

# Wisconsin TAX BULLETIN

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

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April 2008

## New Tax Laws

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted changes to the Wisconsin tax laws. See page 4 for details. [🔗](#)

## Midwestern States Association of Tax Administrators Conference

The 48th Annual Midwestern States Association of Tax Administrators Conference (MSATA) will be held August 17 – 19, 2008, at the Madison Concourse Hotel. Conference sessions will be designed to increase awareness and understanding of some of the most challenging tax issues arising in this time of technological change, evolving business strategies, and constrained funding. This will be an opportunity to meet with colleagues to exchange perspectives and consider solutions, to look at the latest tax technologies and tax policies, and to learn from the experiences of others.

The General Session will be held on Monday, August 18. Tentative agenda items are: Issues with State Business Taxes, Economic Trends and Demographics, and Improving Effectiveness of and Efficiency in Revenue Departments. On Tuesday, August 19, there will be break-out sessions which will feature sessions on Audit, Electronic Solutions, Property Taxes, and Collections/Compliance. A final agenda will be available in May 2008.

Please visit the Department of Revenue's website at [www.revenue.wi.gov](http://www.revenue.wi.gov) for more information.

Please mark your calendar and plan on attending this conference for excellent professional development opportunities. [🔗](#)

## Suggestions for Tax Forms?



Believe it or not, the Department of Revenue is ready to begin work on Wisconsin's tax forms and instructions for 2008. That makes now the perfect time to share any suggestions you may have for improving the forms or instructions.

Please take a few moments to put your ideas in writing, and mail them to Wisconsin Department of Revenue, Administration Technical Services, Mail Stop 6-40, P.O. Box 8933, Madison, WI 53708-8933. If you prefer, you may fax your suggestions to (608) 261-6240, or e-mail them to [isetchsvc@revenue.wi.gov](mailto:isetchsvc@revenue.wi.gov). [🔗](#)

## Beaver Dam, Elkhorn, and Grafton Offices to Close

The Department of Revenue will close its Beaver Dam, Elkhorn, and Grafton branch offices, effective the end of April 2008. Customer services for persons in these locations will be provided from the Madison, Milwaukee, and Waukesha district offices.

In addition to contacting any of the offices listed above, assistance and information are also available 24 hours a day, 7 days a week on the department's website, [www.revenue.wi.gov](http://www.revenue.wi.gov). [🔗](#)

## May 31, 2008 an Important Deadline for Tax Shelters Program

In 2007 Act 20, Wisconsin enacted a Tax Shelters Program which requires certain types of transactions to be specifically disclosed to the Wisconsin Department of Revenue. Additionally, the law creates a voluntary compliance program for taxpayers who failed to report their full taxable income because they used abusive tax shelter transactions.

The law provides new, stringent penalties for taxpayers and advisors who fail to disclose transactions when required and who understate their tax liability because of these transactions. Under the law, **May 31, 2008** is the deadline for taxpayers and their advisors to disclose certain transactions and pay any resulting tax liability for taxable years beginning on or after January 1, 2001 and before January 1, 2007. See page 3 for details on the Tax Shelters Program. [🔗](#)

## The End is Near...

Only two issues to go before the *Wisconsin Tax Bulletin* goes paperless! [🔗](#)

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## Film Production Services Credit Clarified

Sections 71.07(5f)(b)3., 71.28(5f)(b)3., and 71.47(5f)(b)3., Wis. Stats. (2005-06), provide, for tax years beginning after December 31, 2007, a nonrefundable credit against the claimant's income or franchise tax liability. The amount of the credit is equal to the taxes imposed under secs. 77.52 and 77.53, Wis. Stats., that the claimant paid in the taxable year on the purchase of tangible personal property and taxable services that are used directly in producing an accredited production in Wisconsin, including all stages from the final script stage to the distribution of the finished production. The credit applies only to the 5% state sales and use tax. It does not apply to any local taxes or fees. [☞](#)

## Safeguarding Confidential Taxpayer Information

The Wisconsin Department of Revenue (DOR) has a statutory and fiduciary duty to ensure the confidentiality of tax records and tax information. Our focus has always been on our duty to protect the confidentiality of taxpayer information and ensure voluntary compliance with tax laws. The protection of taxpayer information is foremost in our policies, procedures, and culture. We deploy state-of-the-art technologies to ensure the security of taxpayer information, and provide additional safeguards by:

- Training all of our employees in the confidentiality of tax information and the prohibition against browsing and unauthorized disclosure of confidential information. Employees may be disciplined or terminated for unauthorized browsing and disclosure of confidential information.

- Ensuring physical security of confidential taxpayer information in our offices. Access in the Madison headquarters is restricted by a card-pass ID system. Other offices are protected by two locking barriers. Regular physical security inspections are conducted.
- Destroying documents and memory devices in a confidential manner.
- Utilizing electronic security including encryption firewalls, secure file transfer protocol, and logon IDs and passwords.
- Employing a Privacy Officer who provides a central point for identifying, coordinating oversight, advice, education, and communication on privacy-security issues for the department.

DOR employees accept personal responsibility for ensuring the safety of confidential taxpayer information. DOR has always had a high standard in place to safeguard taxpayer information and will continue to seek the most modern and secure mechanisms and technology to protect the confidential information entrusted to it. [☞](#)

### Wisconsin Tax Bulletin

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Mail Stop 6-40  
P.O. Box 8933  
Madison, WI 53708-8933

## Tax Shelters Program

(continued from page 1)

### Tax Shelter Voluntary Disclosure

In order to avoid penalties, taxpayers who used a tax shelter to reduce Wisconsin income or franchise tax liability, increase a loss or credit carryforward, or cause nonfiling of Wisconsin income or franchise tax returns must voluntarily disclose the shelter on Form WI-VCP and pay any additional tax due by **May 31, 2008**.

“Tax shelter” includes reportable transactions and listed transactions as defined for federal income tax purposes, as well as transactions devised principally to avoid Wisconsin taxes without affecting federal income tax liability.

### Taxpayer Requirements to Disclose Reportable Transactions

Taxpayers who filed Form 8886 to disclose a reportable or listed transaction to the Internal Revenue Service (IRS) for federal income tax purposes, but did not attach a copy of that form to the Wisconsin income or franchise tax return, must provide a copy of the form to the department by **May 31, 2008**.

This requirement does not apply to taxpayers who are not otherwise required to file a Wisconsin income or franchise tax return for the year the transaction took place. Further, penalties for failure to disclose will not apply if *all* of the following conditions are met:

- The reportable transaction is not a listed transaction,
- there is no understatement of tax attributable to the reportable transaction, and
- the transaction took place on or before October 27, 2007.

### Material Advisor Requirements to Disclose Reportable Transactions

Material advisors who filed Form 8264 or Form 8918 to disclose a reportable transaction to the IRS for federal

income tax purposes must provide a copy of the form to the department by **May 31, 2008**, if the transaction is a listed transaction. This includes transactions the U.S. Secretary of the Treasury determined to be “tax shelters” under section 6111 of the Internal Revenue Code prior to amendment by the American Jobs Creation Act (enacted October 22, 2004) and subsequently identified as “listed transactions.”

This requirement does not apply if the taxpayer engaged in the transaction is not required to file a Wisconsin income or franchise tax return for the year the transaction took place. This requirement also does not apply to reportable transactions that are not listed transactions if the material advisor provided services regarding the transaction on or before October 27, 2007.

For any of the items above, the taxpayer or material advisor must send the required documents and payment (where applicable) to:

Wisconsin Department of Revenue  
Tax Shelters Program  
P.O. Box 8958  
Madison, WI 53708-8958

For more details on the Tax Shelters Program and answers to frequently asked questions, see the Special Bulletin in *Wisconsin Tax Bulletin* 155 (January 2008), beginning on page 31. You may also find the Special Bulletin on the Department of Revenue’s website at [www.revenue.wi.gov](http://www.revenue.wi.gov).

**Note:** 2007 Act 20 also enacted an ongoing requirement for taxpayers and their material advisors to disclose reportable transactions to Wisconsin whenever those transactions are required to be disclosed to the IRS. For taxpayers and material advisors, copies of the disclosure forms filed with the IRS must be filed with the Department of Revenue within 60 days of the date required by the IRS. For more details on the reportable transaction disclosure requirements, see the article in *Wisconsin Tax Bulletin* 155 (January 2008), page 9, along with the Special Bulletin referenced above. [🔗](#)



## Take Advantage of the Speakers Bureau

Are you planning a meeting, workshop, conference, or training program? The Department of Revenue’s Speakers Bureau provides speakers who can provide information on a variety of topics to business, community, and educational organizations.

Additional information concerning the Speakers Bureau may be found in Wisconsin Publication 700, which is available on the department’s website at [www.revenue.wi.gov/pubs/pb700.pdf](http://www.revenue.wi.gov/pubs/pb700.pdf). [🔗](#)

## New Tax Laws Summarized

The Wisconsin Legislature recently enacted changes to the Wisconsin tax laws. These provisions are contained in 2007 Acts 69, 85, 96, 97, 100, 151, 164, 192, and 216.

2007 Act 85 makes changes to the three-tier liquor distribution system. Most of its provisions are not effective until October 1, 2008. However, beginning July 1, 2008 small wineries (those producing and bottling less than 25,000 gallons of wine in a calendar year) may apply to the Department of Revenue (DOR) for the certification required to seek membership in a small winery cooperative wholesaler (a new entity created by 2007 Act 85). 2007 Acts 69, 164, 192, and 216 make various other changes to the alcohol beverage provisions of Chapter 125, Wis. Stats.

2007 Acts 96, 97, and 100 are Revisor's Correction Bills. They were enacted for the purpose of correcting errors, supplying omissions, correcting and clarifying references, eliminating defects, anachronisms, conflicts, ambiguities, and obsolete provisions, reconciling conflicts, and repelling unintended repeals.

2007 Act 151 updates the definition of "Internal Revenue Code" for regulated investment companies, real estate mortgage investment conduits, real estate investment trusts, and financial asset securitization investment trusts.

Below are descriptions of the major provisions of 2007 Acts 69, 151, 164, and 192. The July issue of the *Wisconsin Tax Bulletin* will include descriptions of the major provisions of 2007 Acts 85, 96, 97, 100, and 216. It will also include information on applying to DOR for certification as a small winery.

### *Corporation Franchise or Income Taxes*

**Internal Revenue Code References Updated for Regulated Investment Companies, Real Estate Mortgage Investment Conduits, Real Estate Investment Trusts, and Financial Asset Securitization Investment Trusts** (2007 Act 151, repeal sec. 71.26(2)(b)12. and 13., amend sec. 71.26(2)(b)14., 15., 16., 17., and 18., and create sec. 71.26(2)(b)19. and 20., various effective dates.)

In 2007 Wisconsin Act 20, the definition of "Internal Revenue Code" was updated for corporations, tax-option (S) corporations, insurance companies, and nonprofit organizations. Act 20 provided that for taxable years beginning on or after January 1, 2007, "Internal

Revenue Code" means the federal Internal Revenue Code as amended to December 31, 2006 with several exceptions, and that certain changes to the Internal Revenue Code made by federal laws enacted in 2005 and 2006 apply for Wisconsin purposes at the same time as for federal purposes. This same updated definition of "Internal Revenue Code" now also applies to regulated investment companies, real estate mortgage investment conduits, real estate investment trusts, and financial asset securitization investment trusts.

For further details of the specific provisions of the federal Internal Revenue Code that Wisconsin has adopted, see *Wisconsin Tax Bulletin* 154 (December 2007), pages 6 and 14.

### *Excise Taxes*

**Issuance of Retail Intoxicating Liquor Licenses** (2007 Act 69, amend sec. 125.51(1)(b), effective March 26, 2008.)

No member of a municipal governing body may hold a wholesaler's permit or, with respect to the issuance or denial of municipal licenses for the sale of intoxicating liquor, do any act in violation of the codes of ethics under sec. 19.59(1), Wis. Stats.

**Alcohol Beverage Provisions Relating to Proof of Age Revised** (2007 Act 164, renumber sec. 125.085(1) to 125.085(1)(intro.) and amend as renumbered, amend sec. 125.085(2), and create sec. 125.085(1)(d) and (e), effective April 8, 2008.)

The definition of "official identification card" for purposes related to the purchase of alcohol beverages is expanded to include:

1. A valid military identification card issued to a member of the U.S. armed forces, or forces incorporated as part of the U.S. armed forces, that contains the person's photograph and date of birth.
2. A valid U.S. passport.

Any alcohol beverage licensee or permittee may require a person to present an official identification card, documentary proof of age, an operator's license issued by another jurisdiction, or any other form of identification or proof of age acceptable to the licensee or permittee before providing alcohol beverages to the person or allowing the person to enter the premises for which the license or permit has been issued. A licensee or permittee is not required to accept any form of identification that does not appear to be valid or authentic or appears altered.



**Allowing a Village to Exceed Its Retail Liquor License Quota** (2007 Act 192, create sec. 125.51(4)(w), effective April 11, 2008.)

The village board of any village in the northern geographical half of Ozaukee County having a population of more than 4,000 may issue, to any applicant designated by the village board, one “Class B” retail liquor license in addition to the number of licenses determined for the village’s quota under sec. 125.51(4)(b) to (d), Wis. Stats.

No “Class B” license may be issued under this provision after August 1, 2008.

If a “Class B” license issued under this provision is surrendered to the issuing village, not renewed, or revoked, the village may not reissue the license, but a “Class B” license issued under this provision may be transferred in the same manner as other alcohol beverage licenses are transferred as provided under sec. 125.04(12)(b)4., Wis. Stats. [✎](#)

## Reminder: Look-Up of Estimated Tax Payments

Every year, the Department of Revenue (DOR) adjusts the estimated tax payments claimed on thousands of tax returns. In an effort to minimize this type of adjustment, DOR recently introduced an application that allows individuals, corporations, trusts, estates, and

practitioners to verify available estimated tax payments when completing a tax return.

The estimated tax application is available on DOR’s website at <https://ww2.revenue.wi.gov/PaymentInquiry/application>. Information on how the application works may be found in *Wisconsin Tax Bulletin* 155 (January 2008), page 3. [✎](#)



## Wisconsin’s Business Wizard is at Your Service

The Department of Revenue receives many inquiries from owners and operators of Wisconsin-based businesses that are just getting started. They are typically trying to get a handle on all of the federal, state, and local regulations and reporting requirements that pertain to them. The State of Wisconsin Business Wizard is a quick and easy way to get customized state-related business information, including:

- licensing, permitting, and regulatory requirements,

- necessary application forms,
- available state resources, and
- other valuable business-related information.

Although the Business Wizard is not all-inclusive, it also provides information concerning certain federal and local regulations.

Can the Business Wizard be of service to you or your clients? Check it out at [www.wisconsin.gov/state/app/wizard/LoadIntro](http://www.wisconsin.gov/state/app/wizard/LoadIntro). [✎](#)

## Electronic Resources for Tax Practitioners

As a tax practitioner, you need accurate and timely information in order to best serve your clients. The Department of Revenue strives to meet this need through its practitioner web page and tax practitioner electronic mailing list.

Both the practitioner web page and tax practitioner electronic mailing list provide updates on tax news and information, including electronic filing mailings, publications, and announcements of approved software and Electronic Return Originators.

The practitioner web page is located at [www.revenue.wi.gov/taxpro/index.html](http://www.revenue.wi.gov/taxpro/index.html). From there, you can subscribe to the electronic mailing list. If you aren’t already, the department encourages you to start taking advantage of these valuable resources! [✎](#)



## Wisconsin Tax Treatment of Disregarded Entities

This article describes the Wisconsin tax treatment of single-member entities disregarded as separate entities under section 7701 of the Internal Revenue Code.

### Income and Franchise Taxes

Various income and franchise tax statutes were amended and created by 1997 Wisconsin Act 27 to adopt federal provisions that allow qualified subchapter S subsidiaries (QSSSs) and certain single-owner entities to be disregarded as separate entities for Wisconsin income or franchise tax purposes.

A single-owner entity, such as a single-member limited liability company (LLC) that is disregarded as a separate entity under IRC sec. 7701, is disregarded as a separate entity for Wisconsin income and franchise tax purposes, and its owner is subject to the tax on or measured by the entity's income. A partnership that is the owner of an entity disregarded as a separate entity under IRC sec. 7701 must include that entity's information on the owner's Wisconsin partnership return.

A single-owner entity disregarded as a separate entity for Wisconsin income and franchise tax purposes is not required to pay pass-through entity withholding tax on Wisconsin income allocable to a nonresident owner, as would otherwise be required by sec. 71.775, Wis. Stats.

### Sales and Use Taxes

As part of 1997 Wisconsin Act 27, two sales and use tax provisions were amended as described below:

- a. The definition of "person" in sec. 77.51(10), Wis. Stats., was amended to include single-owner entities disregarded as separate entities under ch. 71, Wis. Stats.
- b. Section 77.58(3)(a), Wis. Stats., was amended to provide that the owner of a QSSS or single-owner entity disregarded as a separate entity for Wisconsin income or franchise tax purposes must report taxable sales and purchases by the disregarded entity on the owner's sales and use tax return.

No sales and use tax provisions, other than a. and b. in the previous column, were amended or created to state that a QSSS or single-owner entity that is disregarded as a separate entity for Wisconsin income and franchise tax purposes is also disregarded as a separate entity for Wisconsin sales and use tax purposes. Therefore, for sales and use tax purposes other than reporting and collecting sales and use tax, the entities are separate legal entities.

The owner of an entity disregarded as a separate entity under IRC sec. 7701 is responsible for completing the Wisconsin business tax registration on behalf of the disregarded entity for purposes of reporting and collecting Wisconsin sales and use taxes (where applicable). To register, the owner must file an Application for Business Tax Registration, Form BTR-101.


### Withholding Taxes

Section 71.63(3)(c), Wis. Stats., provides that a single-owner entity disregarded as a separate entity under IRC sec. 7701 is an "employer" if it elects to be treated as an "employer" for federal withholding tax purposes. If the disregarded entity is not an "employer" for federal withholding tax purposes, the disregarded entity's Wisconsin employer withholding taxes are reported and paid under the owner's Wisconsin employer identification number.

For wages paid on or after January 1, 2009, Treas. Reg. §301.7701-2 will no longer provide an election. For wages paid on or after January 1, 2009, a disregarded entity will automatically be considered an "employer" for purposes of federal withholding taxes. Wisconsin will follow this treatment. Thus, for wages paid on or after January 1, 2009, a single-owner entity that is disregarded as a separate entity under IRC sec. 7701 will be an "employer" for Wisconsin withholding tax purposes.

As an "employer," a disregarded entity must obtain a Wisconsin employer identification number. To obtain a Wisconsin employer identification number, the entity must file an Application for Business Tax Registration, Form BTR-101.

### Excise Taxes

If a single-owner entity is disregarded as a separate entity under IRC sec. 7701, the owner of the disregarded entity is the taxpayer for purposes of Wisconsin excise taxes. 

## Wisconsin Tax Treatment of the New Michigan Business Tax and Texas Margin Tax

Effective January 1, 2008, the Michigan single business tax is replaced by the Michigan business tax. The Michigan business tax is imposed on persons or unitary business groups doing business or having business activity in the state of Michigan. The tax has two components: (1) a 4.95% tax on business income, and (2) a 0.8% modified gross receipts tax.

Also effective January 1, 2008, the Texas franchise tax is significantly revised. The revised franchise tax is also called the “margin tax.” The tax base for the Texas margin tax is the taxable entity’s margin. “Margin” equals the lesser of three calculations: (1) total revenue minus cost of goods sold, (2) total revenue minus compensation paid, or (3) total revenue times 70 percent.

### May a corporation deduct the Michigan business tax or the Texas margin tax?

A corporation may *not* deduct any component of either the Michigan business tax or the Texas margin tax for Wisconsin franchise or income tax purposes.

Corporations compute their Wisconsin net income under the Internal Revenue Code (IRC) as defined for Wisconsin purposes, with certain modifications. One of the modifications is sec. 71.26(3)(g), Wis. Stats. (2005-06), which provides that IRC sec. 164(a) is modified so that state taxes and taxes of the District of Columbia that are value-added taxes, single business taxes, or taxes on or measured by all or a portion of net income, gross

income, gross receipts, or capital stock are not deductible. Similar statutory language applies to tax-option (S) corporations.

### Do the Michigan business tax and the Texas margin tax qualify for the credit for net income tax paid to another state?

Both the Michigan business tax and the Texas margin tax qualify for the credit for net income tax paid to another state, if the other requirements of the credit provided in sec. 71.07(7), Wis. Stats. (2005-06), are met. For the Michigan business tax, the business income component and the modified gross receipts tax component both qualify for the credit. For the Texas margin tax, the credit applies regardless of which of the three computations is used to compute the “margin.”

Section 71.07(7), Wis. Stats. (2005-06), provides that if a resident individual, estate, or trust pays a net income tax to another state, that resident individual, estate or trust may credit the net tax paid to that other state against the net income tax otherwise payable to Wisconsin on income of the same year. The credit may not be allowed unless the income taxed by the other state is also considered income for Wisconsin tax purposes.

A Wisconsin resident shareholder, partner, or member may also claim a credit for his or her pro rata share of the Michigan business tax or the Texas margin tax paid by a tax-option (S) corporation, partnership, or limited liability company treated as a partnership, provided the income taxed by Michigan or Texas is also considered income for Wisconsin. [§](#)

## 2008 Stimulus Payments

*Note: This article is provided courtesy of the Milwaukee office of the Internal Revenue Service.*

Starting in May, the Treasury will begin sending economic stimulus payments to more than 130 million people. Most payments will go out through the late spring and summer. Payments will continue through December 31st for returns filed after April 15th.

Most Americans who qualify for the stimulus payment will not have to do anything other than file their 2007 tax returns to receive their payment this year.

Stimulus payments will be direct deposited for taxpayers selecting that option when filing their 2007 tax returns. Taxpayers who have already filed with direct deposit

won’t need to do anything else to receive the payment. For those who haven’t filed yet for 2007, we remind them that direct deposit is the fastest way to get both regular refunds and stimulus payments.

The Internal Revenue Service (IRS) will use the 2007 tax return to determine eligibility and calculate the amount of the payment. In most cases, the payment will equal the amount of tax liability on the return with a maximum amount of \$600 for individuals (\$1,200 for people who file a joint return) and a minimum of \$300 for individuals (\$600 for people who file a joint return).

Even people who have little or no tax liability may qualify for the minimum payment if their tax return has \$3,000 or more in qualifying income. Qualifying income includes:

- earned income such as wages and net self-employment incomes,
- Social Security or certain Railroad Retirement benefits, and
- veterans' disability compensation, pension, or survivors' benefits received from the Department of Veterans Affairs in 2007.

Supplemental Security Income (SSI) does not count as qualifying income. Stimulus payments will be subject to offset against outstanding tax and non-tax liabilities in the same fashion as regular refunds.

Many people who are low income or only receive the benefits listed above who do not normally have a filing requirement must file a 2007 return in order to notify the IRS of their qualifying income. The IRS wants these people who turn in a tax return to qualify for the stimulus payment. They will not get a tax bill and will not owe money because of the payment. Everyone listed on the return must have a valid social security number.

Parents and anyone else eligible for a stimulus payment will also receive an additional \$300 for each qualifying child (subject to income phase-outs). To qualify, a child must be eligible under the rules for the Child Tax Credit and have a valid social security number. Children and

all taxpayers must have social security numbers to qualify for the payment.

All 3 VA medical centers in Wisconsin offer free tax assistance to veterans and their families through the Volunteer Income Tax Assistance (VITA) program.

For the Tomah VA Medical Center call: (608) 372-1242

For the Middleton VA Medical Center in Madison call: (608) 280-7030

For the CJ Zablocki VA Medical Center in Milwaukee call: (414) 384-2000, x42340

Or you can locate your nearest VITA site by calling 1-800-906-9887. The Wisconsin Department of Revenue sponsors sites that provide free tax preparation, find their sites at [www.revenue.wi.gov](http://www.revenue.wi.gov). The Tax Counseling for the Elderly (TCE) Program by AARP Tax-Aide provides free tax help which focuses on people age 60 and older. You can locate the nearest AARP Tax-Aide site by calling 1-888-227-7669 or visiting the AARP website.

For additional information on the stimulus payments, your best source is the IRS.gov website at [www.irs.gov](http://www.irs.gov).




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## Progress Continues on an Integrated Tax System

The Department of Revenue plans to continue the process of integrating its tax computer systems during 2008. The Wisconsin Income Processing and Audit System (WINPAS) was first put into production on December 31, 2005 for corporation income/franchise tax. It was expanded in 2006 to include premier resort area tax, local exposition center tax, state rental vehicle tax, individual income tax, and fiduciary income tax. In December 2007, sales and use tax, business tax registration, and occasional consumer use tax were rolled into WINPAS. In September 2008, WINPAS will be expanded to include withholding tax, pass-through withholding tax, partnership returns, and composite tax returns.

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

- Customers will be assigned 15-digit Wisconsin tax account numbers, which to protect privacy will be used in place of social security numbers, federal employer identification numbers, or Wisconsin employer identification numbers on bills, notices, letters, and refund checks being sent out from WINPAS. WINPAS will continue to recognize the old identification numbers, as they will be linked to the newly assigned Wisconsin tax account numbers.
- The look and content of permits, bills, notices, and letters will change. Notices will be identified by a letter identification number, which will allow a customer service person to immediately access the text of a notice that a customer has received.
- Updated addresses for customers who have moved can be entered into the system more promptly, reducing the amount of undeliverable mail.
- Customers who have overdue tax liabilities for tax programs managed by WINPAS and other tax programs will receive separate monthly statements for WINPAS liabilities and the other tax programs.





## 2008 Estimated Income Tax Requirements for Individuals, Estates, and Trusts

Individuals and fiduciaries that expect to owe \$200 or more of income tax (including alternative minimum tax and recycling surcharge) with their 2008 Wisconsin income tax return are required to pay 2008 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. An estimated tax payment may be made either with a personalized 2008 Form 1-ES, *Wisconsin Estimated Income Tax Voucher*, or by Electronic Funds Transfer (EFT). (**Note:** Only individuals and fiduciaries making estimated **income** tax payments may file a Form 1-ES.) Personalized estimated tax vouchers are provided by software packages and tax preparers, or may be downloaded from the department's website or requested from any department office.

Individual and fiduciary income tax estimated tax payments are required to be made by EFT when the required estimated tax payments for the prior taxable year were \$40,000 or more. Even if it is not required, individuals and fiduciaries are encouraged to make their estimated payments using EFT. Making estimated tax payments by EFT eliminates the need to complete Form 1-ES. Also, EFT is quick, easy, and provides confirmation that a payment was received. For more information about EFT payments, call (608) 264-9918; write to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902; or visit the department's website, [www.revenue.wi.gov](http://www.revenue.wi.gov).

For calendar year taxpayers, the first estimated income tax payment is due on April 15, 2008. Installment payments are also due on June 16, 2008 (June 15 is a Sunday), September 15, 2008, and January 16, 2009 (January 15 is a legal holiday). For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year. (**Note:** If any due date falls on a Saturday, Sunday, or legal holiday, use the next business day.)

Estates and grantor trusts that are funded on account of a decedent's death are only required to make estimated tax payments for taxable years that end two or more years after the decedent's death. For example, an individual died on March 28, 2007. A grantor trust that was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 28, 2009.

A trust that is subject to tax on unrelated business income is generally required to pay 2008 Wisconsin estimated income tax if it expects to owe \$500 or more (including recycling surcharge) on a 2008 Wisconsin franchise or income tax return (Form 4T). An estimated tax payment may be made either with a personalized 2008 Form 4-ES, *Wisconsin Corporation Estimated Tax Voucher*, or by EFT. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If estimated tax payments are not made when required or any installment is underpaid, interest may be assessed. [☞](#)

## Updated Publications

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

### Income and Franchise Taxes

- 102 Wisconsin Treatment of Tax-Option (S) Corporations and Their Shareholders (2/08)
- 119 Limited Liability Companies (LLCs) (2/08)

### Sales and Use Taxes

- 216 Filing Claims for Refund of Sales or Use Tax (2/08)

### Other Taxes and Credits

- 123 Business Tax Credits for 2007 (2/08)
- 400 Wisconsin's Recycling Surcharge (1/08)

## Other Topics

- 401 Extensions of Time to File (2/08)
- 501 Field Audit of Wisconsin Tax Returns (2/08)
- 502 Directory of Wisconsin Tax Publications (3/08)
- 506 Taxpayers' Appeal Rights of Field Audit Adjustments (2/08)
- 509 Filing Wage Statements and Information Returns on Magnetic Media or By Electronic Transmission (1/08)
- 700 Speakers Bureau (2/08)

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. [☞](#)



## 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 April 15, 2008, and at each step where action occurred during the period from January 1, 2008, through April 15, 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 20 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

8.63 Liquor wholesaler warehouse facilities – A

### Public Hearing Held (January 2, 2008)

8.63 Liquor wholesaler warehouse facilities – A

**Adopted but Not Yet Effective** (anticipated effective date June 1, 2008)

8.63 Liquor wholesaler warehouse facilities – A

### Adopted and in Effect (April 1, 2008)

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

Additional information concerning the rule that became effective April 1, 2008 may be found in the article titled "Recently Revised Rule Summarized" below. [🔗](#)

## Recently Revised Rule Summarized

Summarized below is information regarding revised Tax 2.505, relating to the apportionment of net business income of interstate professional sports clubs. The effective date of the revisions is April 1, 2008.

In addition to a summary of the changes to the rule, the text of the revisions to the rule is reproduced. In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

To order up-to-date administrative rules of the department, you can use the order blank that appears on page 20 of this Bulletin to obtain the Tax section of the Wisconsin Administrative Code.

**Tax 2.505 Apportionment of apportionable income of interstate professional sports clubs.** This rule order prescribes the method to be used for apportioning the apportionable income of interstate professional sports clubs. It provides that the phase-in of the single sales factor apportionment formula will apply to professional sports clubs.

The text of the revisions to Tax 2.505 is as follows:

SECTION 1. Tax 2.505 (title) and (intro.), (1), (2), and (3) (intro.) and (d) are amended to read:

**Tax 2.505 Apportionment of ~~net business~~ apportionable income of interstate professional sports clubs.** The apportionable income of professional sports clubs engaged in ~~income producing activities~~ business both inside and outside Wisconsin during the year shall be apportioned to Wisconsin using ~~an the~~ the apportionment fraction ~~composed of a property factor representing 25% of the fraction, a payroll factor representing 25% of the fraction and a sales factor representing 50% of the fraction determined described in s. 71.25 (6), Stats., and the apportionment formula computation described in s. 71.25 (6m), Stats., if applicable.~~ The property, payroll, and sales factors described in s. 71.25 (6) and (6m), Stats., shall be determined as follows:

(1) **PROPERTY FACTOR.** The property factor is a fraction as defined in s. 71.25 (7), Stats. Owned or rented real and tangible personal property shall be included in the factor as provided in s. 71.25 (7), Stats., and s. Tax 2.39 ~~(3)~~ (4). Minor equipment, such as uniforms, and playing and practice equipment, need not be included in the factor.

(2) **PAYROLL FACTOR.** The payroll factor is a fraction as defined in s. 71.25 (8), Stats. Compensation shall be reported as provided in s. 71.25 (8), Stats., and s. Tax 2.39 (4) ~~(5)~~. Bonuses and payments shall be included in the payroll factor on a prorated basis in accordance with Internal Revenue Service Ruling 71-137, Cum. Bull., 1971-1. Compensation paid for optioned players shall be included in the factor only if paid directly to the player by the taxpayer.

(3) **SALES FACTOR.** The sales factor is a fraction as defined in s. 71.25 (9), Stats. Sales shall be included in the factor in accordance with s. 71.25 (9), Stats., s. Tax 2.39 ~~(5)~~ (6) and the following rules:

(d) *Player contracts, franchises, etc. and similar sources.* Income from player contract transactions, franchise fees, and other similar sources shall be excluded from the numerator and the denominator of the sales fraction.

**Note:** The provisions of s. Tax 2.505 first apply for taxable years beginning on January 1, 2005. [☞](#)

## Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available in March. The *Sales and Use Tax Report* contains summaries of recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the March 2008 *Sales and Use Tax Report* (1-08) include:

- Top 10 Reasons to Visit the Department of Revenue's Web Site;

- Discount/Membership Cards;
- Digital-to-Analog Converter Box Coupon Program; and
- Questions and Answers (reimbursements from flexible spending accounts, corn used in a corn burning furnace).

The Report is available on the Department of Revenue's website at [www.revenue.wi.gov/isc/sales/08-1.pdf](http://www.revenue.wi.gov/isc/sales/08-1.pdf). [☞](#)



## Enforcement Report

### Dodgeville Couple Charged With Tax Crimes

Bryan D. Hoel, 38, of Dodgeville was charged in January 2008 by the Dane County District Attorney's office with five felony counts of filing false Wisconsin income tax returns and one count of failure to file an income tax return. In addition, Hoel's wife Amy, 42, was charged with six counts of filing false Wisconsin income tax returns and two counts of failure to file income tax returns. The criminal charges followed an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

According to the criminal complaints, in the years 1997 through 2005 Bryan and Amy Hoel received income of over \$426,000. On their income tax returns for those years, they reported total income of \$3,574. In five of those years, they reported zero income.

The complaints also indicate Bryan and Amy Hoel filed trust returns in their own names for 1997, 1998, and 1999; and that Amy Hoel filed trust returns for 2000 and 2001. Through the use of deductions, they reduced their trust income to zero or a negative amount. When the Department of Revenue requested each of them to

provide copies of their trust instruments and documentation of their trust deductions, no documentation was provided.

If convicted on all counts, Bryan Hoel faces a maximum of 30 years, nine months in prison and up to \$60,000 in fines. Amy Hoel faces a maximum of 37 years, six months in prison and up to \$80,000 in fines.

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

### Former Tax Preparer Charged With Tax Fraud

Criminal charges were filed in January 2008 in Milwaukee County Circuit Court against Tineka M. Brown, 31, of Milwaukee for filing fraudulent state income tax returns while employed at Jackson Hewitt Tax Services. The charges were brought by the Milwaukee County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Fraud Unit.

According to the complaint, Brown falsified tax returns of at least six individuals between 2004 and 2005 and obtained, or attempted to obtain, \$31,909 in state and federal earned income credit refunds for these individuals.

In one instance, Brown electronically submitted a phony wage statement for an individual, falsely stating that the person had worked for V&J Employment Service, Inc., and had annual earnings of \$11,378. This resulted in a false combined state and federal earned income credit refund of \$4,902. On the same return, amounts for state and federal withholding taxes were falsified in an attempt to get an additional \$3,488 income tax refund.

According to the complaint, Brown told another customer that she had a friend who was not working and who had children she was not claiming on a tax return. Brown told the customer he could claim the children on his return and he would receive a larger refund. The complaint alleges that Brown told the customer he had to pay her \$1,000 for each child used and that the mother of the children would be given the money. The customer stated that Brown also charged him an additional \$200 to prepare the return.

If convicted, Brown could face up to 12 years in prison, \$20,000 in fines, or both.

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### **Waukesha Couple Charged With Tax Evasion and Welfare Fraud**

Criminal charges were filed in January 2008 in separate complaints against a Waukesha couple, Elfatih Ibrahim, 43, and Soha Shanaa, 38, for tax evasion and welfare fraud.

In a Waukesha County complaint, Soha Shanaa was charged with filing fraudulent Wisconsin income tax returns for 2004 and 2005 and for Public Assistance fraud from January 2003 through April 2006.

In Dane County her husband, Elfatih Ibrahim, was charged with filing a fraudulent Wisconsin income tax return for the 2005 year. He was also charged with theft of state sales tax monies collected between 2002 and 2006 from their Midtown Shell gas station located in Wauwatosa.

According to the complaint, Soha Shanaa applied for medical assistance benefits for her family in February 2002. In July 2002, the couple opened the gas station. Between 2002 and 2005 the couple reported net income

of between \$15,348 and \$37,197 per year from the operation of the gas station. Based on the couple's earnings they received \$15,595 in medical assistance benefits from Waukesha County between January 2003 and April 2006.

An investigation by the Wisconsin Department of Revenue revealed that the couple had substantially underreported their income. A Department of Revenue calculation showed the couple's actual taxable income as \$87,080 in 2004 and \$110,502 in 2005. The state income tax evaded by the pair for the two years is \$10,802.

According to the complaint, the Waukesha County Public Assistance Fraud Division determined that the couple was not entitled to any of the \$15,595 in benefits paid between 2003 and 2006.

The investigation further disclosed that Elfatih Ibrahim had falsified all of the monthly sales tax returns of the business from July 2002 through April 2006, and that he misappropriated \$138,753 in state sales taxes collected from the sales of cigarettes and groceries at the gas station.

According to the criminal complaint, the couple purchased a Lexus automobile in 2004 for \$46,589; at the same time they were making accelerated monthly payments of over \$4,000 on their Waukesha home. In the loan application for the Lexus, the couple claimed their annual income was \$107,000. In another financial document related to their home, the couple claimed their income was \$102,000 per year.

The complaint also noted that the couple made cash deposits of \$73,856 in 2004 and \$91,900 in 2005 into a personal bank account. The couple used money from their business account to pay for personal expenses including payments for credit cards, home utilities, groceries, loan repayments and other personal expenses that totaled \$72,118 in 2004 and \$60,231 in 2005, according to the complaint.

If convicted on all charges Elfatih Ibrahim could face up to 26 years in prison and \$60,000 in fines, while Soha Shanaa could face up to 22 years in prison and \$45,000 in fines.

Criminal charges were filed by the Wisconsin Attorney General's Office and the Waukesha County District Attorney's Office following an investigation by the Criminal Investigation Section of the Wisconsin Department of Revenue.



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**Green Bay Businessman Guilty of Tax Crimes**

Michael P. Dufresne, 52, of Green Bay pleaded no contest in February 2008 in Brown County Circuit Court to four felony counts of theft in a business setting for failing to remit sales taxes collected while he operated Pier 64 restaurant in Allouez.

Dufresne was originally charged in April 2007 with five felony counts of theft in a business setting and two misdemeanor counts of failure to file income tax returns, but was allowed to plead to a reduced charge as a result of a plea bargain.

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

According to the complaint, Dufresne operated Pier 64 from March 2003 to November 2004. The complaint alleges that Dufresne failed to file state sales tax returns or remit any payments to the Department of Revenue from March 2003 through June 2004. On December 2, 2004, Dufresne filed four state sales tax returns for July 2004 through October 2004 but did not remit any payments.

The complaint alleges that during this time Dufresne collected but failed to remit \$38,000 in sales tax. The complaint further alleges that Dufresne failed to file state income tax returns in 2003 and 2004 and that his gross income was \$163,400 in 2003 and \$414,108 in 2004.

Dufresne is scheduled to be sentenced in April 2008 and could face up to 6 months in jail, \$40,000 in fines, or both.

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**Milwaukee Man Sentenced for Filing Fraudulent Homestead Claim**

Terry Potts, age 38, of Milwaukee appeared in Milwaukee County Circuit Court in February 2008 and pleaded no contest to the charge of filing a fraudulent Wisconsin homestead credit claim for 2003.

According to the criminal complaint, Potts also prepared 52 false Wisconsin homestead credit claims for others. Potts charged fees of up to \$300 if the individuals received a refund check. Claims contained inflated rent amounts, false rent certificates, and false claims of Wisconsin residency. The scheme was caught by the

Homestead Credit Unit of the Wisconsin Department of Revenue in Madison.

Judge William Brash III found Potts guilty and sentenced him to one year in the House of Correction, stayed. Potts was placed on 30 months probation and was ordered to pay restitution of \$3,328 during the period of probation.

The prosecution of Potts by the Milwaukee County District Attorney's Office followed an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

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

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**Roofer Receives Jail for Not Filing Taxes**

Robert R. Raymond, 53, of Shorewood, a longtime tax protestor, was sentenced to jail in February 2008 for failure to file state income tax returns. Milwaukee County Circuit Court Judge Dominic Amato sentenced Raymond to nine months in the county jail, but stayed eight months of the sentence until April of 2009 giving Raymond a chance to file tax returns going back as far as 1995.

Raymond turned over his 2005, 2006, and 2007 tax returns to the Department of Revenue and promised to cooperate in any audits and in filing the back years' tax returns. Raymond stated that this was his opportunity to make peace with the state and federal government.

Raymond was originally charged in April 2007 with three misdemeanor counts of failure to file Wisconsin income tax returns for the years 2003, 2004, and 2005. Two of the charges were later dropped as part of a plea bargain.

Raymond had operated a self-employed roofing business since 1980 under the name of Raymond Contractors, first in Grafton and then more recently out of Shorewood.

According to the criminal complaint, Raymond had refused to file income tax returns since the mid 1990's and had argued that he had no Wisconsin income. However, an investigation disclosed that between 2001 and 2004 Raymond used an account at JPMorgan Chase Bank 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 had opened in July 1998.

A Department of Revenue investigation revealed that Raymond made deposits of cash and customer checks into these accounts totaling \$181,523 in 2003, \$159,254 in 2004, and \$180,476 in 2005. The checks were either made out to Raymond or to his business.

According to the complaint, Raymond also owes the Department of Revenue \$49,569 in taxes and interest for the years 1995 through 1999. This amount is based on estimates made by the Department of Revenue for tax returns Raymond refused to file.

In the mid 1990's, Raymond and another man, Robert Bernhoft, marketed an abusive tax shelter called De-Taxing America that contained instructions on how to dodge federal income taxes. Their program was shut down after a 1997 lawsuit by the U.S. Department of Justice.

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### **Chippewa Falls Businessman Convicted of Tax Fraud**

After a three day trial, an Eau Claire County jury deliberated for two hours to find Duane J. Kolve, 41, of Chippewa Falls guilty of three counts of tax crimes. The first count alleged that Kolve failed to timely file a 2002 Wisconsin income tax return. Evidence proved that Kolve received \$222,739 from his corporation, Public Awareness, Inc., in 2002. Kolve did not file the 2002 return until 2006, three years after the deadline for filing.

The second count was for filing a fraudulent 2003 Wisconsin income tax return. According to trial testimony, Kolve reported gross income of \$70,360 on his 2003 Wisconsin tax return. Evidence at trial showed

Kolve's actual income was \$256,544. There was testimony that the Wisconsin income tax evaded by Kolve for 2003 was \$12,513.

The third count was for filing a fraudulent 2002 Wisconsin income tax return in 2006. Trial testimony established Kolve's income for 2002 at \$222,739 as opposed to the \$86,750 Kolve reported on the return. The Wisconsin income tax evaded for 2002 was \$9,082.

The defense argued that Kolve was an unsophisticated businessman who relied on his tax preparer to accurately prepare and report his income. They also alleged a vendetta by the Wisconsin Department of Justice, which assisted in the prosecution, and the Department of Agriculture, Trade, and Consumer Protection, which conducted an investigation that resulted in Kolve being charged with 13 counts of racketeering. Those charges allege that Kolve bilked millions of dollars from vulnerable people for questionable charities.

In his closing, Eau Claire County District Attorney Rich White argued that "It is always about the money." He pointed to evidence that showed Mr. Kolve spent so much money that he had to know his income was much higher than reported. White also reminded the jury of evidence showing that Kolve hid the diversion of corporate funds so that his tax preparer would not know that the expenditures Kolve made were personal rather than business expenditures.

The tax charges are the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section. Kolve faces 12 years and 9 months in prison as well as \$30,000 in fines.

In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the tax liability. Assessment and collection of the tax, penalty, and interest follows a criminal conviction. [Ⓜ](#)



## 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

Apportionment – apportionable income  
*Louis Dreyfus Petroleum Products Corp.*..... 15

### Sales and Use Taxes

Exemption for Industrial Waste Treatment Facilities  
*City of Green Bay.*..... 16

## CORPORATION FRANCHISE AND INCOME TAXES

 **Apportionment – apportionable income.**  
*Louis Dreyfus Petroleum Products Corp. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, January 2, 2008). The issues in this case are whether the following income of Louis Dreyfus Petroleum Products Corp. (LDPPC) is apportionable to Wisconsin:

1. Gain from the sale of a partnership interest.
2. Interest derived from a loan to its parent company.

LDPPC, a Delaware corporation, was a 50% general partner in Pilot Travel Ventures (PTV), a Delaware general partnership, together with Pilot Corporation (Pilot), a Tennessee corporation that was the other 50% general partner. LDPPC sold its interest in PTV to Pilot, resulting in a capital gain. PTV's assets included ownership or leasehold interests in travel centers, one of which was located in Wisconsin.

In addition to the capital gain, LDPPC recognized interest from a loan to its parent company, Louis Dreyfus Energy Corp. The loan was made with proceeds from the sale of the partnership interest.

The Commission determined the capital gain income was apportionable to Wisconsin and the interest income was not.

With regard to the capital gain income, the Commission first looked to applicable Wisconsin law. The Commission concluded that, under sec. 178.21(2), Wis. Stats., LDPPC was co-owner with Pilot of PTV's property in Wisconsin. Therefore, under sec. 71.25(5)(a)5., Wis. Stats., income from the sale of that property in Wisconsin, which was used in the production of business income, was apportionable to Wisconsin.

The Commission then looked to whether the apportionment was constitutionally permissible under the unitary business and operational function tests established in the Supreme Court decision *Allied Signal v. Director, Div. of Tax.*, 504 U.S. 768 (1992). With regard to whether LDPPC was a unitary business with PTV, the Commission looked to the following three central factors in *Allied Signal*:

1. Whether LDPPC and PTV were functionally integrated.
2. Whether LDPPC and PTV had centralized management.
3. Whether there were economies of scale between LDPPC and PTV.

The Commission concluded that LDPPC and PTV were a unitary business, and LDPPC's investment in PTV served an operational rather than an investment function. Therefore, the apportionment was constitutionally permissible.

With regard to the interest income, the Commission concluded that after LDPPC sold its interest in PTV it no longer had a unitary or operational connection with PTV, and also ceased to have any contacts with Wisconsin. Therefore, when LDPPC loaned a portion of the proceeds from the sale to its parent company, its interest income from that loan was not apportionable to Wisconsin.

The taxpayer has appealed this decision to the Circuit Court. The department has not appealed this decision. [!\[\]\(c15650232aa6660c9deb34f3b82dcb72\_img.jpg\)](#)

## SALES AND USE TAXES

**Exemption for Industrial Waste Treatment Facilities.** *City of Green Bay vs. Wisconsin Department of Revenue and Green Bay Packaging, Inc.* (Wisconsin Tax Appeals Commission, December 21, 2007).

The issue in this case is whether the total amount of the real estate and improvements at Green Bay Packaging, Inc.'s (GBP) Green Bay Mill is exempt from property taxation under sec. 70.11(21), Wis. Stats.

NOTE: Although this is a property tax case, the property tax treatment directly affects the Wisconsin sales and use tax treatment of certain transactions. Section 77.54(26), Wis. Stats., provides an exemption from Wisconsin sales and use tax for tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt from property tax under sec. 70.11(21), Wis. Stats. Please see pages 33 – 34 of *Wisconsin Tax Bulletin 154* (December 2007) for an explanation of tax law changes made in 2007 Wisconsin Act 19. This article can be accessed from the Department of Revenue's website at [www.revenue.wi.gov/ise/wtb/154law.pdf](http://www.revenue.wi.gov/ise/wtb/154law.pdf).

On June 20, 2005, the Department of Revenue (DOR) issued a Real Estate Assessment Notice to GBP, assessing GBP's Green Bay Mill. In August of 2005, GBP timely filed a form of objection to the DOR's 2005 real estate assessment, asserting that the Green Bay Mill qualified to be exempt under sec. 70.11(21), Wis. Stats., as property used in recycling operations. On March 28, 2006, the State Board of Assessors issued a Notice of Determination revising the full value assessment to zero dollars. The City of Green Bay challenges DOR's determination that this property is totally exempt from taxation under sec. 70.11(21), Wis. Stats. Most of the equipment employed by GBP at the Green Bay Mill is already entitled to an exemption under sec. 70.11(27), Wis. Stats., as manufacturing machinery and equipment.

GBP's Green Bay Mill manufactures linerboard and corrugating medium (together, the components of containerboard) with 100% recycled fiber. The Green Bay Mill is a closed process water (also referred to as a "closed-loop"), non-bleaching, and 100% recycled containerboard mill, and is one of the first 100% closed process water system paper mills in the world.

The Green Bay Mill operations are divided into six separate areas, consisting of the Main Office and Areas A, B, C, D, and E. The operations are summarized below:

**Main Office** - Recycled fiber is purchased by the Fiber Procurement Manager; environmental evaluations and compliance documents are maintained by the Environmental Manager; orders for recycled product are received, processed and planned; and the Customer Service Department and Quality Department review concerns with recycled product or process.

**Area A (Recycled/Waste Fiber Receiving Area)** - This area is used for bale storage, bale unloading, and to house the "Phoenix" press (machine used to dewater rejected fiber) and the "rejects screw" (an auger-type device that further dewateres the fiber and forms a pile of reject fiber in the rejects loading area). GBP pays the recycled/waste fiber suppliers at predetermined rates based on the weight and quality standards of the fiber they supply.

**Area B (Recycled Fiber Cleaning, Screening, and Preparation Area)** - The equipment in Area B is used to convert paper bales into fiber slurry and remove contaminants. Area B includes chemical storage, the clarifier, refiners, the lab, which monitors and meets environmental permit conditions and evaluates incoming fiber sources, and the holding area for fiber slurry. Once the fiber slurry leaves Area B, the process of cleaning and screening the recycled pulp slurry and contaminants is essentially completed.

**Area C (Maintenance and Maintenance Offices)** - The maintenance shop, maintenance offices, and sheet metal shop are the areas used to store tools and other supplies used to repair all of the fiber processing and other equipment housed throughout the Green Bay Mill.

**Area D (Papermachine, Winder, and Shipping)** - Area D includes the papermachine, the reel, and the winder. The papermachine takes the fiber slurry and forms it into a useable paper sheet. The sheet moves from the calender (a part of the papermachine) and builds onto a parent reel. When the calender reaches the full size, a new parent reel is started. The completed parent reel is transported to the winders. When the parent reel reaches the winder, slitter blades are set to the predesignated roll width size and cut the (large) parent reel of recycled containerboard into smaller desired roll sizes.



The vast majority of the Green Bay Mill's process water is recycled during the operation of the papermachine. The only process water that is not recycled back to the closed-loop process water system is the water that evaporates in the dryer section.

Area D also includes the shipping area, which assigns a unique number to each roll for tracking purposes.

**Area E (Boiler Room and Baghouse)** - The boiler is a standard spreader stoker coal-fired boiler used to generate the steam for the dryer section of the papermachine, which dries the recycled containerboard to the final moisture levels as described above. The boiler room and baghouse contain "multicyclones," which use centrifugal force to remove large particles from the combustion emissions prior to entering the baghouse. After passing through the multicyclones the combustion emissions are routed through the baghouse. The baghouse removes 99% of the particulate from the gaseous emissions generated by the coal combustion process. The baghouse is necessary to meet environmental air standards.

**Closed-Loop Process Water Storage Facilities** - The closed-loop process water recycling system recovers process waters through various stages of operations at the Green Bay Mill. The vast majority of process water recovery occurs in Area D, as the fiber slurry is reduced from 99% water content down to 7% water content.

The City of Green Bay urged the Commission to conclude that, because the legislature did not explicitly intend to expand the exemption, *Newark Group, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Circuit Court, January 31, 2005) (CCH 400-809), was wrongly decided.

*In Newark Group, the Circuit Court affirmed the Wisconsin Tax Appeals Commission's decision that the recycling operations of Newark's Milwaukee Paperboard Division, and its real and personal property used in those operations, from the receipt of old corrugated containers and waste paper to its manufacture of paperboard, was a "waste treatment facility" under sec. 70.11(21), Wis. Stats. The treatment of waste was "for the purpose of abating or eliminating pollution of surface waters, the air or waters of the state..." The Commission stated that DOR's administrative rule defined "facility" more narrowly than the statute. Besides "tangible personal property . . . that is constructed . . .", the Commission held that the real property upon which the facility stands and the supporting buildings and real estate improvements (for example, cement and*


*asphalt storage areas and cyclone fencing) were part of the "facility."*

*The Commission also held that acquiring, removing contaminants from, and baling waste paper and old corrugated containers away from the Milwaukee Paperboard waste treatment facility is not part of the facility's operation. Therefore, the operations of Newark's Recycled Fibers' Division of collecting, compacting, baling, and removing contaminants from old corrugated containers and waste paper were not found to be part of a "waste treatment facility." The real and personal property used in these operations were not exempt from property tax under sec. 70.11(21), Wis. Stats. Property used in sorting, compacting, and baling the waste paper was taxable, because those activities did not alter the nature or composition of the paper. The only alteration was that the volume of paper was reduced.*

In *Newark Group*, the Commission interpreted the statute at issue more broadly than DOR had previously interpreted it. Therefore, in the current case the City of Green Bay requested that the Commission limit its decision in *Newark Group* to its facts and parties and not follow that decision in this case. The City of Green Bay contended that the Commission is not bound by its prior decisions and has reversed course in the past after determining that a prior decision had been erroneous.

The Commission determined that Areas A, B, D, E and all closed-loop process water recycling system storage facilities at the Green Bay Mill are exempt under sec. 70.11(21)(a), Wis. Stats., but the remaining portions of the property are not exempt under that statute.

The Commission also reaffirmed the central holdings of the Commission in *Newark Group*, but limited that decision to allow the exemption from property taxation under sec. 70.11(21)(a), Wis. Stats., of a waste treatment facility that is located on property that is also used for other types or purposes or facilities. The Commission also stated that the legislature's recent amendment of sec. 70.11(21)(a), Wis. Stats., to limit the reach of *Newark Group* in future cases does indicate that the decision in *Newark Group* may have been overbroad.

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



## 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 release is included:

### Withholding Tax

1. What Constitutes “Public Speaking” for Nonresident Entertainers ..... 18

## WITHHOLDING TAX

### 1 What Constitutes “Public Speaking” for Nonresident Entertainers

**Statutes:** Sections 71.01(2) and 71.80(15), Wis. Stats. (2005-06)

**Background:** This tax release is intended to clarify the circumstances under which “public speaking services” are subject to the nonresident entertainer prepayment provisions under sec. 71.80(15), Wis. Stats. (2005-06).

Section 71.80(15), Wis. Stats. (2005-06), requires nonresident “entertainers” to file a surety bond or cash deposit if the total contract price for a performance in Wisconsin exceeds \$3,200. This bond or deposit must be filed to guarantee payment of Wisconsin taxes and any penalties and interest.

See Publication 508, “Wisconsin Tax Requirements Relating to Nonresident Entertainers,” for additional information and guidelines concerning the prepayment provisions.

**Public speaking services** are one of the activities specifically included in the definition of “entertainer” under sec. 71.01(2), Wis. Stats. (2005-06). A “nonresident entertainer” is a nonresident person who, for consideration, furnishes amusement, entertainment, or *public speaking services*, or performs in one or more sporting events in the state of Wisconsin. A nonresident includes a foreign corporation, partnership, or other entity not regularly engaged in business in Wisconsin that derives income from any of these activities or from these services performed by a nonresident person.

For purposes of administering sec. 71.01(2), Wis. Stats. (2005-06), “public speaking services” are defined as “the act or process of making speeches, presentations, and/or other verbal communications to an audience.” Factors such as the topic of the engagement or the make-up of the audience are not relevant. Nor does the event need to be open to the public. A nonresident who is paid for a speech or presentation given to an audience located in Wisconsin is considered to be performing *public speaking services* and is subject to the nonresident entertainer requirements for Wisconsin tax purposes under sec. 71.80(15), Wis. Stats. (2005-06), provided the nonresident entertainer was paid more than \$3,200.

**Note:** If the amount received for public speaking is \$3,200 or less or if the speaker is a Wisconsin resident, the prepayment provisions under sec. 71.80(15), Wis. Stats. (2005-06), do not apply. However, the income from the speaking services is still taxable for Wisconsin income tax purposes.

**Facts and Question 1:** A Wisconsin company pays a nonresident consultant \$5,000 to conduct a work-related training seminar for its employees only. Is this public speaking?

**Answer 1:** Yes. The seminar constitutes public speaking. It does not matter that the training seminar is for employees only. The important factor is that the seminar is conducted in Wisconsin, to an audience, by a nonresident.

**Facts and Question 2:** A Wisconsin university pays a nonresident speaker an honorarium to give a commencement address. The event is open to the public but is attended primarily by graduates and their families. The honorarium is over \$3,200. Is this public speaking?

**Answer 2:** Yes. The commencement address constitutes public speaking. It does not matter that the primary attendees are the graduates and their families.

**Facts and Question 3:** A private university pays a nonresident person \$5,000, in two equal installments, to present academic class lectures to tuition-paying students. Is this public speaking?

**Answer 3:** Yes. This constitutes public speaking. It does not matter that the class lectures were not open to the public.

**Note:** At the time the \$3,200 threshold is met, the amount of surety bond or cash deposit, or the amount to be withheld by the employer, is based on the accumulative total contract price with that employer for the year, not just the amount in excess of \$3,200. For additional information and guidelines concerning the prepayment provisions, refer to Publication 508.