue.wi.gov/html/taxpubs.html](http://www.revenue.wi.gov/html/taxpubs.html). There are over 75 publications available, covering a wide range of topics. 

## Where to Send Your Completed Power of Attorney Forms

The Department of Revenue (DOR) has received several questions as to where a completed Power of Attorney (Form A-222) should be sent.

No Power of Attorney is needed if you are contacting DOR regarding a taxpayer's return you have prepared, if your name is on the 3rd party designee line of the return and the taxpayer has checked the "Yes" box indicating that DOR may discuss the return with you.

If the taxpayer has received a letter or notice from DOR, you should mail or fax your completed Power of Attorney form to the auditor or agent listed on the letter

or notice. If you are filing an amended return where the original return was completed by another practitioner, you may submit Form A-222 with the amended return although that is not a requirement. If DOR writes the taxpayer with questions regarding the amended return, Form A-222 can be sent at that time to the DOR employee listed on the letter.

Please do not submit general Power of Attorney forms. When you need to talk with a DOR employee about a specific taxpayer issue, that employee will request that Form A-222 be sent to him or her prior to responding to you. You may fax your POA form to the auditor or agent working with you. If you do not have a fax number for the auditor or agent, contact him or her for that information. [✉](#)

## Filing Returns for Estates and Trusts

In order to serve you efficiently, the Department of Revenue would like to remind you of the following points:

1. Returns with errors will delay the completion of processing because the errors require a manual adjustment. This will delay the issuing of refunds and may also delay the issuing of a Closing Certificate for Fiduciaries. It is important that you:
  - Use the correct name and identification number of the trust or estate. Trusts file with a federal employer identification number. Estates file the Wisconsin returns with the decedent's social security number.
  - Enter the correct beginning and ending dates for the fiscal year at the top of the Form 2.
  - Complete **only one** of the first two lines of the Form 2. Estates complete the first line and trusts complete the second line. Trusts making the election under IRC §645 to be treated as part of the decedent's estate should attach a copy of the IRS Form 8855, *Election to Treat a Qualified Revocable Trust as Part of an Estate*, and complete the first line of Form 2 with the decedent's name and social security number. No entry should be made on the second line regarding trust name and FEIN.
2. Requests for closing certificates for fiduciaries will be handled as a high priority. The request for a certificate is made by filing Schedule CC. There is no longer a box to check on the Form 2 to request the certificate. In order to receive your certificate as quickly as possible, please remember to:
  - Complete Schedule CC and submit it with the required documents.
  - Mail the schedule and required documents to the correct address. Schedule CC should be mailed to: **Wisconsin Department of Revenue, Post Office Box 8918, Madison, Wisconsin 53708-8918.**
  - Submit all required documents with the request for a closing certificate. A list of the required documents is found in the Form 2 instructions.
  - If you are filing a Form 2 for the estate or trust at the same time you are requesting the closing certificate, the Form 2 should also be sent to Post Office Box 8918. You may send the Form 2 and the Schedule CC together.
3. Be sure to use the correct form. Do not alter a prior year form to file a 2007 return. For fiscal years beginning in 2006, use a 2006 form. For fiscal years beginning in 2007, use a 2007 form. If you are requesting a Closing Certificate for Fiduciaries, be sure to use the current version (revision date 11/07 or later) of the Schedule CC. (Prior versions of the schedule can't be processed and the issuance of the closing certificate may be delayed.)

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

- **Missing documents.** The documents required are listed in the instructions for Form W706 and Form 2.
- **No response to a request for additional information.** Reply promptly to a letter from the department requesting information or additional documents.
- **Misinterpreting the filing requirement.** The filing requirement for the W706 is based on the gross, not net, estate. A late filing fee may be imposed even if there is no estate tax due if the return is filed late. Similarly, the requirement to file an income tax return is based on gross, not net, income, and late filing fees may be imposed even if there is no tax due.
- **Not computing the correct amount due.** If a return is filed late, compute the interest and late filing fee and remit the full amount with the return. This will avoid the necessity of the department issuing an

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

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

Estate (Form W706):

Wisconsin Department of Revenue  
PO Box 8904  
Madison, WI 53708-8904

Fiduciary (Schedule CC):

Wisconsin Department of Revenue  
PO Box 8918  
Madison, WI 53708-8918

If you have questions about filing a return for a trust or estate, please call the department at (608) 266-2772 or send an e-mail to [estate@revenue.wi.gov](mailto:estate@revenue.wi.gov). 



## Enforcement Report

### Cross Plains Man Sentenced to Jail for Forgery and Tax Fraud

Sean M. Blum was sentenced in October 2007 by Dane County Circuit Court Judge Daniel R. Moser. Blum, 31, of Cross Plains was found guilty on two felony counts of forgery and one felony count of filing a fraudulent income tax return. The criminal charges were brought by the Dane County District Attorney's Office after an investigation by the Fitchburg Police Department and the Fraud Unit of the Wisconsin Department of Revenue.

According to the complaint, while dating the daughter of John and Jeanne Flesch, Blum forged checks totaling over \$132,000 against their account. Mr. Blum wrote the checks to himself and signed Jeanne Flesch's name.

Judge Moser withheld sentence and ordered Blum to serve five years probation. As a condition of probation, Blum was ordered to serve one year in the Dane County Jail. He may be released to electronic monitoring after

30 days. Judge Moser said jail was necessary for punishment because of the severity of the offenses.

### Stratford Contractor Pleads Not Guilty to Tax Fraud

After waiving his preliminary hearing in October 2007, Shawn M. Hoffman, 36, of Stratford pleaded not guilty to four felony counts of filing fraudulent Wisconsin income tax returns for the years 2002 through 2005.

According to the criminal complaint filed in July 2007 by the Marathon County District Attorney's Office, Hoffman filed Wisconsin income tax returns on which he reported \$0 tax liability on \$0 income. He attached correspondence to the returns in which he argued that the Internal Revenue Code does not define income, establish an income tax liability, nor state that wages, salaries, or compensation for personal services are taxable income.



The complaint alleges that in the four years 2002 through 2005, Hoffman worked as a construction contractor and earned gross income of \$41,125, \$84,805, \$73,248, and \$101,906, respectively.

Hoffman worked for two Wisconsin companies in 2002, Midwest Siding and Windows and Cover-All of Wisconsin. He worked for Cover-All of Wisconsin in 2003 through 2005. Both companies issued Miscellaneous Income Forms 1099 to Hoffman reporting the income that was paid to him in the years 2002 through 2005.

According to the complaint, Hoffman evaded Wisconsin income tax in excess of \$17,000 for the four years.

Information in the complaint disclosed that Hoffman filed a typical Wisconsin income tax return for the year 1999 as proof that Hoffman was aware of the requirement to file and how to correctly file.

The charges are the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section. If convicted on all counts, Hoffman faces 24 years in prison and \$40,000 in fines.

---

### **Elm Grove Businessman Charged With Tax Fraud**

Criminal charges were filed in November 2007 in Waukesha County against Timothy M. Ebert, 39, a self-employed Elm Grove businessman, for failure to file state income tax returns.

According to the complaint, Ebert failed to file returns for the 2004, 2005, and 2006 years despite having received at least \$175,766 in 2004, \$418,062 in 2005, and \$224,042 in 2006 from businesses he operated related to carpet and air duct cleaning.

The complaint further notes that while Ebert wasn't filing or paying his income taxes, he was driving a 2004 Porsche 911 and a 2005 Cadillac Escalade and living in homes valued between \$477,000 and \$533,000. In a personal credit application that Ebert submitted in 2003, he stated that his salary exceeded \$130,000 per year as the general manager of Wisconsin Professional Cleaners and Carpet Outlet.

Over the years, Ebert ran his businesses under a variety of names including White Glove Professional Cleaners, Wisconsin Professional Cleaners, Cooper Professional Cleaners, Cooper Ducts, White Glove Duct Cleaning, Wisconsin Carpet Outlet, and Air Duct Pros.

According to a Better Business Bureau (BBB) website, the Bureau had processed 13 complaints against Ebert, or one of his businesses, between November 2004 and November 2007. It also noted that Ebert has an unsatisfactory record with the BBB due to failure to respond to complaints.

Milwaukee County Circuit Court records show that on September 21, 2007, Ebert was found guilty of two counts of deceptive ads-untrue, misleading ads and was ordered to pay \$7,089 in forfeitures, surcharges, and costs of investigation.

If convicted on all three state income tax violations, Ebert faces up to 27 months in jail, \$30,000 in fines, or both.

This case is being prosecuted by the Waukesha County District Attorney's Office. The investigation was conducted by the Criminal Investigation Section of the Wisconsin Department of Revenue.

---

### **Shorewood Man Convicted of Tax Fraud**

Robert Rodney Raymond, 53, of Shorewood was found guilty in November 2007 in Milwaukee County Circuit Court on one count of failing to file a Wisconsin income tax return. Raymond was originally charged in April 2007 with three counts, but was allowed to plead to a reduced charge as a result of a plea bargain.

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

Raymond has operated a self-employed roofing business since about 1980 under the name of Raymond Contractors. The business was first operated in Grafton, then more recently from Raymond's home in Shorewood, Wisconsin.

According to the criminal complaint, Raymond has refused to file income tax returns since the mid 1990's and has argued that he has no Wisconsin income, no adjusted gross income, and no federal income. However, an investigation disclosed that between 2001 and 2004, Raymond used a bank account at JP Morgan Chase Bank that had been opened in his wife's name to pay for roofing supplies, parts, and labor. In 2004, Raymond began using a checking account at US Bank that he opened in July 1998.

Despite his claims of no income, a bank analysis revealed that Raymond made deposits of customer checks and cash into the above-mentioned accounts of \$181,523 in 2003, \$159,254 in 2004, and \$180,476 in 2005. The customer checks were made out to “Robert Raymond,” “Robert Raymond Construction,” “Raymond Roofing,” “Raymond Contractors,” or “Raymond Quality Services.” The Department of Revenue contacted the individuals who had written the checks and all confirmed that the payments were for roofing work done by Raymond or his employees. The department also obtained records from Raymond’s principal supplier, Allied Building Products Corporation, which shipped materials directly to Raymond’s construction sites for his larger jobs.

According to the criminal complaint, Raymond owes the Department of Revenue \$49,569 in taxes and interest for the years 1995 through 1999, based on estimates made

by the department, for the returns Raymond refused to file.

Raymond is no stranger to tax controversy. In the mid 1990’s he and another individual marketed an abusive tax shelter called “De-Taxing America” that promoted such concepts as “wages do not constitute taxable income” and “the Internal Revenue Code was never enacted into law.” Their program was shut down after a 1997 lawsuit by the U.S. Department of Justice.

In the past, Raymond has unsuccessfully run for the State Assembly, U.S. House of Representatives, and the U.S. Senate.

Circuit Court Judge Dominic S. Amato scheduled sentencing in this case for February 15, 2008. Raymond faces up to nine months in jail, \$10,000 in fines, or both.




### ***Sales and Use Tax Report Available***

The latest issue of the *Sales and Use Tax Report* became available in December. The *Sales and Use Tax Report* contains summaries of recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the December 2007 *Sales and Use Tax Report* (3-07) include:

- New Tax Laws;

- Internet Tax Freedom Act Extended, But Internet Access Services Remain Taxable in Wisconsin;
- Integrated Tax System Implementation Continues;
- Fees for Sports; and
- Can Retailers Absorb the Sales Tax for Their Customers?

The Report is available on the Department of Revenue’s website at [www.revenue.wi.gov/ise/sales/07-3.pdf](http://www.revenue.wi.gov/ise/sales/07-3.pdf). 

### **Administrative Rules in Process**

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of January 1, 2008, and at each step where action occurred during the period from October 1, 2007, through January 1, 2008.

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 (DOR), you can use the order blank on page 75 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

Information concerning administrative rules of DOR, as well as other state agencies, is also available on the Internet at <https://apps4.dhfs.state.wi.us/admrules/public/Home>. At this website you can search for rules, view the status of current rulemaking, view documents associated with rulemaking, submit and view comments on rules, and subscribe to receive notification of rulemaking. A link to this site is also available on DOR’s website at [www.revenue.wi.gov](http://www.revenue.wi.gov). Click on “Practitioners” and then “Text and Status of Proposed Rules.”

### **Emergency Rules Adopted and in Effect**

- 2.505 Apportionment of net business income of interstate professional sports clubs – A
- 8.63 Liquor wholesaler warehouse facilities – A

**Scope Statement Published**

8.63 Liquor wholesaler warehouse facilities – A

**Sent to Legislative Council Rules Clearinghouse**

2.505 Apportionment of net business income of interstate professional sports clubs – A

8.63 Liquor wholesaler warehouse facilities – A

**Reviewed by Legislative Council Rules Clearinghouse**

2.505 Apportionment of net business income of interstate professional sports clubs – A

8.63 Liquor wholesaler warehouse facilities – A

**Sent to Revisor for Publication of Hearing Notice**

2.505 Apportionment of net business income of interstate professional sports clubs – A  
(published November 30, 2007)

8.63 Liquor wholesaler warehouse facilities – A  
(published December 15, 2007)

**Public Hearing Held** (December 10, 2007)

2.505 Apportionment of net business income of interstate professional sports clubs – A

**Adopted and in Effect** (November 1, 2007)

1.12 Electronic funds transfer – A

Additional information concerning the rule that became effective November 1, 2007 may be found in *Wisconsin Tax Bulletin* 153 (October 2007), page 19. [☞](#)



## Report on Litigation

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

The following decisions are included:

### Corporation Franchise and Income Taxes

Gross income - membership pledges  
*Minocqua Country Club, Inc.* ..... 24


### Sales and Use Taxes

Admissions  
*Minocqua Country Club, Inc.* ..... 24

Estoppel  
*Rodney A. Sawvell d/b/a Prairie Camper Sales*... 26


Real property construction activities versus  
 manufacturing  
*Visu-Sewer Clean & Seal, Inc.* ..... 27

## CORPORATION FRANCHISE AND INCOME TAXES

 **Gross income – membership pledges.** *Minocqua Country Club, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 7, 2007). The issue in this case is whether Minocqua Country Club, Inc. (MCC) is liable for Wisconsin franchise and sales tax on the amounts that it received from pledges (deposits) that its members were required to pay for membership to the club.

See summary below under “Sales and Use Taxes.” [↗](#)

## SALES AND USE TAXES

 **Admissions.** *Minocqua Country Club, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 7, 2007). The issue in this case is whether Minocqua Country Club, Inc. (MCC) is liable for Wisconsin franchise and sales tax on the amounts that it received from pledges (deposits) that its members were required to pay for membership to the club.

The department asserts that the deposits paid to MCC by its members during the years at issue were includable in MCC's gross income for purposes of calculating its Wisconsin franchise tax, and also constituted admission fees that are subject to sales tax. MCC argues that these payments were instead capital contributions under IRC § 118 and not includable in its gross income. MCC also contends that the payments were not receipts subject to Wisconsin sales tax.

MCC is a private country club that owns and operates an 18-hole golf course. The use of MCC's facilities is limited to its members, their guests and invitees. Golf facilities offered by MCC to its members, their guests and other invitees both before and during the period under review include the golf course, a driving range, a practice green, and a pro shop. During the period under review, MCC added a chipping range.

In addition to its golf facilities, MCC offered a range of social and recreational facilities and amenities to its members, their guests and other invitees, before, during and subsequent to the period under review, including tennis courts, a private dock and beach on Lake Minocqua, a dining room and bar, and rooms for members to host parties and other social gatherings. Non-golf programs offered by MCC before, during and subsequent to the period under review included social events, and bridge leagues and tournaments.

Members of MCC generally were required to own 10 shares of MCC stock, which sold for \$100 per share. The stock ownership requirement applied to all membership classes, except honorary members and associate members.

Memberships were not limited to golfers. Social members were those members who enjoy all privileges of MCC facilities other than regular use of the golf course.

In the late 1990's, MCC had fewer than 100 members. MCC concluded that in order to remain viable, it had to attract more members and determined that its existing nine-hole golf course was an obstacle to growth. In addition to the limitations of a nine-hole course, the condition of the existing golf course was substandard. In order to attract more members, MCC concluded that much of the existing nine-hole golf course had to be renovated, the course had to be expanded to an 18-hole



course, and the clubhouse had to be updated. MCC concluded that these plans were necessary to ensure the long-term financial viability of MCC.

On July 1, 1998, MCC's shareholders authorized a renovation and expansion project. The project plans were contingent upon MCC raising \$2 million to finance the Project. In an effort to raise this \$2 million, MCC asked its members to make deposits. Each member was required to sign a "Pledge Agreement." A member who failed to pay his/her pledge or make a deposit would be terminated as a member and his/her shares of stock surrendered. The pledge amounts ranged from \$2,000 to \$25,000. The level of dues depended in part upon the type of membership. For example, regular members paid more than social members. (Social members were asked to make deposits of \$2,000 each.) The use of these funds was restricted to use only for capital improvements related to the renovation and expansion of the golf course, clubhouse and related facilities.

During the period under review, a number of classes of people were allowed to use the MCC golf course who were not required to pay a deposit. However, if an existing regular member did not sign a pledge agreement or make a deposit in accordance with his/her agreement, he/she could not continue as a regular member of MCC and lost continuing rights to use the golf course and other MCC facilities.

Making a deposit alone did not allow a person to become a member of MCC or have access to MCC's facilities, including the golf course. (For example, one individual made a deposit of \$12,500, but never paid dues. That person did not become a member and was not allowed to use MCC's facilities, including its golf course.)

### ***Income/Franchise Tax***

MCC argued that the deposits were capital contributions made by the members to MCC and were properly excluded from MCC's gross income under IRC § 118. The department claims that the deposits were not contributions to capital, but were instead includable in MCC's gross income.

The department included the deposit amounts in MCC's gross income for purposes of calculating MCC's income/franchise tax. The amount that the department included in MCC's gross income included MCC's receipts from the special assessments, pledges, and deposits from both its golfing members and social members.

### ***Sales/Use Tax***

The department added the deposits and proceeds from stock sales from all regular (but not social) members to the sales tax base as taxable admission services. The department did not include in MCC's taxable gross receipts or assess any sales tax on the monies from the pledges/deposits that MCC received from its social members for renovation of MCC's clubhouse, because social members did not have access to the recreational facilities of MCC's golf course. In addition, the department deducted from the sales tax base the dues paid by social members.

Section 77.52(2)(a)2., Wis. Stats., imposes sales tax on the "...admissions to amusement, athletic, entertainment or recreational events or places ... and the furnishing, for dues, fees or other considerations, 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, including the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships."


MCC's primary objection to the sales tax assessment is the department's application of sales tax to the golfing members' deposits. MCC's position is that the deposits are not properly included in the sales tax base.

The Commission determined that the department correctly assessed both franchise and sales taxes. The Commission also ruled in favor of the department's assessment of penalties.

With respect to franchise tax, the Commission looked to the case of *Board of Trade of the City of Chicago v. Comm'r*, 106 T.C. 369 (1994). In this case, the Tax Court analyzed a number of prior cases that concern this issue. The Tax Court identified "three objective factors whose presence tends to support the existence of an investment motive: (1) the fee in question is earmarked for application to a capital acquisition or expenditure; (2) the payors are the equity owners of the corporation and there is an increase in the equity capital of the organization by virtue of the payment; and (3) the members have an opportunity to profit from their investment in the corporation." The Commission also looked to the language of the regulations under IRC § 118. It was determined by the Commission that the deposits at issue did not qualify as capital contributions and were includable in MCC's gross income for the years at issue.

To obtain access to MCC's new golf course, golfing members were required to pay the deposits at issue here (and sustaining members, the increased dues), and, as in every prior Wisconsin case, those payments were subject to sales tax.

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

 **Estoppel.** *Rodney A. Sawvell d/b/a Prairie Camper Sales. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 12, 2007).

The main issues in this case are as follows:

1. Does Wisconsin sales tax apply to the taxpayer's sales of campers and trailers to nonresidents of Wisconsin where such campers and trailers were delivered to buyers in Wisconsin?
2. Is the taxpayer entitled to any credit for Iowa sales or use tax that some of his customers paid to the State of Iowa when they registered the campers and trailers in Iowa, where Iowa refunded a portion of the taxes to the taxpayer?
3. Does the assessment by the Wisconsin Department of Revenue result in any impermissible double taxation?
4. Is the Wisconsin Department of Revenue estopped from imposing tax on the taxpayer's sales at issue based on (a) alleged information provided by the Iowa Department of Revenue, the Iowa Department of Transportation, or the Wisconsin Department of Transportation; and (b) the Wisconsin Department of Revenue's alleged lack of action or failure to act prior to the audit or period at issue?

The taxpayer's business is located in Wisconsin, about one mile from the Iowa border. Approximately 95% of the taxpayer's business consists of sales of non-motorized recreational vehicles, including campers, travel trailers, 5th wheel campers, and park campers. The taxpayer's other business activities include servicing such vehicles and selling parts and supplies. The taxpayer holds a Wisconsin seller's permit.

Many of the taxpayer's sales, including all of the sales at issue, were made to residents of Iowa. Prior to the department's audit of the taxpayer, the taxpayer's standard practice had been to collect and remit Wisconsin sales tax on its sales of campers and trailers to Wisconsin residents. When selling to customers from other states,

such as Iowa, the taxpayer did not collect any sales tax, but typically advised the purchasers to pay any sales or use tax due on their purchases to the state where the vehicle would be titled, registered, and licensed.

At various times before, during, and after the period at issue, the taxpayer contacted personnel at the Wisconsin Department of Revenue, the Wisconsin Department of Transportation, the Iowa Department of Revenue, and the Iowa Department of Transportation requesting advice about state sales and use taxes.

The Wisconsin Department of Revenue assessed the taxpayer sales tax on his sales of non-motorized campers and trailers to nonresidents where transfers occurred in Wisconsin. The Wisconsin Department of Revenue has consistently taken the position in its publications that sales of non-motorized recreational vehicles to residents and nonresidents are taxable when the transfer takes place in Wisconsin and that the exemption in sec. 77.54(5)(a), Wis. Stats., does not apply.

As a result of the Wisconsin Department of Revenue's audit, and with the consent of his affected Iowa customers, the taxpayer applied for a refund of the Iowa use tax that its customers had paid to Iowa when they had registered the campers and trailers at issue in Iowa. While the Iowa Department of Revenue granted the taxpayer a partial refund of taxes, including interest, the Iowa Department of Revenue did not grant refunds for years that were outside the applicable Iowa statute of limitations. The taxpayer received and retained the refunds from the Iowa Department of Revenue and stated that he intends to pay the refund either to the Wisconsin Department of Revenue or back to Iowa.

*Issue 1:* The taxpayer conceded that his sales of campers and trailers to nonresidents were subject to Wisconsin sales tax. The sales occurred in Wisconsin and the vehicles were delivered to the purchasers in Wisconsin. Under Wisconsin law, these sales were taxable.

*Issue 2:* The Commission ruled that there was no basis in Wisconsin law to require the Wisconsin Department of Revenue to allow credit to the taxpayer for taxes that were paid to Iowa nor for the department to request refunds from the Iowa Department of Revenue on behalf of the taxpayer.

*Issue 3:* The Commission also determined that the taxpayer had not been double-taxed. By paying the taxpayer the Iowa refund, Iowa has agreed that Wisconsin was the proper state to tax the transactions at issue. By refusing to pay the portion of the taxpayer's refund


that is barred by Iowa's statute of limitations, Iowa is not asserting a right to tax these transactions.

*Issue 4:* The Commission also determined that the Wisconsin Department of Revenue cannot be held responsible for any inaccurate or conflicting advice that the taxpayer received from the Iowa Departments of Revenue or Transportation. Estoppel may only be asserted against the party whose action or non-action induced reliance, and the Commission determined that there is no identity of interest between the Wisconsin Department of Revenue and any branch of the Iowa state government.

The Commission also stated that the taxpayer's main source for information regarding Wisconsin sales tax should have been the Wisconsin Department of Revenue, and any reliance that the taxpayer placed on advice given by Iowa agencies regarding Wisconsin taxes was unreasonable. The taxpayer also did not provide any evidence of oral or written advice provided by the Wisconsin Department of Transportation personnel.

Additionally, the Commission in *Spickler Enterprises, Ltd. v. Wisconsin Department of Revenue* (WTAC December 21, 1995, which was affirmed by Dane County Circuit Court and Court of Appeals, District IV, on January 22, 1997 and November 20, 1997, respectively), previously addressed this question and determined that the petitioner's alleged reliance on oral advice given by Wisconsin Department of Transportation personnel regarding Wisconsin sales tax did not estop the Wisconsin Department of Revenue in a similar action.

It was not known at the time of publication whether the taxpayer would appeal this decision. [!\[\]\(cbe2492b119e39e02a1dab2af4a4b296\_img.jpg\)](#)

 **Real property construction activities versus manufacturing.** *Visu-Sewer Clean & Seal, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals District IV, October 4, 2007). See *Wisconsin Tax Bulletin* 146 (February 2006), page 37, and *Wisconsin Tax Bulletin* 148 (July 2006), pages 31-32 for summaries of the Wisconsin Tax Appeals Commission and Dane County Circuit Court decisions, respectively.

The taxpayer appealed the Circuit Court's order affirming the Wisconsin Tax Appeals Commission's decision that the Department of Revenue properly classified Visu-Sewer's work as a real property construction activity, thus disallowing sales and use tax exemptions for raw materials, machinery, and equipment.

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

The issue addressed by the Wisconsin Tax Appeals Commission and subsequently reviewed by the Circuit Court was whether the taxpayer was engaged in real property construction activities when it installed sewer liners. The taxpayer contended that its installation of the National Liners and U-Liners into a customer's host sewer pipes is a manufacturing process, and that the raw materials, equipment, and equipment repair and maintenance were exempt from Wisconsin sales and use tax.

The Court of Appeals determined that the Commission reasonably concluded that Visu-Sewer meets the definitions provided by statute and regulation of "contractor" and was engaged in "real estate construction activities." The law then provides that Visu-Sewer is not a manufacturer and cannot claim the sales and use tax exemption for machines and equipment, regardless of whether Visu-Sewer's activities might also satisfy the definition of "manufacturing" provided in sec. 77.54(6m), Wis. Stats., which would allow Visu-Sewer to claim that exemption.

Therefore, the Court of Appeals concluded that the taxpayer is liable for sales or use tax on its purchase of the raw materials, equipment, and machinery that it used in the real property construction activity.

The taxpayer has not appealed this decision. [!\[\]\(b792654f2cef9719eabeb6c5be00811e\_img.jpg\)](#)



## 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 answers in a tax release.)*

The following tax releases are included:

### Sales and Use Tax

1. Discount/Membership Cards.....28
2. Digital-to-Analog Converter Box Coupon Program...29

## SALES AND USE TAX

### 1 Discount/Membership Cards

The examples in this tax release explain the proper Wisconsin sales and use tax treatment of membership fees charged by a retailer that a customer is required to pay before being allowed to purchase tangible personal property or services from the retailer.

- Membership fees charged by a retailer that allow the purchaser of the membership to purchase taxable tangible personal property or taxable services from the retailer are subject to Wisconsin sales or use tax.

**Example 1:** Retailer A requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Retailer A only sells items that are subject to Wisconsin sales or use tax. The \$30 membership fee is subject to Wisconsin sales or use tax.

- Membership fees charged by a retailer that **only** allow the purchaser of the membership to purchase nontaxable tangible personal property or services from the retailer are not subject to Wisconsin sales or use tax.

**Example 2:** Retailer B requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Retailer B only sells items that are not subject to Wisconsin sales or use tax. The \$30 membership fee is not subject to Wisconsin sales or use tax.

- Membership fees charged by a retailer to a customer that allow the customer to purchase both taxable and nontaxable tangible personal property or services from the retailer are subject to tax to the same extent the items being purchased are subject to tax. If the percentage of taxable items being purchased by the customer is not known by the retailer at the time the membership is sold, the retailer may charge Wisconsin sales or use tax on the entire membership fee. The retailer is liable for Wisconsin sales or use tax on the entire membership fee, unless the retailer can document the amount of its nontaxable sales to the customer.

**Example 3:** Retailer D requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Retailer D sells both items that are subject to Wisconsin sales or use tax and items that are not subject to Wisconsin sales or use tax. Retailer D does not know what percentage of a particular customer’s purchases will be subject to tax at the time the membership is sold. Retailer D may charge Wisconsin sales or use tax on the entire \$30 membership fee.



- A retailer is not liable for Wisconsin sales or use tax on its receipts from membership fees charged to customers who provide the retailer with properly completed continuous Wisconsin Sales and Use Tax Exemption Certificates (Form S-211), claiming a valid exemption on **all** of their purchases from the retailer.

**Example 4:** Retailer X requires that its customers purchase a membership for \$30 to its store before the customer is allowed to make purchases at the store. The membership is good for one year from the date purchased. Customer Y resells all of the items it purchases from Retailer X and provides Retailer X with a properly completed continuous Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), claiming resale, at the time Customer Y purchases the membership from Retailer X. Since Customer Y has provided Retailer X with a properly completed continuous Wisconsin Sales and Use Tax Exemption Certificate (Form S-211), for all its purchases from Retailer X, Retailer X is not required to collect Wisconsin sales or use tax on the \$30 membership fee.

## 2 Digital-to-Analog Converter Box Coupon Program

The Department of Commerce's National Telecommunications and Information Administration (NTIA), a federal agency, will be administering a federally-funded coupon program that enables each household in the United States to receive up to two (2) coupons that are each good for up to \$40 off the purchase of a television converter box that will allow analog televisions receiving over-the-air broadcasts to continue to work even after the over-the-air television signals are converted to all digital signals. This conversion is scheduled to be completed by February 17, 2009. Only one coupon can be used towards each converter box purchased. This tax release describes the NTIA coupon program and the Wisconsin sales and use tax treatment of purchases made using these NTIA-issued coupons.

### The Coupon Program

Under the NTIA coupon program, an eligible household will complete an application to apply for up to two (2) coupons that can only be used towards the purchase of "coupon eligible digital-to-analog converter boxes" (CECBs). A CECB is a converter box that contains only those features or functions necessary to convert any channel broadcast in the digital television service into a format that the consumer can display on a television

receiver designed to receive and display signals only in the analog television service. The NTIA will identify the specific converter boxes that qualify for this program and the retailers of these converter boxes will agree to only accept the NTIA-issued coupons for the CECBs.

Once the household has received an NTIA-issued coupon for a CECB, they may take the NTIA-issued coupon to a participating retailer to receive the lesser of the purchase price or \$40 off the purchase price of the CECB. If the CECB costs \$40 or less, the customer will not be required to pay anything. If the CECB costs more than \$40, the customer will be required to pay the difference between the selling price and the \$40 NTIA coupon. A customer that purchases a CECB using one of these coupons may not return the CECB for a full cash refund or make an exchange for another item, unless it is another CECB.

The retailer will then provide the required information to the NTIA to receive reimbursement for each of the NTIA-issued coupons they redeem. The NTIA will reimburse the retailer directly for the lesser of the purchase price or \$40 for each of the CECBs sold by the retailer under this program and for which NTIA-issued coupons were presented by the customers and accepted by the retailer.

### Wisconsin Sales and Use Tax Treatment

If the total selling price of the CECB is \$40 or less and the customer presents an NTIA-issued coupon to the retailer for the purchase of the CECB, no Wisconsin sales or use tax will be due on this transaction since the reimbursement is made directly from the NTIA to the retailer. The \$40 or less that the retailer receives directly from the NTIA towards the purchase of the CECB is not taxable since this is considered a sale to the federal government.

**Example:** Customer A purchases a CECB from Retailer B. The selling price of the CECB is \$35. Customer A presents an NTIA-issued coupon to Retailer B that entitles Customer A up to \$40 off the purchase price of the CECB. Since the total selling price of the CECB was less than \$40, Customer A is not required to pay anything to receive the CECB. Retailer B does, however, receive \$35 directly from the NTIA from the sale of this CECB. Since the NTIA is a federal government agency that is paying the retailer directly for the CECB, this is considered a sale to the federal government and there is no Wisconsin sales or use tax due on this transaction. Sales to the federal government are not subject to Wisconsin sales or use tax.

If the total selling price of the CECB is more than \$40 and the customer presents an NTIA-issued coupon to the retailer for the purchase of the CECB, Wisconsin sales or use tax would only be due on the difference between the total selling price and the \$40 reduction the customer received due to the NTIA-issued coupon, since the reimbursement for the \$40 coupon is made directly from the NTIA to the retailer.

**Example:** Customer Y purchases a CECB from Retailer Z. The selling price of the CECB is \$65. Customer Y presents an NTIA-issued coupon to Retailer Z that entitles Customer Y up to \$40 off the purchase price of the CECB. Since the total selling price of the CECB is more than \$40, Customer Y is required to pay the additional \$25 to purchase the CECB. In addition to the \$25 Retailer Z receives from Customer Y, Retailer Z also receives \$40 directly from the NTIA relating to the sale of this CECB, due to the NTIA-issued coupon. Retailer Z is liable for the tax on the additional \$25 that Customer Y pays for the CECB. However, the \$40 that is paid directly to Retailer Z from the NTIA, a federal government agency, is not subject to Wisconsin sales or use tax since this part of the sale is considered a sale to the federal government.