

# Wisconsin TAX BULLETIN

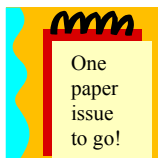
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## New Tax Laws

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



## Don't Miss an Issue...

With only one issue to go before the *Wisconsin Tax Bulletin* (WTB) goes paperless, if you haven't already done so now would be a good time to sign up for the Department of Revenue's tax practitioner electronic mailing list. In addition to other information of specific concern to tax professionals, you will receive an e-mail notification when a new issue of the WTB is available on the department's website. Signing up is as easy as going to [www.revenue.wi.gov/html/lists.html](http://www.revenue.wi.gov/html/lists.html), checking the "Tax Practitioner" box, entering your e-mail address, and clicking on "Subscribe." [🔗](#)

## How Does the Internet Tax Freedom Act Amendments Act of 2007 Affect Wisconsin Sales and Use Taxes?

**Question:** Are sales of Internet access services subject to Wisconsin sales and use taxes, in light of the federal Internet Tax Freedom Act Amendments Act of 2007?

**Answer:** Yes, provided the service originates or terminates in Wisconsin and is charged to a service address in Wisconsin. Although the federal Internet Tax Freedom Act Amendments Act of 2007 extended the prohibition of tax on Internet access services through November 1, 2014, this Act also extended the grandfather clause, under which Wisconsin's tax on Internet access is protected, through November 1, 2014.

**Note:** For sales on or after June 30, 2008, Wisconsin sales and use taxes do not apply to the sale of telecommunications purchased, used, or sold to provide Internet access in Wisconsin. [🔗](#)

## Wisconsin Supreme Court Rules in Computer Software Case

On July 11, 2008, the Wisconsin Supreme Court issued a ruling in the case of *Wisconsin Department of Revenue vs. Menasha Corporation*. In a 4-3 decision, the Court affirmed the Wisconsin Tax Appeals Commission decision that Menasha Corporation is entitled to a sales tax refund for taxes paid on custom computer software. A summary of the *Menasha* decision appears on pages 23 to 26 of this Bulletin. [🔗](#)

## Hayward, Kenosha, and Sheboygan Offices to Close

The Department of Revenue will close its Hayward, Kenosha, and Sheboygan branch offices, effective the end of September 2008. Customer services for persons in these locations will be provided from the Appleton, Eau Claire, and Milwaukee 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). [🔗](#)

## Wisconsin Tax Relief for Flood Victims

The federal government has declared a state of disaster in 30 Wisconsin counties. The 30 counties are Adams, Calumet, Columbia, Crawford, Dane, Dodge, Fond du Lac, Grant, Green, Green Lake, Iowa, Jefferson, Juneau, Kenosha, La Crosse, Manitowoc, Marquette, Milwaukee, Monroe, Ozaukee, Racine, Richland, Rock, Sauk, Sheboygan, Vernon, Walworth, Washington, Waukesha, and Winnebago Counties.

As a result, affected taxpayers in these 30 counties will qualify for tax relief. Detailed information on the tax relief available is located on the department's website at [www.revenue.wi.gov/news/080716.html](http://www.revenue.wi.gov/news/080716.html). [🔗](#)

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## Increased Standard Mileage Rates Apply for Wisconsin

As a result of the recent increases in the price of fuel, the Internal Revenue Service has increased the optional standard mileage rate to 58.5¢ per mile for business purposes and 27¢ per mile for medical and moving expense purposes. The mileage rate that applies to the deduction for charitable contributions is fixed under § 170(i) of the Internal Revenue Code at 14¢ per mile. The increased rates, which are effective from July 1, 2008 through December 31, 2008, also apply for Wisconsin. [☞](#)

### Upcoming Events

## Annual Fall Tax Practitioner Meetings

The Wisconsin Department of Revenue (DOR) will be holding a series of tax practitioner meetings this fall. The purpose of the meetings is to provide information about processing and tax law changes for the 2009 tax processing season. The meetings will also provide a forum for tax practitioners to provide feedback to tax administrators. All interested tax practitioners are invited.

The meetings will be held October 30 in Eau Claire, November 3 in Waukesha, November 13 in Green Bay, November 14 in Appleton, and November 20 in Madison. Detailed information regarding meeting locations and times will be available soon on DOR's website, [www.revenue.wi.gov](http://www.revenue.wi.gov). [☞](#)



### 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 October. 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's website at [www.revenue.wi.gov/training/events.html](http://www.revenue.wi.gov/training/events.html). [☞](#)

## MSATA Website Now Available

As previously reported in the *Wisconsin Tax Bulletin*, the 48th Annual Midwestern States Association of Tax Administrators Conference (MSATA) will be held August 17 – 19, 2008 at the Madison Concourse Hotel. A website devoted exclusively to MSATA is now up and running, on which you'll find a final agenda, registration form, and other information concerning the conference and its host city. Visit [www.msatastates.org](http://www.msatastates.org) to find out what MSATA and Madison have to offer. We look forward to seeing you in August! [☞](#)



### Tax School in Session This Fall

Tax Insight, LLC, in cooperation with the Wisconsin Department of Revenue, will be conducting a series of tax schools from September through December. Topics include S-corporation issues, sales and use tax issues, agricultural tax issues, and income tax.

Additional information is available on Tax Insight's website at [www.taxinsight.com](http://www.taxinsight.com) or the Department of Revenue's website at [www.revenue.wi.gov/training/insight.html](http://www.revenue.wi.gov/training/insight.html). [☞](#)

### Wisconsin Tax Bulletin

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## New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. Following is an index and brief descriptions of the major excise tax and other provisions. These provisions are contained in 2007 Acts 85, 96, 97, 100, 216, and 226.

The description for each provision indicates the sections of the statutes affected and the effective date of the new provision.

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#### A. Excise Taxes

##### 1. License and Permit Exception for Certain Auction Sales of Intoxicating Liquor and Fermented Malt Beverages (2007 Act 216, amend sec. 125.06(11), effective April 22, 2008.)

No alcohol beverages license or permit is required under ch. 125, Wis. Stats., for the sale by an auction house at public auction of sealed bottles or containers of wine or of unopened bottles of intoxicating liquor or fermented malt beverages by a charitable organization, as defined in sec. 440.41(1), Wis. Stats., at an auction held to raise money for the charitable organization.

##### 2. Definition of “Wine” Modified (2007 Act 85, amend sec. 125.02(22), effective October 1, 2008.)

The definition of “wine” is modified to exclude products containing more than 21 percent of alcohol by volume.

##### 3. Provisions for Wine Collectors Created (2007 Act 85, renumber sec. 125.03(1) to 125.03(1)(a), amend sec. 125.03(3), and create secs. 125.02(23), 125.03(1)(b), and 125.06(11m), effective October 1, 2008.)

“Wine collector” means an individual who meets the standards established by the department by rule and who is registered with the department as a collector of wine.

No alcohol beverage license or permit is required for the sale by a wine collector to any other wine collector of manufacturer-sealed bottles or containers of wine that the selling wine collector has held for at least 8 years if the selling wine collector has provided prior notice of the sale to the department. No more than one sale in any 12-month period may be conducted by a wine collector under this provision.

The department shall promulgate rules providing for registration of wine collectors and establishing standards of eligibility for registration as a wine collector. The rules shall also specify the form and manner of the prior notice required to be provided to the department by a selling wine collector. (**Note:** The department has adopted an emergency rule that, in part, contains all of these required elements. Additional information concerning this rule may be found in the article titled “Emergency Rule Recently Adopted” on page 18 of this Bulletin.)

**4. Reciprocal Wine Shipment Provisions Replaced With Direct Wine Shippers' (WDS) Permit Provisions** (2007 Act 85, repeal secs. 125.52(8), 125.53(3), and 125.58(4)(a)1. to 4., renumber sec. 125.58(4)(a)(intro.) to 125.58(4) and amend as renumbered, repeal and recreate sec. 139.035, and create sec. 125.535, effective October 1, 2008.)

All provisions concerning the shipment of wine from another state directly to an individual in Wisconsin and from Wisconsin directly to an individual in another state under a reciprocal agreement are removed from chs. 125 and 139, Wis. Stats.

The department shall issue direct wine shippers' permits authorizing the permittee to ship wine directly to an individual in Wisconsin who is of the legal drinking age, who acknowledges receipt of the wine shipped, and who is not intoxicated at the time of delivery.

The department may, by rule, establish an annual fee, not to exceed \$100, for each WDS permit issued. All fees collected shall be credited to the appropriation account under sec. 20.566(1)(ha), Wis. Stats.

A direct wine shippers' permit may be issued to any person that manufactures and bottles wine on premises covered by any of the following:

1. A manufacturer's or rectifier's permit under sec. 125.52, Wis. Stats.
2. A winery permit under sec. 125.53, Wis. Stats.
3. A winery license, permit, or other authorization issued to the winery by any state from which the winery will ship wine into Wisconsin.
4. A federal basic permit for a winery under 27 USC 203 and 204.

A winery located outside of Wisconsin is eligible for a direct wine shippers' permit if both of the following apply:

1. The winery holds a valid business tax registration certificate issued under sec. 73.03(50), Wis. Stats.
2. The winery submits a copy of 3. or 4. above to the department, either with an initial application or renewal for a business tax registration

certificate or the application for the direct wine shippers' permit.

Natural persons obtaining direct wine shippers' permits are not required to be residents of Wisconsin. A person is not required to complete a responsible beverage server training course to be eligible for a permit. Corporations and limited liability companies obtaining direct wine shippers' permits are subject to sec. 125.04(6), Wis. Stats., and any other person, including any natural person or cooperative, obtaining a direct wine shippers' permit shall appoint an agent, and be subject to all provisions of sec. 125.04(6), Wis. Stats., in the same manner applicable to corporations and limited liability companies.

Containers of wine shipped to an individual in Wisconsin under a direct wine shippers' permit shall be clearly labeled to indicate that the package may not be delivered to an underage person or to an intoxicated person.

No individual may resell, or use for a commercial purpose, wine received by the individual that is shipped under a direct wine shippers' permit.

No individual in Wisconsin may receive more than 108 liters of wine annually shipped under a direct wine shippers' permit. Each individual shall be responsible for compliance with this annual limit. An individual who violates this annual limit is subject to a fine of not more than \$1,000 or imprisonment for not more than 90 days or both, and may have any alcohol beverage license or permit issued to them revoked by the court. This limit does not apply to purchases made under a medicinal alcohol permit issued under sec. 125.61, Wis. Stats.

A winery located outside of Wisconsin that ships wine into Wisconsin under a direct wine shippers' permit is not required to hold an out-of-state shipper's permit under sec. 125.58, Wis. Stats.

All wine shipped directly to an individual located in Wisconsin by a person holding a direct wine shippers' permit shall be sold with the liquor tax imposed under sec. 139.03, Wis. Stats., included in the selling price. As directed by the department, the liquor taxes shall be paid to, and a quarterly return filed with, the department once every quarter on or



before the 15<sup>th</sup> day of the next month following the close of the calendar quarter.

In addition to filing a quarterly liquor tax return, each person holding a direct wine shippers' permit shall be required to file an addendum, on forms furnished by the department, that provides, at a minimum, the identity, quantity, and price of all wine shipped to individuals in Wisconsin during the previous quarter, along with the name, address, and birthdate of each person who purchased the wine as well as the person of legal drinking age who acknowledged delivery of the wine. Working with WDS permittees, the department shall develop forms, in both paper and electronic format, for use by such permittees in obtaining this information and complying with any other requirement under Wisconsin law in connection with the direct shipment of wine. The department shall keep confidential, in the same manner required for tax returns under sec. 71.78(1) and (5) to (8), Wis. Stats., reports submitted under this provision, but the department may use aggregated or summary information from such reports for purposes of the monthly publication of information required under sec. 139.11(4)(b), Wis. Stats.

Any failure of a person holding a direct wine shippers' permit to pay the liquor tax or file the required addendum within 30 days of its due date constitutes grounds for revocation or suspension of the permit. The provisions on timely filing under sec. 71.80(18), Wis. Stats., apply to the liquor tax and addendum required to be filed by a person holding a direct wine shippers' permit.

No wine may be shipped directly to an individual in Wisconsin by a person holding a direct wine shippers' permit unless sales or use tax is paid on the sale of such wine.

**5. General Alcohol Beverages Licensing Requirements Revised** (2007 Act 85, create sec. 125.04(3)(a)4m., effective October 1, 2008.)

Each application form prepared by the department for each kind of license, other than a manager's or operator's license, and for each kind of permit issued under ch. 125, Wis. Stats., shall require, if the applicant is a cooperative organized under ch. 185, Wis. Stats., the identity of the cooperative members, board of directors, and agent.

**6. Provisions for Revocations or Suspensions of, or Refusals to Renew, Alcohol Beverages Permits by the Department Revised** (2007 Act 85, amend sec. 125.12(5), effective October 1, 2008.)

The department shall revoke any retail permit issued by it and any other permit issued by it under ch. 125, Wis. Stats., for a violation of sec. 125.535, Wis. Stats., or sec. 139.035, Wis. Stats.

**7. Manufacturer's and Rectifier's Permit Provisions Revised** (2007 Act 85, repeal sec. 125.52(6) and (8) and amend sec. 125.52(1), effective October 1, 2008.)

*Authorized Activities Modified*

A manufacturer's or rectifier's permit entitles the permittee to sell intoxicating liquor to wholesalers holding a permit under sec. 125.54, Wis. Stats., to wineries holding a permit under sec. 125.53, Wis. Stats., and to other manufacturers and rectifiers holding a permit under sec. 125.52, Wis. Stats., from the premises described in the permit.

Under prior law, a person holding a manufacturer's or rectifier's permit could wholesale wine, pursuant to the terms of the permit, without procuring a winery permit. It also entitled the permittee to sell intoxicating liquor from the premises described in the permit. In addition, holders of rectifiers' permits could sell intoxicating liquor rectified by the permittee to retailers without any other permit.

*Reporting Requirements Removed*

A rectifier is no longer required to file a written statement with the department that the permittee is a distributor of a particular brand in Wisconsin, or an area of Wisconsin, and that the sales of that brand by the permittee and anyone purchasing from the permittee will be limited to the area specified. Under prior law, a rectifier was required to file this statement before selling any intoxicating liquor and was also required to inform the department of any change in the area specified in the statement within 7 days of the effective date of the change.

In addition, the reporting requirement for a permittee shipping wine from Wisconsin to individuals in another state under authorization of a reciprocity agreement has been removed.

- 8. Winery Permit Provisions Revised** (2007 Act 85, repeal sec. 125.53(3) and amend sec. 125.53(1), effective October 1, 2008.)

***Authorized Activities Expanded***

In addition to authorizing the manufacture and bottling of wine on the premises covered by the permit for sale to wholesalers holding a permit under sec. 125.54, Wis. Stats., a winery permit authorizes the permittee to, on the winery premises and without obtaining a rectifier's permit, possess intoxicating liquor and mix or blend intoxicating liquor to produce wine sold to wholesalers.

***Provisions Authorizing a "Class A" or "Class B" License Modified***

The "Class A" or "Class B" license a winery permittee is authorized to have may either be issued for the winery premises or for real estate owned or leased by the winery. The winery may provide wine manufactured, mixed, or blended on the winery premises directly to the "Class A" or "Class B" premises.

***Reporting Requirement Removed***

The reporting requirement for a permittee shipping wine from Wisconsin to individuals in another state under authorization of a reciprocity agreement has been removed.

- 9. Wholesaler's Permit Provisions Revised** (2007 Act 85, amend sec. 125.54(1) and create sec. 125.54(7)(e) and (8), effective October 1, 2008.)

***Authorized Activities Modified***

A wholesaler's permit authorizes the permittee to sell, from the premises described in the permit, intoxicating liquor at wholesale to retailers and wholesalers, as well as to manufacturers, rectifiers, and wineries for production purposes. The permittee may not sell intoxicating liquor for consumption on the premises.

Under prior law, a wholesaler's permit authorized the permittee to sell intoxicating liquor at wholesale from the premises described in the permit. Except for a brewer holding both a "Class B" license for the sale of intoxicating liquor on the brewery premises and a wholesaler's permit for the sale of wine only, a permittee could not sell intoxicating liquor for consumption on the premises.

***Exception to Bona Fide Wholesaler Provisions Created***

The bona fide wholesaler provisions of sec. 125.54(7), Wis. Stats., do not apply to a cooperative wholesaler under sec. 125.545, Wis. Stats.

***Duty to Work in Good Faith Established***

Each wholesaler has an obligation to negotiate in good faith with any manufacturer, rectifier, or winery that seeks to sell its products in Wisconsin through the wholesaler. To this end, all wholesalers shall work diligently to ensure that distribution channels are available for the sale of intoxicating liquor products through wholesalers to retailers in Wisconsin.

- 10. Provisions Concerning the Issuance of Combination Permits Revised** (2007 Act 85, repeal sec. 125.55(1)(b), consolidate sec. 125.55(1)(intro.) and (a) and renumber to 125.55(1) and amend as renumbered, and amend sec. 125.55(2), effective October 1, 2008.)

The department may not issue a combination rectifier's and wholesaler's permit.

- 11. Out-of-State Shipper's Permit Provisions Revised** (2007 Act 85, repeal sec. 125.58(4)(a)1. to 4. and (b), renumber sec. 125.58(4)(a)(intro.) to 125.58(4) and amend as renumbered, and amend sec. 125.58(1), effective October 1, 2008.)

An out-of-state shipper's permit authorizes the permittee to ship intoxicating liquor into Wisconsin only to a person holding a wholesaler's permit under sec. 125.54, Wis. Stats., or, if shipped from a permittee who is a manufacturer or rectifier, to a person holding a manufacturer's or rectifier's permit under sec. 125.52, Wis. Stats., or a winery permit under sec. 125.53, Wis. Stats. A winery located outside Wisconsin that holds a direct wine shipper's permit may ship wine directly to an individual in Wisconsin as provided under sec. 125.535, Wis. Stats., and is not required to hold an out-of-state shipper's permit.

Under prior law, an out-of-state shipper's permit authorized the permittee to ship intoxicating liquor into Wisconsin to a person holding a manufacturer's, rectifier's, wholesaler's, industrial alcohol, or medicinal alcohol permit. It also

authorized a winery located outside Wisconsin to ship wine directly to an individual in Wisconsin under authorization of a reciprocal agreement.

## **12. Provisions of Permits to Solicit for Future Sales**

**Revised** (2007 Act 85, amend sec. 125.65(8), effective October 1, 2008.)

Nonresident persons holding permits to solicit for future sales may solicit sales from retailers in Wisconsin only if the orders are solicited for, and will be filled by, persons holding wholesalers' permits under sec. 125.54, Wis. Stats. Under prior law, orders could also be solicited from retailers in Wisconsin if the orders were solicited for and were filled by persons holding manufacturers' and rectifiers' permits under sec. 125.52, Wis. Stats.

## **13. General Restrictions and Requirements Concerning Shipments of Intoxicating Liquor Into Wisconsin Revised**

(2007 Act 85, repeal sec. 125.68(10)(bm), (bs), and (c) and amend sec. 125.68(10)(a) and (b), effective October 1, 2008.)

Except as authorized in the provisions for direct wine shippers' permits under sec. 125.535, Wis. Stats., no intoxicating liquor may be shipped into, transported into, or delivered within Wisconsin unless it is consigned to a person holding a wholesaler's permit under sec. 125.54, Wis. Stats., or, if shipped from a manufacturer or rectifier in another state holding an out-of-state shipper's permit under sec. 125.58, Wis. Stats., consigned to a person holding a manufacturer's or rectifier's permit under sec. 125.52, Wis. Stats., or a winery permit under sec. 125.53, Wis. Stats.

Under prior law, no intoxicating liquor could be shipped into, transported into, or delivered within Wisconsin unless consigned to a person holding a permit for the sale of intoxicating liquor, other than a retail "Class B" permit. An exception was provided for a winery holding an out-of-state shipper's permit under sec. 125.58, Wis. Stats., shipping wine directly to an individual in Wisconsin under authorization of a reciprocal agreement.

## **14. Restrictions on Dealings Between Intoxicating Liquor Manufacturers, Rectifiers, Wholesalers, and Retailers Revised**

(2007 Act 85, repeal sec. 125.69(1)(b)2. and 3., (c)1. to 3., and (4)(c), renumber sec. 125.69(1)(c)(intro.) to 125.69(1)(c) and amend as renumbered, and amend sec.

125.69(1)(a), (b)1., and (6)(a), effective October 1, 2008.)

### ***Interest Restrictions for Wineries and Out-of-State Shipper Permittees Created***

No winery or out-of-state shipper permittee may hold any direct or indirect interest in any "Class A" license or establishment, "Class B" license or permit or establishment, or "Class C" license or establishment. This provision does not prohibit a winery that has a winery permit under sec. 125.53, Wis. Stats., from having an ownership interest in a "Class B" license issued under sec. 125.51(3)(am), Wis. Stats.

No winery or out-of-state shipper permittee, whether located within or without Wisconsin, may hold any direct or indirect interest in any wholesale permit or establishment.

### ***Additional Interest Restriction for Rectifiers Created***

No rectifier, whether located within or without Wisconsin, may hold any direct or indirect interest in any wholesale permit or establishment.

### ***Interest Restrictions for Wholesalers, Brewers, and Manufacturers Modified***

A wholesaler may no longer have an interest in a corporation that owns and operates a golf course and leases premises on the golf course to the holder of a "Class B" license or permit.

A brewer may no longer hold both a "Class B" license for the sale of intoxicating liquor on brewery premises and a wholesaler's permit for the sale of wine only issued under sec. 125.54, Wis. Stats.

As under prior law, no manufacturer, whether located within or without Wisconsin, may hold any direct or indirect interest in any wholesale permit or establishment. However, exceptions are no longer provided for the winery permit provisions under sec. 125.53, Wis. Stats., and for a manufacturer that is also a brewer holding a wholesaler's permit issued under sec. 125.54, Wis. Stats., for the wholesale sale of wine only. Also, it is no longer specified that the above provision does not prohibit any of the following persons from obtaining a permit to solicit for future sales under sec. 125.65, Wis. Stats.:



1. An employee of a person who has been issued a winery permit under sec. 125.53, Wis. Stats.
2. A licensee who was issued a “Class B” license under sec. 125.51(3)(am), Wis. Stats.
3. A “Class A” licensee who has also been issued a winery permit under sec. 125.53, Wis. Stats.

***Additional Interest Restrictions for “Class B” Licensees and Permittees and “Class C” Licensees Created***

No “Class B” licensee or permittee or “Class C” licensee may hold any direct or indirect interest in a manufacturer, rectifier, winery, or out-of-state shipper permit or establishment.

***Interest Restrictions for Retail Licensees Created***

Except as authorized in the winery permit provisions of sec. 125.53, Wis. Stats., no retail licensee may hold any direct or indirect interest in any manufacturer, rectifier, winery, or out-of-state shipper permittee.

***Retail Purchase Credit Restrictions Modified***

A provision is removed that specified for purposes of retail purchase credit restrictions a person holding both an intoxicating liquor wholesale permit and intoxicating liquor retail license is deemed an intoxicating liquor retailer.

***Restrictions on the Purchases of Campuses and Retailers Modified***

No campus or retail licensee or permittee may purchase intoxicating liquor from, or possess intoxicating liquor purchased from, any person other than a wholesaler holding a permit for the sale of intoxicating liquor issued under ch. 125, Wis. Stats. Under prior law, a campus or retail licensee or permittee could also purchase or possess intoxicating liquor purchased from a manufacturer or rectifier holding a permit for the sale of intoxicating liquor issued under ch. 125, Wis. Stats.

**15. Retail Alcohol Beverages License and Permit Authority Restricted to Face-to-Face Retail Sales** (2007 Act 85, create secs. 125.272 and 125.51(6), effective October 1, 2008.)

A Class “A” or Class “B” fermented malt beverages license; Class “B” fermented malt beverages permit; “Class A,” “Class B,” or “Class C” intoxicating

liquor license; or “Class B” intoxicating liquor permit authorizes only face-to-face sales to consumers at the premises described in the retail license or permit. This provision does not apply with respect to caterers or to fermented malt beverages or intoxicating liquor authorized to be furnished in a hotel room or coliseum suite under secs. 125.26(2m) and (2s) and 125.51(3)(bm) and (bs), Wis. Stats.

**16. Provisions for Small Winery Cooperative Wholesalers Created** (2007 Act 85, create secs. 125.54(7)(e) and 125.545, effective October 1, 2008.)

***Definitions***

“Member” means a small winery that meets the requirements established under sec. 125.545, Wis. Stats., for membership in a cooperative wholesaler and that has been qualified and accepted for membership in a cooperative wholesaler.

“Out-of-state winery” means a winery that is located in a state other than Wisconsin and that holds a valid direct shipper’s permit issued under sec. 125.535, Wis. Stats.

“Retailer” means any person holding a “Class A,” “Class B,” or “Class C” license or “Class B” permit issued under sec. 125.51, Wis. Stats.

“Small winery” means any winery that produces and bottles less than 25,000 gallons of wine in a calendar year.

“Small winery cooperative wholesaler” or “cooperative wholesaler” means an entity established under sec. 125.545, Wis. Stats.

“Wisconsin winery” means a winery operating under a permit issued under sec. 125.53, Wis. Stats.

***Creation and Organization***

A cooperative wholesaler may only be created as provided under secs. 185.043(2) and 125.545, Wis. Stats. Each cooperative wholesaler operating under authority of sec. 125.545, Wis. Stats., shall be organized under ch. 185, Wis. Stats., but shall be subject to the limitations on such cooperatives imposed by sec. 125.545, Wis. Stats. Only small wineries may be members of a cooperative wholesaler. The principal purpose of a cooperative

wholesaler shall be to sell and distribute wine manufactured, blended, or mixed, and also bottled, by its members.

A cooperative wholesaler shall include in its articles of incorporation under ch. 185, Wis. Stats., a single location for its agent and principal office, which location shall be in Wisconsin.

A small winery may become a member of a cooperative wholesaler only if it holds a direct shipper's permit under sec. 125.535, Wis. Stats., and is certified by the department as a small winery.

In addition to the requirements specified in sec. 185.31, Wis. Stats., for the board of directors of a cooperative wholesaler, a director representing a member that is a Wisconsin winery shall be either an owner or an employee of that Wisconsin winery. If any out-of-state winery is a member of the cooperative wholesaler, at least one director shall be either an owner or an employee of an out-of-state winery that is a member of the cooperative wholesaler.

A cooperative wholesaler may not employ any owner or employee of a member. However, an individual that is an owner or an employee of a member may act as a volunteer to assist that cooperative wholesaler in the sale and distribution of wine to retailers and other wholesalers in the manner authorized under sec. 125.545, Wis. Stats.

#### ***Authorization and Activities***

Within 7 days after filing its articles of incorporation under ch. 185, Wis. Stats., a cooperative wholesaler shall apply to the department for a wholesaler's permit under sec. 125.54, Wis. Stats. The provisions of sec. 125.04 (5)(c) and (6), Wis. Stats., shall apply to a cooperative wholesaler as if the cooperative wholesaler were a corporation or a limited liability company and, for each of these provisions, the department shall determine whether the cooperative wholesaler is most similar to a corporation or a limited liability company in the context of that provision and apply that provision to the cooperative wholesaler accordingly.

The department may issue not more than one wholesaler's permit to any cooperative wholesaler. The department may not issue more than a total of 6 wholesalers' permits to cooperative wholesalers in Wisconsin. The department may not issue any new

wholesaler's permit to a cooperative wholesaler after December 31, 2008, but may renew wholesalers' permits that were initially issued to cooperative wholesalers prior to that date.

No cooperative wholesaler may operate in Wisconsin without a wholesaler's permit.

A cooperative wholesaler issued a wholesaler's permit is authorized to sell and distribute only wine. A cooperative wholesaler may not sell or distribute any alcohol beverages, or any other product, except wine. These provisions do not apply to the resale of wine industry trade goods (bottles, corks, and other supplies used by wineries in the bottling and sale of wine) to the cooperative wholesaler's members or to any winery that was formerly a member of the cooperative wholesaler.

A cooperative wholesaler shall purchase on consignment wine from its members to be resold to retailers and other wholesalers. A cooperative wholesaler may not purchase wine from any person other than a member. A cooperative wholesaler may not resell or distribute wine unless it has been purchased on consignment from a member. A cooperative wholesaler may not sell or distribute wine except to a retailer or to a wholesaler holding a permit under sec. 125.54, Wis. Stats.

A cooperative wholesaler may purchase ancillary wine industry trade goods such as bottles, corks, and other supplies used by wineries in the bottling and sale of wine if such trade goods do not include any alcohol beverages. Any wine industry trade goods purchased by a cooperative wholesaler under this provision may be offered for resale to the cooperative wholesaler's members or to any winery that was formerly a member of the cooperative wholesaler.

A cooperative wholesaler shall work with all of its members on evenhanded terms. Any preferential treatment by a cooperative wholesaler for the benefit of a member that is a Wisconsin winery, and any discrimination against a member that is an out-of-state winery, is prohibited.

Neither a cooperative wholesaler nor its members are subject to any restriction on dealings under sec. 125.69(1), Wis. Stats., between wholesalers and wineries. Except for the bona fide wholesaler provisions in s. 125.54(7), Wis. Stats., and as

otherwise provided in sec. 125.545, Wis. Stats., all provisions of chs. 125 and 139, Wis. Stats., that apply to a wholesaler issued a permit under sec. 125.54, Wis. Stats., also apply to a cooperative wholesaler issued a permit under sec. 125.54, Wis. Stats.

### ***Exclusive Distribution***

A member of a cooperative wholesaler may make its wine available for purchase by a retailer or another wholesaler only through the cooperative wholesaler of which it is a member. A member of a cooperative wholesaler may not sell its wine directly to any other wholesaler or directly to a retailer.

### ***Semiannual Meetings and Biennial Reports***

At least once every 6 months, the board of directors of a cooperative wholesaler shall meet in person with an employee of the department. At each of these meetings, the cooperative wholesaler shall provide a detailed report of its operations and sales activities, bring whatever documentation the department considers reasonably necessary for the department to conduct its review of the cooperative wholesaler, and answer any questions the department may have about the cooperative wholesaler's activities. A representative of the University of Wisconsin Center for Cooperatives shall also attend each of these meetings.

Within 7 days after each of these meetings, the department shall submit in writing to the cooperative wholesaler all additional questions for which the department requests an answer of the cooperative wholesaler. The cooperative wholesaler shall provide answers to the department's questions within 7 days.

Within 6 weeks after each of these meetings, the department shall issue a report stating whether the cooperative wholesaler is operating properly under Wisconsin law and shall detail any problem areas that the cooperative wholesaler must correct. The University of Wisconsin Center for Cooperatives shall also issue a report within 6 weeks of each of these meetings and detail in that report all recommendations on how the cooperative wholesaler can improve its operations and better comply with Wisconsin law. All reports issued by the department and by the University of Wisconsin Center for Cooperatives shall be publicly available.

With each application for renewal of a wholesaler's permit issued to a cooperative wholesaler, each cooperative wholesaler shall file with the department, in the form and manner prescribed by the department by rule, a biennial report that includes detailed information on its members, board of directors, and sale and distribution activities.

### ***Department Certification and Rule Making***

The department shall, upon application, certify eligible applicants as small wineries and renew prior certifications of eligible applicants as small wineries.

Any winery seeking to become a member of, or to maintain its membership in, a cooperative wholesaler may apply to the department for certification as a small winery. If the winery meets the definition of a small winery, holds a direct shipper's permit under sec. 125.535, Wis. Stats., and submits any other information that the department determines is necessary to certify that the winery is operating as a small winery and is eligible for membership in a cooperative wholesaler, the department shall certify the winery as a small winery. This certification shall remain valid for one year.

In certifying a winery as a small winery, the department shall classify the winery as either a Wisconsin winery or an out-of-state winery.

The department shall refuse to certify any winery that cannot demonstrate it holds all necessary permits for its operations or that the department finds is otherwise not in full compliance with the laws of Wisconsin.

The department shall promulgate rules to administer and enforce the requirements under this section. (**Note:** The department has adopted an emergency rule that, in part, meets this requirement. Additional information concerning this rule may be found in the article titled "Emergency Rule Recently Adopted" on page 18 of this Bulletin.)

### ***Penalties***

Any winery that sells or distributes its wine directly to a retailer, rather than through a wholesaler or cooperative wholesaler, is subject to a fine of not more than \$10,000 and revocation of all of its

permits by the department under sec. 125.12(5), Wis. Stats.

Any cooperative wholesaler that provides preferential treatment to a Wisconsin winery or discriminates against an out-of-state winery is subject to a fine of not more than \$10,000 and revocation of its wholesaler's permit by the department under sec. 125.12(5), Wis. Stats.

### ***Nonstatutory Provisions***

#### **1. Small Winery Interim Certification**

Between July 1, 2008 and September 30, 2008 the Department of Revenue shall, upon application, certify eligible applicants as small wineries.

Any winery that may seek to become a member of a cooperative wholesaler after October 1, 2008, may apply to the department for certification as a small winery. If the winery meets the definition of a small winery under sec. 125.545(1)(d), Wis. Stats., as created by 2007 Act 85, and holds a direct shipper's permit as required under sec. 125.545(2)(a)3.a., Wis. Stats., as created by 2007 Act 85, and submits any other information that the department determines is necessary to certify that the winery is operating as a small winery and will be eligible for membership in a cooperative wholesaler after October 1, 2008, the department shall certify the winery as a small winery. This certification shall remain valid for one year.

In certifying a winery as a small winery, the department of revenue shall classify the winery as either a Wisconsin winery or an out-of-state winery, as those terms are defined under sec. 125.545(1), Wis. Stats., as created by 2007 Act 85.

The department shall refuse to certify any winery that cannot demonstrate it holds all necessary permits for its operations or that the department finds is otherwise not in full compliance with the laws of Wisconsin.

#### **2. Small Winery Distribution Phase-In**

A winery that was issued a winery permit under sec. 125.53(1), Wis. Stats. (2005-06), prior to October 1, 2008 is authorized to sell at

wholesale to other licensees or permittees under ch. 125, Wis. Stats., wine manufactured and bottled on the premises covered by the winery permit. This provision does not apply after June 30, 2009.

### **17. Confidentiality of and Reporting Requirements Pertaining to Intoxicating Liquor Documents** (2007 Act 85, renumber sec. 139.11(4) to 139.11(4)(a) and amend as renumbered, amend sec. 139.11(4)(title), and create sec. 139.11(4)(b), effective October 1, 2008.)

Sections 71.78(1) and (4) to (9) and 71.83(2)(a)3., relating to confidentiality of income, franchise, and gift tax returns, do not apply to any information obtained from any person on an intoxicating liquor tax return, report, schedule, exhibit, or other document or from an audit report relating to any of those documents. With the information provided to the department by any person, the Department of Revenue shall publish at least once each month:

1. Statistics on the total number of liters of the types and brands of intoxicating liquor sold in Wisconsin.
2. A current and regularly updated list, made available on paper and on the department's Internet website, of permit holders that minimally includes detailed information on the name, address, contact person, and date of permit issuance for every manufacturer's and rectifier's permit issued under sec. 125.52, Wis. Stats., winery permit issued under sec. 125.53, Wis. Stats., direct wine shipper's permit issued under sec. 125.535, Wis. Stats., wholesaler's permit issued under sec. 125.54, Wis. Stats., and out-of-state shipper's permit issued under sec. 125.58, Wis. Stats.
3. A report summarizing the identity, quantity, and price of all products sold under each winery permit issued under sec. 125.53, Wis. Stats., and each direct wine shipper's permit issued under sec. 125.535, Wis. Stats.
4. A report summarizing the sales quantity and product data available for all products sold under each wholesaler's permit issued under sec. 125.54, Wis. Stats.



## B. Other

### 1. Addback for Certain Related Entity Expenses

(2007 Act 226, renumber secs. 71.34(1) to 71.34(1k) and 71.42(1) to 71.42(1g), renumber sec. 71.26(2)(a) to 71.26(2)(a)(intro.) and amend as renumbered, amend secs. 71.05(6)(a)15., 71.30(2), 71.45(2)(a)10., and 71.80(1)(b), and create secs. 71.01(1am), (1t), (5s), (9ad), (9am), and (9an), 71.05(6)(a)24. and (b)45. and 46., 71.22(1b), (1tm), (3m), (9ad), (9am), and (9an), 71.26(2)(a)7., 8., and 9., 71.34(1am), (1b), (1e), (1k) (j), (k), and (L), (1L), (1p), and (1r), 71.42(1b), (1s), (1t), (4d), (4m), and (4n), 71.45(2)(a)16., 17., and 18., and 71.80(23) and nonstatutory provision, effective for taxable years beginning on or after January 1, 2008.)

This Act requires individuals, fiduciaries, corporations, tax-option (S) corporations, partnerships, LLCs treated as partnerships, and insurance companies to add back to their federal income interest expenses and rental expenses which are paid, accrued, or incurred to, or in connection with transactions with, a related entity. The Act then allows a deduction for these expenses if they are disclosed in the manner prescribed by the department and certain conditions are met.

#### Definitions

- “Aggregate effective tax rate” means the sum of the effective tax rates imposed by a state, U.S. possession, foreign country, or any combination thereof, on the person or entity.
- “Effective tax rate” means the maximum tax rate imposed by the state, U.S. possession, or foreign country, multiplied by the apportionment percentage, if any, applicable to the person or entity under the laws of that state, U.S. possession, or foreign country.
- “Interest expenses” for purposes of this Act means interest that would otherwise be deductible under sec. 163 of the Internal Revenue Code (IRC) and deductible in the computation of Wisconsin taxable income.
- “Qualified real estate investment trust” means a real estate investment trust, except a real estate investment trust the shares or beneficial interests of which are not regularly traded on an established securities market and more than 50 percent of the voting power or value of any

class of the beneficial interests or shares of which are owned or controlled, directly, indirectly, or constructively, by a single entity that is treated as an association taxable as a corporation under the IRC. The following entities are **not** considered an association taxable as a corporation:

- An entity that is exempt from taxation under sec. 71.26(1), Wis. Stats., and exempt from federal income tax pursuant to the provisions of sec. 501(a), IRC.
- A real estate investment trust that is a qualified real estate investment trust.
- A qualified real estate investment trust subsidiary under sec. 856(i), IRC, that is a subsidiary of a qualified real estate investment trust.
- A corporation, trust, association, or partnership organized outside the laws of the United States that satisfies all of the following:
  - At least 75 percent of the entity’s total asset value at the close of its taxable year consists of real estate assets, as defined in sec. 856(c)(5)(B), IRC, cash and cash equivalents, and U.S. government securities;
  - The entity is not subject to tax on amounts distributed to its beneficial owners or is exempt from entity-level taxation;
  - The entity distributes at least 85 percent of its taxable income, as computed in the jurisdiction in which it is organized, to the holders of its shares or certificates of beneficial interest on an annual basis;
  - Either no more than 10 percent of the voting power or value in the entity is held directly, indirectly, or constructively by a single entity or individual or the shares or beneficial interests of the entity are regularly traded on an established securities market; and



- The entity is organized in a country that has a tax treaty with the United States.

The constructive ownership rules of sec. 318(a), IRC, as modified by sec. 856(d)(5), IRC, apply in determining the ownership of stock, assets, or net profits of any person.

- “Related entity” means any person related to a taxpayer as provided under sec. 267 or 1563, IRC, during all or a portion of the taxpayer’s taxable year and any real estate investment trust under sec. 856 of the IRC, except a qualified real estate investment trust, if more than 50 percent of any class of the beneficial interests or shares of the real estate investment trust are owned directly, indirectly, or constructively by the taxpayer, or any person related to the taxpayer, during all or a portion of the taxpayer’s taxable year. The constructive ownership rules of sec. 318(a), IRC, as modified by sec. 856(d)(5), IRC, apply in determining the ownership of stock, assets, or net profits of any person.
- “Rental expenses” for purposes of this Act means the gross amounts that would otherwise be deductible in the computation of Wisconsin taxable income for the use of, or the right to use, real property and tangible personal property in connection with real property, including services furnished or rendered in connection with such property, regardless of how reported for financial accounting purposes and regardless of how computed.

### ***Addition and Subtraction Modifications***

The following additions and subtractions are created:

1. An addition to federal income for the amount deducted or excluded under the IRC for interest expenses and rental expenses that are directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities.
2. A subtraction from federal income for the amount added to federal income under 1. above, to the extent the conditions described in the next column under *Conditions for Allowing Deductions* apply to such expenses.

3. A subtraction from federal income for the amount added, pursuant to 1. in the previous column, to the federal income of a related entity that paid interest expenses or rental expenses to the taxpayer, to the extent that the related entity could not offset such amount with the deduction allowable under 2. in the previous column.

### ***Conditions for Allowing Deductions***

The subtraction under 2. in the previous column shall not be allowed for any interest expenses or rental expenses that are directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions with, one or more related entities, if the aggregate amount paid, accrued, or incurred for those related entity transactions is not disclosed on a separate form prescribed by the department in the manner prescribed by the department. (**Note:** The department is in the process of creating a new form, Schedule RT, for disclosure of these transactions).

Additionally, in order for a taxpayer to make the subtraction under 2. in the previous column, **one** of the conditions in a., b., or c. below must be true:

- a. The related entity to which the taxpayer paid, accrued, or incurred the interest expenses or rental expenses during the taxable year directly or indirectly paid, accrued, or incurred such amounts in the same taxable year to a person who is not a related entity or the related entity to which the taxpayer paid, accrued, or incurred such expenses is a holding company or a direct or indirect subsidiary of a holding company, as defined in 12 USC 1841(a) or (l) or 12 USC 1467a(a)(1)(D), not including any entity that is organized under the laws of another jurisdiction and that primarily holds and manages investments of a bank, subsidiary, or affiliate. For purposes of this provision, “interest” does not include interest that is paid in connection with any debt that is incurred to acquire the taxpayer’s assets or stock under sec. 368 of the IRC. If a portion of such an interest expense or rental expense is paid, accrued, or incurred in the same taxable year to a person who is not a related entity, that portion shall be allowed as a deduction to the taxpayer.
- b. The related entity was subject to tax on, or measured by, its net income or receipts in this state or any state, U.S. possession, or foreign

country; the related entity's tax base in such state, U.S. possession, or foreign country included the income received from the taxpayer for the interest expenses or rental expenses; the related entity's aggregate effective tax rate applied to such income or receipts was at least 80 percent of the taxpayer's aggregate effective tax rate; and the related entity is not a real estate investment trust under sec. 856 of the IRC, other than a qualified real estate investment trust. "Any state, U.S. possession, or foreign country" does not include any state, U.S. possession, or foreign country under the laws of which the taxpayer files with the related entity, or the related entity files with another entity, a combined income tax report or return, a consolidated income tax report or return, or any other report or return that is due because of the imposition of a tax that is measured on or by income or receipts, if the report or return results in eliminating the tax effects of transactions, directly or indirectly, between either the taxpayer and the related entity or between the related entity and another entity.

- c. The taxpayer establishes that the transaction satisfies any other conditions that the department considers relevant, based on the facts and circumstances, to determine that the primary motivation for the transaction was one or more business purposes other than the avoidance or reduction of state income or franchise taxes; that the transaction changed the economic position of the taxpayer in a meaningful way apart from tax effects; and that the interest expenses or rental expenses were paid, accrued, or incurred using terms that reflect an arm's-length relationship.

### ***Other Provisions***

Wisconsin law currently provides that in the case of two or more organizations, trades, or businesses (whether or not incorporated, whether or not organized in the United States, and whether or not affiliated) owned or controlled directly or indirectly by the same interests, the Secretary of Revenue or his or her delegate may distribute, apportion, or allocate gross income, deductions, credits, or allowances between or among such organizations, trades, or businesses, if he or she determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any of such

organizations, trades, or businesses (secs. 71.30(2) and 71.80(1)(b), Wis. Stats. (2005-06)). This Act provides that this authority is in addition to, and not a limitation of or dependent on, the addition and subtraction provisions in 1. and 2. on page 14.

A nonstatutory provision indicates that the Department of Revenue has entered into a substantial number of settlement agreements with banks and other financial institutions regarding their investment subsidiaries, and that the intent of the Legislature in enacting this Act is to have no effect on those settlement agreements.

2. **Statutory References Revised and Statutory Language Corrected – Revisor's Correction Bill** (2007 Act 96, amend secs. 71.05(6)(a)15., 71.07(2dm)(a)1. and 3., (f)1., (j), and (k), (2dx)(a)2., (b)(intro.), (c), and (d), 71.28(1dm)(a)1. and 3., (f)1., (j), and (k), (1dx)(a)2., (b)(intro.), (c), and (d), and 71.47(1dm)(a)1. and 3., (f)1., (j), and (k), (1dx)(a)2., (b)(intro.), (c), and (d), effective March 28, 2008.)

Section 560.799, Wis. Stats., as created by 2005 Wisconsin Act 487, is renumbered 560.7995, as 2005 Wisconsin Act 361 also created a provision numbered 560.799. All applicable statutory references in ch. 71, Wis. Stats., are revised accordingly.

An extra "and" is removed from the list of credits in sec. 71.05(6)(a)15., Wis. Stats., as affected by Wisconsin Acts 361, 479, and 483.

3. **Statute Renumbered and Statutory References Revised – Revisor's Correction Bill** (2007 Act 97, renumber sec. 71.10(5g) to 71.10(5m) and amend secs. 71.07(3w)(c)1., 71.08(1)(intro.), 71.28(3w)(c)1., and 71.47(3w)(c)1., effective March 28, 2008.)

Section 71.10(5g), Wis. Stats., as created by 2005 Wisconsin Act 71, is renumbered 71.10(5m). 2005 Wisconsin Act 25 also created a provision numbered 71.10(5g).

Section 20.835(2)(cm), Wis. Stats., as created by 2005 Wisconsin Act 361, is renumbered 20.835(2)(co), as a provision numbered 20.835(2)(cm) previously existed. All applicable statutory references in ch. 71, Wis. Stats., are revised accordingly.

Section 71.08(1)(intro.), Wis. Stats., as affected by 2005 Wisconsin Act 479, is amended to reflect the removal of sec. 71.07(3c) and (3e), Wis. Stats., by the Governor's partial veto of 2005 Wisconsin Act 361.

- 4. Statutory Language Corrected – Revisor's Correction Bill** (2007 Act 100, amend secs. 71.07(3w)(a)6. and (bm)3. and 4., 71.28(3w)(a)6. and (bm)3. and 4., and 71.47(3w)(a)6. and (bm)3. and 4., effective March 28, 2008.)

The article "a," inserted after the Governor's partial veto of 2005 Wisconsin Act 361, is replaced with the article "an" preceding the term "enterprise zone."

#### *Nonstatutory Provision*

The above changes are void if the Governor's partial veto of 2005 Wisconsin Act 361 is overridden. [✎](#)



#### **IRS News**

*Note: Information for this article has*

*been provided courtesy of the Milwaukee office of the Internal Revenue Service.*

#### ***Tax Preparation for Baby Boomers***

The IRS advises practitioners that as Baby Boomers reach retirement age, they will be dependent upon different sources of income, including social security. It is important for persons age 65 and older to understand how their age and their new sources of income will impact their individual income tax returns.

A recent audit conducted by the Treasury Inspector General for Tax Administration indicated calculating taxable social security benefits and failing to take the higher standard deduction for persons age 65 years or older are the two most repeated errors made by seniors who file **paper** tax returns.

Other reports indicate calculating the tax on qualified dividends and incorrectly writing the social security numbers of dependents were also among the top common errors made by persons 65 and older.

Of course the easiest way for seniors to eliminate these common errors is to **e-file** their tax returns.

#### ***Small Business Campaign Launched***

A year-long campaign has been launched to help educate new self-employed small business owners about federal tax responsibilities and about filing Schedule C, Profit or Loss from Business.

To get the latest information about the campaign, go to [www.irs.gov](http://www.irs.gov) to start a free subscription to e-News for Small Businesses.

#### ***2008 Nationwide Tax Forums Underway***

The 2008 IRS Nationwide Tax Forums are being held in six cities across the nation during July, August, and September. The Tax Forums offer three full days of seminars with the latest word from IRS leadership and experts in the fields of tax law, compliance, and ethics.

For detailed agenda and registration information go to [www.taxforuminfo.com](http://www.taxforuminfo.com). [✎](#)

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

The latest issue of the *Sales and Use Tax Report* became available in June. 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 June 2008 *Sales and Use Tax Report* (2-08) include:

- **IMPORTANT NOTICE:** The *Sales and Use Tax Report* is Going Paperless;

- Sales of Beer, Liquor, Wine, and Cigarettes are Subject to Sales and Use Taxes;
- Cylinders Rented to Transport Exempt Gas;
- Questions and Answers for Car Wash Operators; and
- Voluntary Disclosure.

The Report is available on the Department of Revenue's website at [www.revenue.wi.gov/ise/sales/08-2.pdf](http://www.revenue.wi.gov/ise/sales/08-2.pdf). [✎](#)

## **Manufacturing Investment Credit Available for 2008**

The manufacturer's sales tax credit is no longer available for taxable years beginning after December 31, 2005. However, some taxpayers with unused manufacturer's sales tax credit carryforwards are eligible for the manufacturing investment credit, which is available for taxable years beginning on or after January 1, 2008.

This article summarizes the tax benefits available to taxpayers who have unused manufacturer's sales tax credits from taxable years beginning before January 1, 2006. Note that businesses eligible for the manufacturing investment credit must submit their applications to the Wisconsin Department of Commerce no later than September 30, 2008.

### **Carryforward Available for Taxpayers With \$25,000 or Less in Unused Credit**

If a taxpayer has \$25,000 or less in unused manufacturer's sales tax credit, the unused credit may be claimed, but for each of the first two taxable years beginning after December 31, 2005, it is limited to 50 percent of its amount as of the beginning of the first such taxable year. If the credit cannot be used during this period, it may be carried forward for the remainder of its 20-year carryforward period until used.

For manufacturer's sales tax credits passed through a tax-option (S) corporation, partnership, or other type of pass-through entity, the \$25,000 threshold is determined at the shareholder, partner, member, or beneficiary level. Any manufacturer's sales tax credit carryforwards used at the shareholder, partner, member, or beneficiary level cannot also be used in the computation of the manufacturing investment credit.

### **Deduction for Taxpayers With Over \$25,000 in Unused Credit**

If a taxpayer has over \$25,000 in unused manufacturer's sales tax credit, for each of the first two taxable years beginning after December 31, 2005, the taxpayer may deduct 50 percent of the unused credit that was added back to income in prior years. This deduction may be claimed even if the taxpayer has a net loss or loss carryforward. For pass-through entities, the \$25,000 threshold for purposes of this deduction is determined at the shareholder, partner, member, or beneficiary level.

The purpose of this deduction is to reverse the effect of including the manufacturer's sales tax credit in income in prior years when the taxpayer was unable to receive the benefit of the credit. This deduction has no effect on a taxpayer's eligibility for, or computation of, the manufacturing investment credit.

### **Manufacturing Investment Credit**

Taxpayers with over \$25,000 in unused manufacturer's sales tax credit and who meet certain criteria are also eligible for the manufacturing investment credit.

Pass-through entities may apply for the manufacturing investment credit and pass it on to their shareholders, partners, members, or beneficiaries. Tax-option (S) corporations whose manufacturer's sales tax credit carryforwards were generated in taxable years beginning before January 1, 1998 may also apply for the manufacturing investment credit and pass it on to their shareholders, even though they were not able to pass the manufacturer's sales tax credit on to their shareholders when they first computed the credit.

The manufacturing investment credit is equal to the amount of unused manufacturer's sales tax credit amortized over a 15-year period. The Wisconsin Department of Commerce certifies companies eligible for the manufacturing investment credit. The general criteria for eligibility are:

- The business has retained 100% of full-time jobs that it employed in Wisconsin from December 23, 2003, through either December 31, 2006, or December 31, 2007; or
- The business's average annual investment in Wisconsin from January 1, 2003, through either December 31, 2006, or December 31, 2007, is equal to no less than 2 percent of the total book value of the business's depreciable assets in facilities that are based in Wisconsin; or
- The business's average annual investment in Wisconsin from January 1, 2003, through either December 31, 2006, or December 31, 2007, is no less than \$5,000,000.

**Companies eligible for the manufacturing investment credit must file an application with the Department of Commerce no later than September 30, 2008.** For more information on the application process, see the Department of Commerce's website at <http://commerce.wi.gov/BD/BD-MIC.html>.



**Note:** In the manufacturing investment credit application form, pass-through entities should enter the amount of unused manufacturer's sales tax credit at the entity level, not the amount from Wisconsin Schedule MS. This is because Schedule MS is completed at the shareholder, partner, member, or beneficiary level. In order to apply for the manufacturing investment credit, the pass-through entity may need to obtain information from its shareholders, members, partners, or beneficiaries regarding the

amount of their remaining credit carryforward from the pass-through entity.

Taxpayers and businesses who receive a manufacturing investment credit will use Wisconsin Schedule MI to claim the credit on their 2008 Wisconsin income or franchise tax return. The amount of manufacturing investment credit computed in each taxable year must be included in Wisconsin income. [☞](#)

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## Emergency Rule Recently Adopted

On June 26, 2008 an emergency administrative rule creating Tax 8.03 and 8.05, relating to wine collectors and small winery cooperative wholesalers, went into effect. This emergency rule was created to satisfy the rulemaking requirements of secs. 125.03(1)(b) and 125.545(6)(b), Wis. Stats., which were created by 2007 Wisconsin Act 85 (see the article titled “New Tax Laws” on page 3 of this Bulletin for summaries of the major provisions of Act 85). The emergency rule does the following:

- Provides the requirements for registration of wine collectors, the sale of wine held by a collector to other wine collectors, and notice to the department in advance of any sale.
- Details the procedure for the creation and organization of small winery cooperative wholesalers. It describes the application process and requirements for the members of the cooperative.

- Creates a provision specifying that the department may approve cooperative wholesaler applications to provide greater public convenience and service to all areas of Wisconsin.
- Details the activities authorized for small winery cooperative wholesalers.

The full text of the order adopting the emergency rule is available at

<https://apps4.dhfs.state.wi.us/admrules/public/Rmo?nRmold=4443>. The emergency rule will remain in effect until July 1, 2010 or when the accompanying permanent rule takes effect, whichever is sooner. See the article titled “Administrative Rules in Process” on page 19 of this Bulletin for information concerning the status of the proposed permanent rule.

Wine collectors, small wineries, and others who have questions concerning the provisions of the emergency rule may contact the Department of Revenue at (608) 266-2776. [☞](#)

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## Reminder: Payment by EFT Required for Some Employers

Effective November 1, 2007, the Wisconsin Administrative Code was amended to require employers who withhold delinquent Wisconsin tax from employee compensation to make these payments (known as wage attachment or wage certification payments) to the Wisconsin Department of Revenue using Electronic Funds Transfer (EFT). Additional information concerning this rule change may be found in *Wisconsin Tax Bulletin* 153 (October 2007), page 19.

In April 2008 over 2,100 letters were mailed to employers with active wage attachments, informing them of the new requirement. These and any other employers with active wage attachments are strongly encouraged to visit the department's website at [www.revenue.wi.gov/eserv/wage/wage.html](http://www.revenue.wi.gov/eserv/wage/wage.html). There they will find information concerning available EFT methods, registering for EFT, adding wage attachment payments to an existing EFT account, and applying for a waiver from the EFT requirement.

Questions concerning the EFT requirement for employers with active wage attachments may be directed to the department at (608) 264-9956. [☞](#)





## Administrative Rules in Process

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

### Emergency Rules Adopted and in Effect (June 26, 2008)

- 8.03 Wine collectors – NR
- 8.05 Small winery cooperative wholesalers – NR

### Scope Statement Published (April 30, 2008)

- 8.03 Wine collectors – NR
- 8.05 Small winery cooperative wholesalers – NR

### Sent to Legislative Council Rules Clearinghouse

- 8.03 Wine collectors – NR
- 8.05 Small winery cooperative wholesalers – NR


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

- 8.63 Liquor wholesaler warehouse facilities – A

Additional information concerning the rule that became effective June 1, 2008 may be found in the article titled “Recently Adopted Rule Summarized” on page 20 of this Bulletin. Additional information concerning the emergency rule relating to wine collectors and small winery cooperative wholesalers may be found in the article titled “Emergency Rule Recently Adopted” on page 18 of this Bulletin.

To order up-to-date administrative rules of the Department of Revenue (DOR), you can contact the Document Sales and Distribution Section of the Wisconsin Department of Administration to obtain the Tax section of the Wisconsin Administrative Code. Additional information is available at [www.legis.state.wi.us/rsb/codinfo.html](http://www.legis.state.wi.us/rsb/codinfo.html).

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.” 



## New Retirement Income Subtraction on the Horizon


Effective for taxable years beginning **on or after January 1, 2009**, individuals who receive income from a qualified retirement plan or an individual retirement account (IRA) may be able to subtract up to \$5,000 of such retirement benefits when computing their Wisconsin income tax.

To qualify for the subtraction, the individual must be at least 65 years of age before the close of the taxable year for which the subtraction is being claimed, and meet the following income limitations for that year.

- If the individual is single or files as head of household, his or her federal adjusted gross income is less than \$15,000.

- If the individual is married and files a joint return, the couple’s federal adjusted gross income is less than \$30,000.
- If the individual is married and files a separate return, the sum of both spouses’ federal adjusted gross income is less than \$30,000.

The subtraction does not apply to retirement benefits that are otherwise exempt from Wisconsin income tax. For example, an individual is receiving military retirement benefits that are exempt from Wisconsin income tax. The individual may not claim the \$5,000 subtraction based on the military retirement benefits.

The subtraction will first be available on 2009 Wisconsin income tax returns (due April 15, 2010). Individuals who will qualify for the subtraction and who will be making estimated tax payments for 2009 may want to consider the subtraction when determining the amount of their estimated tax payments. 

## Recently Adopted Rule Summarized

Summarized below is information regarding revised Tax 8.63, relating to liquor wholesaler warehouse facilities. The effective date of the revisions is June 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.

**Tax 8.63 Liquor wholesaler warehouse facilities.** This rule order changes the amount of floor space that a liquor wholesaler warehouse facility described in a wholesalers' permit is required to be from 4,000 to 1,000 square feet. It also creates a provision that allows the minimum square footage requirement to be waived when it is determined that a waiver is fair and equitable.

In addition to the changes to the requirements concerning liquor wholesaler warehouse facilities and liquor wholesalers, the rule creates a provision requiring the department to prepare and maintain a list of all liquor wholesale permittees and post the names from this list on the Internet. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

The text of the revisions to Tax 8.63 is as follows:

SECTION 1. Tax 8.63 (1) is amended to read:

**(1) MINIMUM REQUIREMENTS FOR WAREHOUSE FACILITIES.** The premises described in a permit issued under s. 125.54, Stats., shall be a minimum of ~~4,000~~ 1,000 square feet of floor space and shall be located in a free-standing building that is not part of or connected to a premises covered by a retail license or permit issued under s. 125.51, Stats.

SECTION 2. Tax 8.63 (1m) is created to read:

**(1m) EXCEPTION TO MINIMUM REQUIREMENTS.** The secretary of revenue may waive the requirement that a premises described in a permit issued under s. 125.54, Stats., be a minimum of 1,000 square feet of floor space when the secretary determines the waiver fair and equitable, if the applicant or permittee does both of the following:


(a) Submits a written request for a waiver along with the application for issuance or renewal of a permit.

(b) Clearly indicates how the requirements described in sub. (1) and s. 125.54 (7), Stats., other than the requirement that the premises described in the permit be a minimum of 1,000 square feet of floor space, will be or have been met.

SECTION 3. Tax 8.63 (7) is created to read:

**(7) INTERNET POSTING OF PERMITTEE INFORMATION.** The department shall prepare and maintain a list of all permittees under s. 125.54, Stats., and shall post the names of permittees from this list on the Internet at a site that is created and maintained by the department. The Internet site shall list the name of each permittee and the total square feet of floor space of the premises described in the permit. The department shall update the Internet site on a quarterly basis.

**Note:** This section interprets s. 125.54 (7), Stats.


To order up-to-date administrative rules of the department, you can contact the Document Sales and Distribution Section of the Wisconsin Department of Administration to obtain the Tax section of the Wisconsin Administrative Code. Additional information is available at [www.legis.state.wi.us/rsb/codinfo.html](http://www.legis.state.wi.us/rsb/codinfo.html). 

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## Updated Publication

Since the last issue of the *Wisconsin Tax Bulletin*, the Department of Revenue has revised its Publication 302, *Wisconsin Alcohol Beverage and Tobacco Laws for Retailers*. The revised version is available on the department's website at:

<http://www.revenue.wi.gov/pubs/pb302.pdf>.

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



## Enforcement Report

### Chippewa Falls Businessman Sentenced for Tax Fraud

Duane J. Kolve, 41, of Chippewa Falls was sentenced in March 2008 on 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.

Kolve was placed on 6 years probation. As a condition of probation, he was ordered to serve 6 months in jail. He was also ordered to pay the unpaid tax liabilities, as well as the associated penalties and interest.

The tax charges were the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

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### Green Bay Businessman Sentenced for Tax Crimes

Michael P. Dufresne, 52, of Green Bay was sentenced to 90 days in jail and three and a half years of probation in April 2008 in Brown County Circuit Court after pleading guilty to four felony counts of theft in a business setting for failing to remit sales taxes collected while he operated Pier 64, a restaurant in Allouez.

Dufresne was 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. One of the felony charges and both misdemeanor charges were later dropped as part 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.

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### Contractor Charged With Tax Fraud

Mark A. Stefanski, 52, of Iron Ridge failed to appear in Dodge County Circuit Court in April 2008 and a warrant was issued for his arrest. Stefanski was charged with two counts of failure to file timely income tax returns and three counts of knowingly submitting false tax documents.

The criminal tax charges were brought by the Dodge County District Attorney's Office after an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

According to the complaint, Mr. Stefanski filed a 2004 tax return due on April 15, 2005, on January 29, 2007, and a 2005 tax return due on April 17, 2006, on December 19, 2006.

Zeros were entered on all lines of the 2004, 2005, and 2006 tax returns indicating no gross income for each year. Payment records from various companies and individuals who paid Mr. Stefanski for work revealed he received payments of at least \$24,505 in 2004, \$84,095 in 2005, and \$34,264 in 2006. Mr. Stefanski

refused to file correct Wisconsin income tax returns and in numerous letters to the Department of Revenue stated that the submitted returns were proper.

If convicted on all counts, Mr. Stefanski could face up to 45 months in prison and fines totaling \$50,000. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, penalties, and interest due follows a conviction for criminal violations.

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### **Waukesha Woman Receives Jail Time for Tax and Welfare Fraud**

Soha Shanaa, 38, of Waukesha was ordered to spend one year in jail in April 2008 in Waukesha County Circuit Court. Judge Linda Van De Water withheld sentencing and placed Shanaa on five years probation. Shanaa was also ordered to pay restitution to the Wisconsin Department of Revenue and to Waukesha County.

Shanaa pleaded guilty in March 2008 to charges of filing fraudulent state income tax returns for 2004 and 2005 and for public assistance fraud.

In a separate complaint filed in Dane County in January 2008, Shanaa's husband, Elfatih Ibrahim, was charged with filing a fraudulent state income tax return for 2005 and for theft of state sales tax money.

The complaints alleged that the couple, who operate the Midtown Shell gas station at 641 North Hawley Road, misappropriated \$138,753 in sales tax money from the sales of cigarettes and groceries between 2002 and 2006.

According to the complaints, the couple also evaded \$10,802 in state income taxes in 2004 and 2005 by filing fraudulent income tax returns and underreporting income from their business operation. For 2004, the couple reported making only \$28,207 while an investigation by the Department of Revenue determined that their actual income was \$89,880. For 2005, the couple reported making \$37,197 while the investigation determined their income was \$113,302.

While misappropriating sales taxes and evading income taxes, the couple was also receiving medical assistance benefits from Waukesha County based on their fraudulent reported earnings. According to the complaints, between January 2003 and April 2006 the couple received \$15,595 in benefits they were not entitled to.

The investigation revealed that the couple made frequent cash deposits into personal accounts, depositing \$73,856 in 2004 and \$91,900 in 2005, and made accelerated payments of \$3,000 per month on their \$260,000 Waukesha home. They also purchased a \$46,000 Lexus automobile in July 2004 with a \$10,000 down payment. The couple used money from their business account to pay for personal expenses including payments for credit cards, home utilities, loan repayments, and other personal expenses totaling \$72,118 in 2004 and \$60,231 in 2005.

Elfatih Ibrahim was scheduled to appear in Dane County Circuit Court in May 2008.

Criminal charges were filed by the Wisconsin Attorney General's office and the Waukesha County District Attorney's Office after an investigation by the Criminal Investigation Section of the Wisconsin Department of Revenue. [✎](#)





## Report on Litigation

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

The following decisions are included:

### Sales and Use Taxes

Admissions <i>Milwaukee Symphony Orchestra Inc.</i> .....	23
Computer software – taxability (canned vs. custom programs) <i>Menasha Corporation</i> .....	23
Manufacturing exemption - snow-grooming equipment <i>James Engel D/B/A Sunburst Snowtubing and Recreation Park, LLC</i> .....	26

### Sales and Use Taxes, and Withholding of Taxes

Officer Liability <i>Christopher L. Field</i> .....	26
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## SALES AND USE TAXES

**Admissions.** *Milwaukee Symphony Orchestra, Inc. vs. Wisconsin Department of Revenue* (Dane County Circuit Court, April 23, 2008). This is a judicial review of the Wisconsin Tax Appeals Commission decision dated December 15, 2006. See *Wisconsin Tax Bulletin* 150 (January 2007), pages 31-32, for a summary of the Wisconsin Tax Appeals Commission's decision.

The main issue in this case is whether revenues received by Milwaukee Symphony Orchestra Inc. ("MSO") from admissions to its concerts are subject to Wisconsin sales tax under sec. 77.52(2)(a)2., Wis. Stats., which imposes Wisconsin sales and use tax on the sale of admissions to amusement, athletic, entertainment, or recreational events or places.

The Department of Revenue conducted a field audit of MSO for September 1, 1992 through August 31, 1996. During the audit period, MSO paid sales taxes on its concert ticket sales. In July 1997, MSO filed amended sales tax returns for the audit period, claiming a refund of \$719,456.69 in sales tax that it had previously paid on

its sales, including all of its ticket sales. The department granted a portion of MSO's refund claim and denied the remainder of the claim, which denial MSO contests.

The Department of Revenue contends that MSO's performances are *primarily entertainment* in nature. It was the assertion of MSO that its purpose of performing is *primarily educational* in nature. The Wisconsin Tax Appeals Commission previously concluded that the concerts at issue are *not primarily educational* events and the receipts from its concerts are, therefore, subject to Wisconsin sales tax.

The Circuit Court determined that the Wisconsin Tax Appeals Commission's interpretation of sec. 77.52(2)(a)2., Wis. Stats., as establishing a test based on a distinction between educational and entertainment events, has no foundation in the statute. The Circuit Court stated that the educational value of an event is not an appropriate test to determine whether an event is "entertainment."

Therefore, the Circuit Court remanded the action back to the Wisconsin Tax Appeals Commission to develop a standard for determining whether an event is "entertainment" and then apply its standard to MSO's concert receipts. Although the Wisconsin Tax Appeals Commission is free to conclude that MSO's concerts are taxable entertainment events, the Circuit Court stated that the Wisconsin Tax Appeals Commission must anchor its determination on a statutorily-based standard.

It was not known at the time of publication whether this decision would be appealed.

**Computer software – taxability (canned vs. custom programs).** *Wisconsin Department of Revenue vs. Menasha Corporation* (Supreme Court of Wisconsin, July 11, 2008). On January 25, 2007, the Court of Appeals reversed the October 26, 2004 decision of the Circuit Court for Dane County, which had reversed the Wisconsin Tax Appeals Commission's December 1, 2003 decision. See *Wisconsin Tax Bulletin* 151 (April 2007), page 20, *Wisconsin Tax Bulletin* 141 (January 2005), page 25, and *Wisconsin Tax Bulletin* 137 (January 2004), page 29, respectively, for summaries of the Court of Appeals, Circuit Court, and Commission decisions.



***Facts***

The taxpayer is a Wisconsin corporation with headquarters in Neenah, Wisconsin. In 1993, the taxpayer hired an independent accounting firm to evaluate its business and accounting software systems. The firm recommended that the taxpayer standardize its systems by implementing a single business software environment. The independent accounting firm also recommended that another consulting firm conduct feasibility studies to determine if a software system could integrate all of the taxpayer's subsidiaries. With its consultants, the taxpayer concluded that a global application software system would be feasible, provided that the new system allowed custom modification to meet the taxpayer's unique business requirements.

The taxpayer purchased the software system ("R/3 System") in 1995 for \$5.2 million. The initial R/3 System consisted of more than seventy software modules. Each module provided a rudimentary business and accounting software system for a segment of a client's business. The R/3 System is not usable to a client as sold; it must be modified to fit a client's business operations. It becomes usable for serving a client's business and accounting needs only after the modifications are completed.

The licensing agreement contained no provision for customization of the system by the vendor; however, the vendor advised the taxpayer that, because of the complexities of the system and substantial customization necessary to make the system usable, the taxpayer would be required to retain either the vendor's consultants or a consultant designated by the vendor. Since the vendor was unable to supply all of the necessary consultants for the installation and customization of the system, the taxpayer worked with one of the vendor's designated consultants. The taxpayer understood that the customization process could take years to complete and would cost tens of millions of dollars. The taxpayer's budget for purchasing the R/3 System included the costs that it expected to pay both the vendor and the vendor's designated consultants for the configuration, modification, and customization of the system.

Initial installation of the R/3 System began on March 25, 1996, and downloading was complete on March 27, 1996. The implementation and programming team members worked to customize the system for over nine months in order to meet the taxpayer's functional needs. The programming team created codes for hundreds of user exits to the R/3 System to integrate external programs with the R/3 System. In addition, the

programming team created new subsystems to run parallel to the R/3 system for operations that were not available in the R/3 System, but were critical to the taxpayer's business. In total, more than 3,000 modifications were made to the R/3 System by the implementation and programming teams. The vendor also provided patches for the R/3 System to correct functional gaps. Some of these patches included new source code written specifically for the taxpayer's R/3 System to address the shortfalls of the R/3 System as it applied to the taxpayer's business.

Testing of the R/3 System lasted three to four months and included running real data through the system to determine whether it was operational in accordance with the taxpayer's required specifications. After testing was complete, all relevant employees from all of the taxpayer's subsidiaries were required to attend two-day to five-day classes provided by the consultants and the taxpayer's information support staff.

Customization and installation of the R/3 System cost the company more than \$23 million, of which only \$5.2 million was for the core R/3 System. To customize the system for the taxpayer's business, the taxpayer paid the vendor \$2.5 million, the vendor's designated consultant approximately \$13 million, and third-party consultants approximately \$775,000.

In 1998, the Department of Revenue audited the vendor. In that audit, the department determined that the R/3 System was non-custom and thus taxable. The vendor did not dispute that determination. Separately, the vendor and the taxpayer entered into an agreement whereby the taxpayer would pay sales tax for the R/3 System but that the taxpayer would dispute that payment and file a claim for refund. The taxpayer filed a claim for refund with the Department of Revenue for tax paid on its purchase of the R/3 System. The department denied the taxpayer's refund claim and its petition for redetermination.

***Case History***

This case was previously heard by the Wisconsin Tax Appeals Commission, the Circuit Court for Dane County, and the Court of Appeals. Each of the courts decided the following:

*Wisconsin Tax Appeals Commission* – On December 1, 2003, the Commission granted the taxpayer's motion for summary judgment. Using the factors for determining whether a program is a custom program under sec. Tax 11.71(1)(e), Wis. Adm. Code, the

Commission concluded the software was custom software, because: (1) significant presale consultation and analysis had occurred, (2) a former employee of the vendor loaded the software, and after installation and customization was complete, the R/3 System was tested for three to four months, (3) substantial training and written documentation was required, (4) the system needed enhancement and maintenance support, (5) the cost, when considering all the facts and circumstances, is a factor, but not determinative\*, and (6) the software was not “prewritten” software because of the substantial amount of resources, time, and effort needed to make the R/3 System usable. The Commission determined that Factor 7 regarding significant modification to an existing program was not applicable, because the R/3 System was a custom program rather than an existing program. The Department of Revenue appealed this decision to the Circuit Court for Dane County.

*\*The Commission concluded that Factor 5 regarding a rebuttable presumption that a program is not custom if it cost \$10,000 or less, should not apply in this case, because the cost greatly exceeded \$10,000, but the Commission reasonably concluded that cost could be considered when evaluating all the facts and circumstances. In the end, the Commission reasonably considered cost.*

**Circuit Court for Dane County** – The Circuit Court reversed the Commission on October 6, 2004. While the Circuit Court found no error with the Commission’s interpretation of the rule’s introduction, it disagreed with the Commission’s interpretation and application of some factors. The Circuit Court concluded that the R/3 System was existing and prewritten when the vendor sold it to the taxpayer because (1) while there may have been significant presale consultation and analysis, and significant testing of the customized system, the fact that a former employee of the vendor installed it rather than the vendor weighs in favor of deeming the R/3 system prewritten; (2) while the Department of Revenue conceded the third, fourth, and fifth factors, the R/3 System fits the definition of a prewritten program because (a) it was already prepared and available for general consumption prior to the sale to the taxpayer, (b) it was held by the vendor to be licensed to thousands of world-wide customers as requested, and (c) it was not written solely for the taxpayer upon the taxpayer’s request; therefore, (3) given that the R/3 System was an ex-

isting program, the seventh factor does apply, and the facts as set forth by the Commission do not show that the vendor performed the significant modification of the R/3 System that was required to make it useful to the taxpayer.

The Circuit Court stated that where the software selected for purchase is an already existing program available for general use, significant modification must be made by the vendor for the software to be deemed custom. Thus, the taxpayer’s purchase of the R/3 System did not involve the purchase of custom software.

**Court of Appeals** – On January 25, 2007, the Court of Appeals reversed the Circuit Court’s decision and affirmed the Commission’s decision granting a refund to the taxpayer for taxes paid on the software. The Court of Appeals concluded that the Commission reasonably interpreted and applied sec. Tax 11.71(1)(e) and (k), Wis. Adm. Code, in determining that the software was customized software. The Department of Revenue appealed this decision to the Supreme Court of Wisconsin.

### Issues

The Supreme Court of Wisconsin addressed the following two issues:

1. What is the proper level of deference that it should give to the Commission’s decision?
2. Did the Commission reasonably conclude that the R/3 System was a custom program and, therefore, not subject to sales and use tax?


### The Supreme Court of Wisconsin’s Decision

**Issue 1** – In this case, the Supreme Court of Wisconsin reviewed the Commission’s decision. While the Supreme Court of Wisconsin is not bound by an agency’s (for example, the Commission’s) conclusions of law, the Supreme Court of Wisconsin may defer to the Commission’s legal conclusions. The specific characterization of deference given to an agency is dependent upon whether the agency is interpreting a statute or a regulation.

The Supreme Court of Wisconsin concluded that the Commission’s interpretation of the statute (sec. 77.51(20), Wis. Stats.) is entitled to “due weight deference, while the Commission’s interpretation of the regulation (sec. Tax 11.71(1)(e), Wis. Adm. Code) is entitled to “controlling weight deference.”

Issue 2 – The Supreme Court of Wisconsin determined that the Commission reasonably concluded that all the facts and circumstances and all seven factors provided by regulation must be considered when determining whether a computer program is a custom program. Applying this construction to the particular facts of the case, the Supreme Court of Wisconsin determined that the Commission reasonably concluded that the R/3 System was a custom program.

Accordingly, the Supreme Court of Wisconsin affirmed the decision of the Court of Appeals.

 **Manufacturing exemption – snow-grooming equipment.** *James Engel d/b/a Sunburst Snowtubing and Recreation Park, LLC vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 27, 2008).

The issue in this case is whether James Engel d/b/a Sunburst Snowtubing and Recreation Park, LLC and Summit Ski Corp. d/b/a Sunburst Ski Area (together, “taxpayer”) uses snow-grooming tractors and related equipment exclusively and directly in its manufacture of snow, thus allowing the taxpayer an exemption from Wisconsin sales and use taxes on its purchase of such equipment. Section 77.54(6)(a), Wis. Stats., provides an exemption for machinery and specific processing equipment used exclusively and directly by a manufacturer in manufacturing tangible personal property.

The taxpayer owns and operates a winter recreational ski, snowboarding, and snowtubing area where the public can enter and participate for a fee. The taxpayer collects and remits sales taxes on its fees, which are taxable admissions.

In connection with its business, the taxpayer owns and operates certain snow-making and grooming equipment. The taxpayer uses its snow-grooming tractors and related equipment to spread and groom manufactured snow on the slopes of its facility. The snow-grooming tractors and related equipment are used to groom both manufactured snow and natural snow at its facility. The tractors are used by the taxpayer on a daily basis to re-finish snow surfaces, regardless of new snow additions (natural or machine-made snow) and regardless of any snow-making process. On a daily or twice daily basis, the taxpayer uses the grooming tractors to create a “Corduoy Groomed Surface Condition” on the slopes of its facilities for use by its customers. Although the taxpayer does not manufacture snow for sale to its customers, the taxpayer asserts that it manufactures this “Corduoy Groomed Surface Condition” for sale to its


customers that the customers purchase and consume through use on the slopes.

The Department of Revenue allowed the exemption for machinery and equipment that the taxpayer used in its snow-making operation. However, the department stated that the manufacturing process ends when the snow is deposited in piles on the slopes of the taxpayer’s facilities. The taxpayer asserted that the end product of its manufacturing process is the “Corduoy Groomed Surface Condition” composed of natural and man-made snow and produced by the grooming tractors.

The Commission ruled that the snow-grooming equipment at issue did not qualify for exemption from Wisconsin sales and use taxes under sec. 77.54(6)(a), Wis. Stats. The taxpayer is not in the business of selling snow, including packed snow with a “Corduoy Groomed Surface Condition,” to its customers. The taxpayer’s customers do not come to its facilities to purchase snow. Rather, its customers come to ski, snowboard, or go snowtubing. The taxpayer sells taxable admissions. To the extent that the taxpayer sells any snow (including groomed snow) as tangible personal property in conjunction with its sales of admissions, such sales would be treated as incidental to its sales of services.

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

## SALES AND USE TAXES AND WITHHOLDING OF TAXES

 **Officer Liability.** *Christopher L. Field vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 19, 2008). The issue in this case is whether the taxpayer is a responsible person who is liable for the unpaid sales taxes of Next Generation Computers, LLC (“NGC”) under sec. 77.60(9), Wis. Stats, for the period of July 1, 2001 through December 31, 2001.

NGC was organized effective June 21, 2001. NGC had a checking account that was active throughout and after the period at issue. The taxpayer was one of three individuals who signed a Bank Signature Card for the account and was authorized to act on NGC’s behalf with respect to the account. The taxpayer signed checks from NGC’s checking account during this period that were issued to various persons.

The taxpayer denied that he was a member and officer of NGC; however, the taxpayer stated that he was a member and officer of NGC in prior correspondence with the Wisconsin Department of Revenue. Additionally, on NGC's application for a Wisconsin Seller's Permit, the taxpayer is listed as an officer and 25% owner of NGC.

The Commission stated that the Department of Revenue presented clear and satisfactory evidence establishing that the taxpayer had the **authority** and **duty** to pay the taxes at issue and that he **intentionally breached that duty**. Therefore, the Commission concluded that the Department of Revenue was correct in determining that the taxpayer is a responsible person with respect to NGC and that the taxpayer is personally liable for the unpaid sales taxes at issue.

The taxpayer has appealed this decision to the Circuit Court.



# 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:

## SALES AND USE TAX

### 1 Credit for Sales and Use Taxes Paid to Other States and Their Local Units of Government

This tax release supersedes the tax releases previously published in *Wisconsin Tax Bulletin* 75 (January 1992), page 17, *Credit for Sales Tax Paid in Minnesota*, and *Wisconsin Tax Bulletin* 100 (January 1997), page 29, *Credit for Sales and Use Taxes Paid to Other States and Local Units of Government*. The tax treatment described in this tax release applies for all periods open to adjustment under the statute of limitations.

**Statutes:** Sections 77.53(16), 77.71(2), (3), and (4), and 77.54(1), Wis. Stats. (2005-06), as amended through 2007 Wisconsin Act 11, unless otherwise indicated.

**Introduction:** Persons located in Wisconsin, including individuals, corporations, partnerships, and limited liability companies, may purchase and take possession of items outside of Wisconsin and then store, use, or consume the items in Wisconsin. These persons may be required to pay the sales or use tax of another state and/or a local unit of government when taking possession of the items in the other state.

Wisconsin sales and use tax law provides a credit for sales or use taxes that are properly due and paid to another state and/or local unit of government on property or services purchased outside Wisconsin and subsequently stored, used, or consumed in Wisconsin. The credit is allowed against (but not in excess of) the total of Wisconsin state, county, and special district (baseball stadium and football stadium) use taxes imposed on the same property or services purchased in the other state. (**Note:** Local exposition district taxes are only imposed on the **sales** of certain property and services. No local exposition **use** tax is imposed. Premier resort area taxes are only imposed on the **sales** of tangible personal property and taxable services. No premier resort area **use** tax is imposed.)

#### Index to Information Contained in This Tax Release

#### I. Background - Applicable Wisconsin Statutes

#### II. Limitation on Amount of Credit for Sales or Use Tax Paid to Another State

#### III. Examples

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**I. Background**

1. Applicable Wisconsin Statutes

***Credit for Other State's State Sales or Use Tax Paid:*** Section 77.53(16), Wis. Stats. (2005-06), provides that “If the purchase, rental or lease of tangible personal property or service subject to the tax imposed by this section was subject to a sales tax by another state in which the purchase was made, the amount of sales tax paid the other state shall be applied as a credit against and deducted from the tax, to the extent thereof, imposed by this section. In this subsection ‘sales tax’ includes a use or excise tax imposed on the use of tangible personal property or taxable service by the state in which the sale occurred and ‘state’ includes the District of Columbia but does not include the commonwealth of Puerto Rico or the several territories organized by congress.”

***Credit for Other State's Local Sales or Use Tax Paid - General:*** Section 77.71(2), Wis. Stats. (2005-06), provides that “An excise tax is imposed at the rate of 0.5% in the case of a county tax or at the rate under ss. 77.705 or 77.706 in the case of a special district tax of the sales price upon every person storing, using or otherwise consuming in the county or special district tangible personal property or services if the property or service is subject to the state use tax under s. 77.53, except that a receipt indicating that the tax under sub. (1), (3) or (4) has been paid relieves the buyer of liability for the tax under this subsection and except that if the buyer has paid a similar local tax in another state on a purchase of the same property or services that tax shall be credited against the tax under this subsection and except that for motor vehicles that are used for a purpose in addition to retention, demonstration or display while held for sale in the regular course of business by a dealer the tax under this subsection is imposed not on the sales price but on the amount under s. 77.53 (1m).”

***Credit for Other State's Local Sales or Use Tax Paid - Construction Contractors:*** Section 77.71(3), Wis. Stats. (2005-06), provides that “An excise tax is imposed upon a contractor engaged in construction activities within the county or special district, at the rate of 0.5% in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax of the sales price of tangible personal property that is used in constructing, altering, repairing or improving real property and that becomes a component part of real property in that county or special district, except that if the contractor has paid the sales tax of a county in the case of a county tax or of a special district in the case of a special district tax in this state on that property, or has paid a similar local sales tax in another state on a purchase of the same property, that tax shall be credited against the tax under this subsection.”

***Credit for Other State's Local Sales or Use Tax Paid - Registered or Titled Items Including Automobiles, Boats, and Aircraft:*** Section 77.71(4), Wis. Stats. (2005-06), provides that “An excise tax is imposed at the rate of 0.5 percent in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax of the sales price upon every person storing, using or otherwise consuming a motor vehicle, boat, snowmobile, **recreational vehicle, as defined in s. 340.01 (48r)** [emphasis added to highlight change], trailer, semitrailer, all-terrain vehicle or aircraft, if that property must be registered or titled with this state and if that property is to be customarily kept in a county that has in effect an ordinance under s. 77.70 or in a special district that has in effect a resolution under s. 77.705 or 77.706, except that if the buyer has paid a similar local sales tax in another state on a purchase of the same property that tax shall be credited against the tax under this subsection.” (This applies for periods after December 31, 2007.)

*For periods prior to January 1, 2008, sec. 77.71(4), Wis. Stats. (2005-06), reads as follows:* “An excise tax is imposed at the rate of 0.5% in the case of a county tax or at the rate under s. 77.705 or 77.706 in the case of a special district tax of the sales price upon every person storing, using or otherwise consuming a motor vehicle, boat, snowmobile, **mobile home not exceeding 45 feet in length** [emphasis added to highlight change], trailer, semitrailer, all-terrain vehicle or aircraft, if that property must be registered or titled with this state and if that property is to be customarily kept in a county that has in effect an ordinance under s. 77.70 or in a special district that has in effect a resolution under s. 77.705 or 77.706, except that if the buyer has paid a similar local sales tax in another state on a purchase of the same property that tax shall be credited against the tax under this subsection.”

***Exemption for Gross Receipts Which This State is Prohibited From Taxing Under the Constitution or Laws of the United States:*** Section 77.54(1), Wis. Stats. (2005-06), provides that “There are exempted from the taxes imposed by this subchapter: The gross receipts from the sale of and the storage, use or other consumption in this state of tangible personal property and services the gross receipts from the sale of which, or the storage, use or

other consumption of which, this state is prohibited from taxing under the constitution or laws of the United States or under the constitution of this state.”

**Note 1:** "Local sales tax," "local use tax," and "local tax" as used in this tax release mean a sales or use tax imposed by a city, village, town, county, or other local unit of government in another state.

**Note 2:** The Wisconsin Sales and Use Tax Return line references in this tax release are references to the Wisconsin Sales and Use Tax Return (Form ST-12) with a revision date of 10/07.

**Note 3:** Most of the examples illustrate reporting the Wisconsin state, county, and baseball or football stadium district use taxes using Form ST-12. For taxpayers who are not required to file Form ST-12, other forms approved for use in reporting Wisconsin state, county, and baseball or football stadium district use taxes may be used, such as Form UT-5 (Consumer Use Tax Return) or Form 1 (Wisconsin Individual Income Tax Return).

## II. Limitation on Amount of Credit for Sales or Use Taxes Paid to Another State

The five charts below summarize the amount of credit for another state's state and local sales or use taxes properly paid which may be claimed against the Wisconsin state, county, and stadium use taxes imposed. The charts apply to commonly encountered situations, but not all situations. See examples #11 through #17 for special situations. Also, see footnotes 3 and 4, after Chart 5. If you have a situation not covered in the following examples, please contact the Wisconsin Department of Revenue.

**Chart 1 - Amount of Credit Allowed for the Other State's Combined State and Local Sales or Use Taxes Properly Paid Which May Be Claimed Against Wisconsin State Use Tax Imposed. Wisconsin State Use Tax Rate is 5%**

Combined State and Local Tax Rate Imposed in Other State	Credit Against the 5% Wisconsin State Use Tax Imposed	Credit Against the 0.5% County Use Tax Imposed	Credit Against the 0.5% Football Stadium Use Tax Imposed	Credit Against the 0.1% Baseball Stadium Use Tax Imposed
Less Than 5%	Amount of Combined State and Local Taxes Paid to the Other State	N/A	N/A	N/A
Equal to or Greater Than 5%	Amount of Wisconsin State Use Tax Imposed	N/A	N/A	N/A

**Chart 2 - Amount of Credit Allowed for the Other State's Combined State and Local Sales or Use Taxes Properly Paid Which May Be Claimed Against Wisconsin State and County Use Taxes Imposed. Combined Wisconsin State and County Use Tax Rate is 5.5%**

Combined State and Local Tax Rate Imposed in Other State	Credit Against the 5% Wisconsin State Use Tax Imposed	Credit Against the 0.5% County Use Tax Imposed	Credit Against the 0.5% Football Stadium Use Tax Imposed	Credit Against the 0.1% Baseball Stadium Use Tax Imposed
Less Than 5.5%	10/11 (.9091) of the Amount of Combined State and Local Taxes Paid to the Other State	1/11 (.0909) of the Amount of Combined State and Local Taxes Paid to the Other State	N/A	N/A
Equal to or Greater Than 5.5%	Amount of Wisconsin State Use Tax Imposed	Amount of Wisconsin County Use Tax Imposed	N/A	N/A

**Chart 3 - Amount of Credit Allowed for the Other State's Combined State and Local Sales or Use Taxes Properly Paid Which May Be Claimed Against Wisconsin State and Football Stadium District Use Taxes Imposed.<sup>1,2</sup> Combined Wisconsin State and Football Stadium Use Tax Rate is 5.5%**

Combined State and Local Tax Rate Imposed in Other State	Credit Against the 5% Wisconsin State Use Tax Imposed	Credit Against the 0.5% County Use Tax Imposed	Credit Against the 0.5% Football Stadium Use Tax Imposed	Credit Against the 0.1% Baseball Stadium Use Tax Imposed
Less Than 5.5%	10/11 (.9091) of the Amount of Combined State and Local Taxes Paid to the Other State	N/A	1/11 (.0909) of the Amount of Combined State and Local Taxes Paid to the Other State	N/A
Equal to or Greater Than 5.5%	Amount of Wisconsin State Use Tax Imposed	N/A	Amount of Wisconsin Football Stadium Use Tax Imposed	N/A

**Chart 4 - Amount of Credit Allowed for the Other State's Combined State and Local Sales or Use Taxes Properly Paid Which May Be Claimed Against Wisconsin State and Baseball Stadium District Use Taxes Imposed.<sup>3,4</sup> Combined Wisconsin State and Baseball Stadium District Use Tax Rate is 5.1%**

Combined State and Local Tax Rate Imposed in Other State	Credit Against the 5% Wisconsin State Use Tax Imposed	Credit Against the 0.5% County Use Tax Imposed	Credit Against the 0.5% Football Stadium Use Tax Imposed	Credit Against the 0.1% Baseball Stadium Use Tax Imposed
Less Than 5.1%	50/51 (.9804) of the Amount of Combined State and Local Taxes Paid to the Other State	N/A	N/A	1/51 (.0196) of the Amount of Combined State and Local Taxes Paid in the Other State
Equal to or Greater Than 5.1%	Amount of Wisconsin State Use Tax Imposed	N/A	N/A	Amount of Wisconsin Baseball Stadium Use Tax Imposed

**Chart 5 - Amount of Credit Allowed for the Other State's Combined State and Local Sales or Use Taxes Properly Paid Which May Be Claimed Against Wisconsin State, County, and Baseball Stadium Use Taxes Imposed.<sup>3,4</sup> Combined Wisconsin State, County, and Baseball Stadium District Use Tax Rate is 5.6%**

Combined State and Local Tax Rate Imposed in Other State	Credit Against the 5% Wisconsin State Use Tax Imposed	Credit Against the 0.5% County Use Tax Imposed	Credit Against the 0.5% Football Stadium Use Tax Imposed	Credit Against the 0.1% Baseball Stadium Use Tax Imposed
Less Than 5.6%	50/56 (.8929) of the Amount of Combined State and Local Taxes Paid in the Other State	5/56 (.0893) of the Amount of Combined State and Local Taxes Paid to the Other State	N/A	1/56 (.0178) of the Amount of Combined State and Local Taxes Paid to the Other State
Equal to or Greater Than 5.6%	Amount of Wisconsin State Use Tax Imposed	Amount of Wisconsin County Use Tax Imposed	N/A	Amount of Wisconsin Baseball Stadium Use Tax Imposed

<sup>1</sup> The football stadium district is comprised of Brown County. Brown County does not currently impose a county sales or use tax.



<sup>2</sup> **Exception for construction materials stored in the Baseball Stadium District and later used in Brown County.**

A special computation is required in a situation where construction materials are first subject to a sales or use tax in another state, the materials are stored, used, or consumed in the baseball stadium district, and then used in real property construction in Brown County. The 0.5% football stadium district use tax imposed will be offset by a credit for the 0.1% baseball stadium district use tax imposed. The combined Wisconsin state and local taxes are then reduced by the credit for the other state's combined state and local sales taxes paid, with the credit being allocated as follows:

- (a) if the construction materials are first stored in Milwaukee, Ozaukee, or Washington counties, the Wisconsin state and local taxes owed, before applying the credit for taxes paid to the other state, are as follows:

Wisconsin state use tax:	5.0%
County use tax:	0.5%
Baseball stadium use tax:	0.1%
Football stadium use tax:	0.4% (0.5% rate less credit for the 0.1% baseball stadium district use tax)
<u>Total</u>	<u>6.0%</u>

The credit for the taxes paid to the other state is allocated as follows: 50/60 (.8333) is allocated against the Wisconsin state use tax imposed, 5/60 (.0833) is allocated to the Wisconsin county use tax imposed, 1/60 (.0167) is allocated to the baseball stadium district use tax imposed, and 4/60 (.0667) is allocated against the football stadium use tax imposed, or

- (b) If the construction materials are first stored in Racine or Waukesha counties, the Wisconsin state and local taxes owed, before applying the credit for taxes paid to the other state, are as follows:

Wisconsin state use tax:	5.0%
Baseball stadium use tax:	0.1%
Football stadium use tax:	0.4% (0.5% rate less credit for the 0.1% baseball stadium district use tax)
<u>Total</u>	<u>5.5%</u>

The credit for the taxes paid to the other state is allocated as follows: 50/55 (.9091) is allocated against the Wisconsin state use tax imposed, 1/55 (.0182) is allocated to the baseball stadium district use tax imposed and 4/55 (.0727) is allocated to the football stadium district use tax imposed.

<sup>3</sup> The baseball stadium district is comprised of the following counties: Milwaukee, Ozaukee, Racine, Washington, and Waukesha. Milwaukee, Ozaukee, and Washington counties currently impose a county sales and use tax. Racine and Waukesha counties do not currently impose a county sales or use tax.

<sup>4</sup> **Exception for Construction Materials Stored in Brown County and Later Used in the Baseball Stadium District.**

In a situation where construction materials are first subject to a sales or use tax in another state, are first stored, used, or consumed in Brown County, and then used in real property construction in the baseball stadium district, no baseball stadium taxes are due. The 0.1% baseball stadium district use tax is offset by a credit for the 0.5% football stadium district use tax imposed on the same purchase. The combined Wisconsin state and local taxes are then reduced by the credit for the other state's combined state and local sales taxes paid, with the credit being allocated as follows:

- (c) if the construction materials are used in real property construction in Milwaukee, Ozaukee, or Washington counties, 50/60 (.8334) is allocated against the Wisconsin state use tax imposed, 5/60 (.0833) is allocated to the county use tax imposed, and 5/60 (.0833) is allocated against the football stadium district use tax imposed, or
- (d) If the construction materials are used in real property construction in Racine or Waukesha counties, use Chart 3.

**III. Examples**

The following examples include various situations persons may encounter with respect to Wisconsin state, county, and stadium sales and use taxes, if they purchase items outside of Wisconsin and are required to pay sales or use taxes to the other state. The examples provide information as to the amount of sales tax paid to the other state which may be claimed as a credit against the Wisconsin state, county, and stadium use taxes imposed and how to compute and report the Wisconsin state, county, and stadium use taxes due. If you have a situation not covered in the following examples, please contact the Wisconsin Department of Revenue.

**Facts 1 - Combined State and Local Sales Taxes Paid in Other State are Less Than Wisconsin State Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5%.**

- Company A, in Wisconsin, purchases equipment for \$1,000 from a supplier located in State B.
- Company A takes possession of the equipment in State B.

- Company A is properly charged State B's 4% state sales tax (\$40) and State B's 0.25% local sales tax (\$2.50).
- Company A brings the equipment into Wisconsin for use in a county which does not impose the 0.5% county sales and use tax, nor is the county a part of either the baseball or football stadium district.

**Questions 1:**

- May the combined 4.25% state and local sales taxes (\$42.50) paid to State B be claimed as a credit against the 5% Wisconsin state use tax (\$50.00) imposed?
- What amount of Wisconsin state use tax must be paid to Wisconsin on this transaction?
- How should Company A report the net use tax due (if any) to Wisconsin on this transaction?

**Answers 1: (Refer to Chart 1)**

- Yes. The combined 4.25% state and local sales taxes (\$42.50) paid to State B are allowed as a credit under secs. 77.53(16) and 77.54(1), Wis. Stats. (2005-06), against the 5% Wisconsin state use tax (\$50.00) imposed on the same purchase.
- The Wisconsin state use tax due is computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State Use Tax Imposed (\$1,000 x 5%)	\$50.00
Less: State B's State and Local Sales Taxes Paid (\$1,000 x 4.25%)	\$42.50
Wisconsin State Use Tax Due	\$ 7.50

- Company A should report the Wisconsin state use tax due as follows:

Measure of Wisconsin State Use Tax Due:

$\$7.50 \text{ (State Use Tax Due)} \div 0.05 \text{ (State Tax Rate)} = \$150.00 \text{ (Measure of State Use Tax Due)}$

\$150.00 (the measure of state use tax due) should be entered on line 21a of the Wisconsin Sales and Use Tax Return (Form ST-12).

**Facts 2 - Combined State and Local Sales Taxes Paid to Other State are Less Than Combined Wisconsin State and County Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.5%.**

- Company E, located in Wisconsin, purchases equipment for \$1,000 from a supplier located in State F.
- Company E takes possession of the equipment in State F.
- Company E is properly charged State F's 4% state sales tax (\$40) and State F's 1% local sales tax (\$10).
- Company E brings the equipment into Wisconsin for use in a county that imposes the 0.5% county sales and use tax, but the county is not part of either the baseball or football stadium district.

**Questions 2:**

- May the 4% state sales tax (\$40) and the 1% local sales tax (\$10) paid to State F be claimed as a credit against the combined 5.5% Wisconsin state and county use taxes (\$55.00) imposed?

- b. What amount of Wisconsin state and county use taxes must be paid to Wisconsin on this transaction?
- c. How should Company E report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 2: (Refer to Chart 2)**

- a. Yes. The combined 5% state and local sales taxes (\$50) paid to State F are allowed as credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.5% Wisconsin state and county use taxes (\$55) imposed on the same purchase.
- b. The Wisconsin state and county use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State and County Use Taxes Imposed (\$1,000 x 5.5%)	\$55.00
Less: State F's State and Local Sales Taxes Paid (\$1,000 x 5%)	\$50.00
Wisconsin State and County Use Taxes Due:	\$ 5.00

- c. Company E should report the Wisconsin state and county use taxes due as follows:

Measure of Wisconsin State and County Use Taxes Due:

\$5.00 (Use Taxes Due) ÷ 0.055 (Combined Wisconsin Use Tax Rate) = \$90.91 (Measure of Wisconsin State and County Use Taxes Due)

\$90.91 (the measure of Wisconsin state use tax due) should be entered on line 21a of the Wisconsin Sales and Use Tax Return (Form ST-12).

\$90.91 (the measure of Wisconsin county use tax due) should be entered on line 22c, 23c, 24c, or 25c of Form ST-12, or on Schedule CT, as appropriate.

**Facts 3 - State Sales Tax Paid to Other State is Less Than Combined Wisconsin State and Football Stadium District Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.5%.**

- Company I, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State J.
- Company I takes possession of the equipment in State J.
- Company I is properly charged State J's 4.5% state sales tax (\$450). No local sales or use tax is imposed in State J on the sale of the equipment to Company I.
- Company I brings the equipment into Wisconsin for use in Brown County. Brown County comprises the football stadium district. The football stadium district tax rate is 0.5%. Brown County does not impose the 0.5% county sales and use tax.

**Questions 3:**

- a. May the 4.5% state sales tax paid to State J (\$450) be claimed as a credit against the combined 5.5% Wisconsin state and football stadium district use taxes (\$550) imposed?
- b. What amount of Wisconsin state and football stadium district use taxes must be paid to Wisconsin on this transaction?
- c. How should Company I report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 3: (Refer to Chart 3)**

- a. Yes. The amount of state sales tax paid to State J (\$450) is allowed as a credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.5% Wisconsin state and football stadium district use taxes (\$550) imposed on the same purchase.
- b. The Wisconsin state and football stadium district use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
	-----
Wisconsin State and Football Stadium District Use Taxes Imposed (\$10,000 x 5.5%)	\$550.00
Less: State J's State Sales Tax Paid (\$10,000 x 4.5%)	\$450.00
	-----
Wisconsin State and Football Stadium District Use Taxes Due:	\$100.00
	=====

- c. Company I should report the Wisconsin state and football stadium district use taxes due as follows:

Measure of Wisconsin State and Football Stadium District Use Taxes Due:

\$100.00 (Use Taxes Due) ÷ 0.055 (Combined Wisconsin Use Tax Rate) = \$1,818.18 (Measure of Wisconsin State and Football Stadium Use Taxes Due).

\$1,818.18 (the measure of Wisconsin state use tax due) should be entered on line 21a of the Wisconsin Sales and Use Tax Return (Form ST-12).

\$1,818.18 (the measure of Wisconsin football stadium district use tax due) should be entered on line 29a of the Wisconsin Sales and Use Tax Return (Form ST-12).

**Facts 4 - State Sales Tax Paid to Other State is Less Than Combined Wisconsin State and Baseball Stadium District Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.1%.**

- Company O, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State P.
- Company O takes possession of the equipment in State P.
- Company O is properly charged State P's 5% state sales tax (\$500). No local sales or use tax is imposed in State P on the sale of the equipment to Company O.
- Company O brings the equipment into Wisconsin for use in Racine County. Racine County is a part of the baseball stadium district. The baseball stadium district tax rate is 0.1%. Racine County does not impose the 0.5% county sales and use tax.

**Questions 4:**

- a. May the 5% state sales tax paid to State P (\$500) be claimed as a credit against the combined 5.1% Wisconsin state and baseball stadium district use taxes (\$510) imposed?
- b. What amount of Wisconsin state and baseball stadium district use taxes must be paid to Wisconsin on this transaction?
- c. How should Company O report the use taxes due (if any) to Wisconsin on this transaction?



**Answers 4: (Refer to Chart 4)**

- a. Yes. The amount of state sales tax paid to State P (\$500) is allowed as a credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.1% Wisconsin state and baseball district use taxes (\$510) imposed on the same purchase.
- b. The Wisconsin state and baseball stadium district use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
	-----
Wisconsin State and Baseball Stadium District Use Taxes Due (\$10,000 x 5.1%)	\$510.00
Less: State P's Sales Tax Paid (\$10,000 x 5.0%)	\$500.00
	-----
Wisconsin State and Baseball Stadium District Use Taxes Due:	\$ 10.00
	=====

- c. Company O should report the Wisconsin state and baseball stadium district use taxes due as follows:

Measure of Wisconsin State and Baseball Stadium District Use Taxes Due:

$\$10.00 \text{ (Use Taxes Due)} \div .051 \text{ (Combined Wisconsin Use Tax Rate)} = \$196.08 \text{ (Measure for State and Baseball Stadium District Use Taxes Due)}$

\$196.08 (the measure of state use tax due) should be entered on line 21a of the Wisconsin Sales and Use Tax Return (Form ST-12).

\$196.08 (the measure of baseball stadium district use tax due) should be reported on line 28a of the Wisconsin Sales and Use Tax Return (Form ST-12).

**Facts 5 - State Sales Tax Paid to Other State is Less Than Combined Wisconsin State, County, and Baseball Stadium District Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.6%.**

- Company S, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State T.
- Company S takes possession of the equipment in State T.
- Company S is properly charged State T's 4.5% state sales tax (\$450). No local sales or use tax is imposed in State T on the sale of the equipment to Company S.
- Company S brings the equipment into Wisconsin for use in Ozaukee County. Ozaukee County imposes the 0.5% county sales and use tax. Ozaukee County is part of the baseball stadium district. The baseball stadium district sales and use tax rate is 0.1%.

**Questions 5:**

- a. May the 4.5% state sales tax paid to State T (\$450) be claimed as a credit against the combined 5.6% Wisconsin state, county, and baseball stadium district use taxes (\$560) imposed?
- b. What amount of Wisconsin state, county, and baseball stadium district use taxes must be paid to Wisconsin on this transaction?
- c. How should Company S report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 5: (Refer to Chart 5)**

- a. Yes. The amount of state sales tax paid to State T (\$450) is allowed as a credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.6% Wisconsin state, county, and baseball stadium district use taxes (\$560) imposed on the same purchase.
- b. The Wisconsin state, county and baseball stadium district use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
	-----
Wisconsin State, County, and Baseball Stadium District Use Taxes Imposed (\$10,000 x 5.6%)	\$560.00
Less: State T's Sales Tax Paid (\$10,000 x 4.5%)	\$450.00
	-----
Wisconsin State, County, and Baseball Stadium District Use Taxes Due	\$110.00
	=====

- c. Company S should report the Wisconsin state, county, and baseball stadium district use taxes due as follows:

Measure of Wisconsin State, County, and Baseball Stadium District Use Taxes Due:

\$110.00 (Use Taxes Due) ÷ .056 (Combined Wisconsin Use Tax Rate) = \$1,964.29 (Measure for State, County, and Baseball Stadium District Use Taxes Due)

\$1,964.29 (the measure of Wisconsin state use tax due) should be entered on line 21a of the Wisconsin Sales and Use Tax Return (Form ST-12).

\$1,964.29 (the measure of Wisconsin county use tax due) should be entered on line 22c, 23c, 24c, or 25c of Form ST-12, or on Schedule CT, as appropriate.

\$1,964.29 (the measure of Wisconsin baseball stadium district use tax due) should be entered on line 28a of the Wisconsin Sales and Use Tax Return (Form ST-12).

**Facts 6 - State Sales Tax Paid to Other State is Equal to or Greater Than Wisconsin State Use Tax Imposed. Total Wisconsin Use Tax Rate is 5%.**

- Company C, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State D.
- Company C takes possession of the equipment in State D.
- Company C is properly charged State D's 6% state sales tax (\$600). No local sales or use tax is imposed in State D on the purchase of the equipment by Company C.
- Company C brings the equipment into Wisconsin for use in a county which does not impose the 0.5% county sales and use tax, nor is the county a part of either the baseball or football stadium district.

**Questions 6:**

- a. May the 6% state sales tax (\$600) paid to State D be claimed as a credit against the 5% Wisconsin state use tax (\$500) imposed?
- b. What amount of Wisconsin state use tax must be paid to Wisconsin on this transaction?
- c. How should Company C report the use tax due (if any) to Wisconsin on this transaction?

**Answers 6: (Refer to Chart 1)**

- a. Yes. The 6% state sales tax (\$600) paid to State D is allowed as a credit under secs. 77.53(16) and 77.54(1), Wis. Stats. (2005-06), against (but not in excess of) the 5% Wisconsin state use tax (\$500) imposed on the same purchase.

- b. The Wisconsin state use tax due is computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State Use Tax Imposed (\$10,000 x 5%)	\$500.00
Less: State D's State Sales Tax Paid (\$10,000 x 6%)	\$500.00*
Wisconsin State Use Tax Due:	\$ 0.00

\* **Note:** The amount of credit for the state sales tax (\$600) paid to State D is limited to the amount of Wisconsin state use tax imposed (\$500) on the same property or service.

- c. Since the state sales tax paid to State D is equal to or greater than the Wisconsin state use tax imposed, no entry is required on the Wisconsin Sales and Use Tax Return (Form ST-12) to report the purchase by Company C or the credit for sales tax paid to State D on that same purchase.

**Facts 7 - State Sales Tax Paid to Other State is Equal to or Greater Than Combined Wisconsin State and County Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.5%.**

- Company G, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State H.
- Company G takes possession of the equipment in State H.
- Company G is properly charged State H's 6% state sales tax (\$600). No local sales or use tax is imposed in State H on the purchase of the equipment by Company G.
- Company G brings the equipment into Wisconsin for use in a county that imposes the 0.5% county sales and use tax, but the county is not part of either the baseball or football stadium district.

**Questions 7:**

- May the 6% state sales tax paid to State H (\$600) be claimed as a credit against the combined 5.5% Wisconsin state and county use taxes (\$550) imposed?
- What amount of Wisconsin state and county use taxes must be paid to Wisconsin on this transaction?
- How should Company G report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 7: (Refer to Chart 2)**

- Yes. The amount of state sales tax paid to State H (\$600) is allowed as a credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against (but not in excess of) the combined 5.5% Wisconsin state and county use taxes (\$550) imposed on the same purchase.
- The Wisconsin state and county use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State and County Use Taxes Imposed (\$10,000 x 5.5%)	\$550.00
Less: State H's State Sales Tax Paid (\$10,000 x 6.0 %)	\$550.00*
Wisconsin State and County Use Taxes Due:	\$0.00

\***Note:** The amount of credit for the state sales tax paid to State H is limited to the combined Wisconsin state and county use taxes imposed on that same property or service.

- c. Since the state sales tax paid to State H is equal to or greater than the Wisconsin state and county use taxes imposed, no entry is required on the Wisconsin Sales and Use Tax Return to report the purchase by Company G or the credit for state sales tax paid to State H on that same purchase.

**Facts 8 – Combined State and Local Sales Taxes Paid to Other State are Equal to or Greater Than Combined Wisconsin State and Football Stadium District Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.5%.**

- Company K, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State L.
- Company K takes possession of the equipment in State L.
- Company K properly remitted State L's 5% state use tax (\$500) and a local 1% use tax (\$100) to State L.
- Company K brings the equipment into Wisconsin for use in Brown County. Brown County comprises the football stadium district. The football stadium district tax rate is 0.5%. Brown County does not impose the 0.5% county sales and use tax.

**Questions 8:**

- a. May the combined state and local use taxes paid to State L (\$600) be claimed as a credit against the combined 5.5% Wisconsin state and football stadium district use taxes (\$550) imposed?
- b. What amount of Wisconsin state and football stadium district use taxes must be paid to Wisconsin on this transaction?
- c. How should Company K report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 8: (Refer to Chart 3)**

- a. Yes. The combined amount of state and local use taxes paid to State L (\$600) is allowed as a credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.5% Wisconsin state and football stadium district use taxes (\$550) imposed on the same purchase.
- b. The Wisconsin state and football stadium district use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
	-----
Wisconsin State and Football Stadium District Use Taxes Imposed (\$10,000 x 5.5%)	\$550.00
Less: State L's State and Local Sales Taxes Paid (\$10,000 x 6.0%)	\$550.00*
	-----
Wisconsin State and Football Stadium District Use Taxes Due:	\$ 0.00
	=====

\* **Note:** The amount of credit for the state and local use taxes paid to State L is limited to the amount of combined Wisconsin state and football stadium district use taxes imposed on that same property or service.

- c. Since the combined state and local use taxes paid to State L are equal to or greater than the combined Wisconsin state and football stadium district use taxes imposed, no entry is required on the Wisconsin Sales and Use Tax Return (Form ST-12) to report the purchase by Company K or the credit for state and local use taxes paid to State L.



**Facts 9 - Combined State and Local Sales Taxes Paid to Other State are Equal to or Greater Than Combined Wisconsin State and Baseball Stadium District Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.1%.**

- Company M, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State N.
- Company M takes possession of the equipment in State N.
- Company M properly remitted State N's 6% state use tax (\$600), and a local 0.25% use tax (\$25) to State N.
- Company M brings the equipment into Wisconsin for use in Waukesha County. Waukesha County is a part of the baseball stadium district. The baseball stadium district tax rate is 0.1%. Waukesha County does not impose the 0.5% county sales and use tax.

**Questions 9:**

- a. May the combined state and local use taxes paid to State N (\$625) be claimed as a credit against the combined 5.1% Wisconsin state and baseball stadium district use taxes (\$510) imposed?
- b. What amount of Wisconsin state and baseball stadium district use taxes must be paid to Wisconsin on this transaction?
- c. How should Company M report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 9: (Refer to Chart 4)**

- a. Yes. The combined amount of state and local use taxes paid to State N (\$625) is allowed as a credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.1% Wisconsin state and baseball stadium district use taxes (\$510) imposed on the same purchase.
- b. The Wisconsin state and baseball stadium district use taxes due are computed as follows:

	Combined State and Local Sales/Use Tax
	-----
Wisconsin State and Baseball Stadium District Use Taxes Imposed (\$10,000 x 5.1%)	\$510.00
Less: State N's State and Local Use Taxes Paid (\$10,000 x 6.25%)	\$510.00*
	-----
Wisconsin State and Baseball Stadium District Use Taxes Due:	\$ 0.00
	=====

\* **Note:** The amount of credit for the state and local use taxes paid to State N is limited to the amount of combined Wisconsin state and baseball stadium district use taxes imposed on that same property or service.

- c. Since the combined state and local sales taxes paid to State N are equal to or greater than the state and baseball stadium district use taxes due to Wisconsin, no entry is required on the Wisconsin Sales and Use Tax Return (Form ST-12) to report the purchase by Company M or the credit for state and local use taxes paid to State N.

**Facts 10 - Combined State and Local Use Taxes Paid to Other State are Equal to or Greater Than Combined Wisconsin State, County, and Baseball Stadium District Use Taxes Imposed. Total Wisconsin Use Tax Rate is 5.6%.**

- Company Q, located in Wisconsin, purchases equipment for \$10,000 from a supplier located in State R.
- Company Q takes possession of the equipment in State R.
- Company Q properly remitted State R's 6.0% state use tax (\$600), and a local 0.25% use tax (\$25) to State R.

- Company Q brings the equipment into Wisconsin for use in Milwaukee County. Milwaukee County imposes the 0.5% county sales and use tax. Milwaukee County is a part of the baseball stadium district. The baseball stadium district tax rate is 0.1%.

**Questions 10:**

- May the combined state and local use taxes paid to State R (\$625) be claimed as a credit against the combined 5.6% Wisconsin state, county, and baseball stadium district use taxes (\$560) imposed?
- What amount of Wisconsin state, county, and baseball stadium district use taxes must be paid to Wisconsin on this transaction?
- How should Company Q report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 10: (Refer to Chart 5)**

- Yes. The combined amount of state and local use tax paid to State R (\$625) is allowed as a credit under secs. 77.53(16), 77.71(2), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.6% Wisconsin state, county, and baseball stadium district use taxes (\$560) imposed on the same purchase.
- The Wisconsin state, county, and baseball stadium district use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
	-----
Wisconsin State, County, and Baseball Stadium District Use Taxes Imposed (\$10,000 x 5.6%)	\$560.00
Less: State R's State and Local Use Taxes Paid (\$10,000 x 6.25%)	\$560.00*
	-----
Wisconsin State, County, and Baseball Stadium District Use Taxes Due:	\$0.00
	=====

\* **Note:** The credit for the state and local use taxes paid to State R is limited to the combined Wisconsin state, county, and baseball stadium district use taxes imposed on that same property or service.

- Since the combined state and local use taxes paid to State R is equal to or greater than the Wisconsin state, county, and baseball stadium district use taxes imposed, no entry is required on the Wisconsin Sales and Use Tax Return (Form ST-12) to report the purchase by Company Q or the credit for state and local use taxes paid to State R.

**Facts 11 - Other State's State and Local Sales Taxes Improperly Paid.**

- Company W, located in Wisconsin, purchases \$200 of office supplies from Vendor Q located in State X.
- The office supplies are shipped by common carrier from Vendor Q to Company W's offices located in a Wisconsin county that has adopted the 0.5% county sales and use tax, but the county is not a part of either the baseball or football stadium district.
- Vendor Q charges State X's 6% state sales tax (\$12) and State X's 0.5% local sales tax (\$1) on the transaction.

**Questions 11:**

- May the combined 6.5% state and local sales taxes (\$13) paid to State X be claimed as a credit against the combined 5.5% Wisconsin state and county use taxes (\$11) imposed?
- What amount of Wisconsin state and county use taxes must be paid to Wisconsin on this transaction?
- How should Company W report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 11:**

- a. No. State X's combined 6.5% state and local sales taxes paid (\$13) on this transaction may not be claimed as a credit under secs. 77.53(16), 77.54(1), and/or 77.71(2), Wis. Stats. (2005-06), against the combined 5.5% Wisconsin state and county use taxes imposed (\$11) because the sales taxes paid to Vendor Q cannot be properly imposed by State X. The sale occurred in Wisconsin, not in State X.

To obtain a refund of State X's state and local sales taxes improperly collected on the transaction, Company W should contact Vendor Q or State X.

- b. Company W must pay the combined 5.5% Wisconsin state and county use taxes (\$11) imposed on this transaction.
- c. Company W should report the Wisconsin state and county use taxes due as follows:

\$200 (the measure of Wisconsin state use tax due) should be entered on line 21a of the Wisconsin Sales and Use Tax Return (Form ST-12).

\$200 (the measure of Wisconsin county use tax due) should be entered on line 22c, 23c, 24c, or 25c of Form ST-12, or on Schedule CT, as appropriate.

**Facts 12 - Other State's State Sales or Use Tax Imposed AFTER Wisconsin State, County, and Baseball Stadium District Sales or Use Taxes Imposed.**

- Company Y, located in Wisconsin, purchases materials for \$5,000 from Supplier S located in State Z. Supplier S ships the materials via common carrier to Company Y's location in Wisconsin. No state or local sales or use tax is imposed by State Z on this transaction.
- The materials are stored in Wisconsin in a county that has adopted the 0.5% county sales and use tax. The county is a part of the baseball stadium district. The baseball stadium district tax rate is 0.1%.
- Company Y pays the 5.6% combined Wisconsin state, county, and baseball stadium district use taxes (\$280) imposed on the storage of the materials in Wisconsin.
- Company Y transports the materials in Company Y's trucks into State Z and uses the materials in a real property construction activity there.
- State Z imposes a 6% use tax on the materials used in real property construction in State Z. Company Y pays State Z's use tax (\$300), since the materials were consumed in State Z in a real property construction activity.

**Question 12:**

May State Z's 6% state use tax be claimed as a credit against the combined 5.6% Wisconsin state, county, and baseball stadium district use taxes imposed?

**Answer 12:**

No. State Z's 6% use tax paid (\$300) may not be claimed as a credit under sec. 77.53(16), 77.54(1), and/or 77.71 (2), Wis. Stats. (2005-06), against the combined 5.6% Wisconsin state, county, and baseball stadium district use taxes imposed on the materials stored in Wisconsin because the Wisconsin taxes were properly imposed **before** State Z's taxes were imposed.

**Facts 13 - Construction Contractors: Combined State and Local Sales Taxes Paid to Other State are Equal to or Greater Than Combined Wisconsin State and County Use Taxes Imposed.**

- Construction Contractor K purchases materials for \$1,000 from a supplier located in State L.
- Construction Contractor K takes possession of the materials in State L.
- Construction Contractor K is properly charged State L's 6% state sales tax (\$60) and a 0.25% local sales tax (\$2.50).
- Construction Contractor K brings the materials to Wisconsin and stores them in a county that has adopted the 0.5% county sales and use tax, but the county is not part of either the baseball or football stadium district.
- Construction Contractor K then uses the materials in a real property construction activity in the Wisconsin county indicated above.

**Questions 13:**

- a. May the combined 6.25% state and local sales taxes paid to State L (\$62.50) be claimed as a credit against the combined 5.5% Wisconsin state and county use taxes (\$55) imposed?
- b. What amount of Wisconsin state and county use taxes must be paid to Wisconsin on this transaction?
- c. How should Construction Contractor K report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 13: (Refer to Chart 2)**

- a. Yes. The amount of state and local sales taxes paid to State L (\$62.50) may be claimed as a credit under secs. 77.53(16), 77.71(3), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.5% Wisconsin state and county use taxes (\$55) imposed. The credit is limited to the amount of Wisconsin state and county use taxes imposed on the same purchase.
- b. The Wisconsin state and county use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
	-----
Wisconsin State and County Use Taxes Imposed ( $\$1,000 \times 5.5\%$ )	\$55.00
Less: State L's State and Local Sales Taxes Paid ( $\$1,000 \times 6.25\%$ )	\$55.00*
	-----
Wisconsin State and County Use Taxes Due	\$ 0.00
	=====

\* **Note:** The amount of credit for the combined state and local sales taxes paid to State L is limited to the amount of combined Wisconsin state and county use taxes imposed on that same property or service.

- c. Since the combined state and local sales taxes paid to State L is equal to or greater than the state and county use taxes due to Wisconsin, no entry is required on the Wisconsin Sales and Use Tax Return (Form ST-12) to report the purchase by Construction Contractor K or the credit for state and local sales taxes paid to State L.

**Facts 14 - Registered Property (Boat): Combined State and Local Sales Taxes Paid to Other State are Less Than Wisconsin State Use Taxes Imposed.**

**Note:** "Registered property" means a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length (applies prior to January 1, 2008), recreational vehicle as defined in sec. 340.01(48r), Wis. Stats. (applies after December 31, 2007), trailer, semitrailer, all-terrain vehicle, or aircraft, if that property must be registered or titled in the State of Wisconsin.



- Individual M, located in Wisconsin, purchases a boat (an item required to be registered or titled in Wisconsin) for \$10,000 from a supplier located in State N.
- Individual M takes possession of the boat in State N.
- Individual M is required to pay State N's 4% state sales tax (\$400) and State N's 1% local sales tax (\$100).
- The boat is customarily kept in a Wisconsin county that imposes the 0.5% county sales and use tax, but the county is not part of either the baseball or football stadium district.

**Questions 14:**

- a. May the combined 5% state and local sales taxes (\$500) paid to State N be claimed as a credit against the combined 5.5% Wisconsin state and county use taxes (\$550) imposed?
- b. What amount of Wisconsin state and county use taxes must be paid to Wisconsin on this transaction?
- c. How should Individual M report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 14: (Refer to Chart 2)**

- a. Yes. The combined 5% state and local sales tax paid to State N (\$500) may be claimed as a credit under secs. 77.53(16), 77.71(4), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.5% Wisconsin state and county use taxes imposed on the same purchase.
- b. The Wisconsin state and county use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State and County Use Taxes Imposed (\$10,000 x 5.5%)	\$550.00
Less: State N's State and Local Sales Taxes Paid (\$10,000 x 5%)	\$500.00
Wisconsin State and County Use Taxes Due	\$ 50.00

- c. Individual M should report the Wisconsin state and county use taxes due as follows:

Referring to Chart 2, the Wisconsin state use tax is \$45.45 (10/11 x \$50). \$45.45 should be entered in Section D, Line 4 (State Tax) of Wisconsin Department of Natural Resources (DNR) Form 9400-163, *Boat Registration and Titling Application* (Rev. 01/2008). Also, enter code "4" in the box to the right of line 4 and attach a bill of sale or other verification of tax payment to the other state to the form.

Referring to Chart 2, the Wisconsin county use tax due is \$4.55 (1/11 x \$50). \$4.55 should be entered in Section D, Line 5 (County Tax) of DNR Form 9400-163, *Boat Registration and Titling Application* (Rev. 01/2008).

**Note:** The Wisconsin state and county use taxes due may also be reported on Form ST-12, Form UT-5, or Form 1, when applicable.

**Facts 15 - Registered Property (Vehicles) and Manufacturer's Rebates: State Sales Tax Paid to Other State is Greater Than Wisconsin State and County Use Taxes Imposed. Taxable Measure of the Sales Price in the Other State is Less Than Taxable Measure of the Sales Price in Wisconsin.**

**Note:** "Registered property" means a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length (applies prior to January 1, 2008), recreational vehicle as defined in sec. 340.01(48r), Wis. Stats. (applies after December 31, 2007), trailer, semitrailer, all-terrain vehicle, or aircraft, if that property must be registered or titled in the State of Wisconsin.

- Individual P, a resident of Wisconsin, purchases a new automobile in State R from Dealer Z.
- Individual P purchased the automobile from Dealer Z for \$25,000.
- Manufacturer X allowed Individual P a \$5,000 rebate on the purchase of the automobile.
- Individual P properly paid State R's state sales tax of 6% on the net purchase price of \$20,000.
- Individual P subsequently registers the vehicle for use in Wisconsin. The applicable Wisconsin state and local use tax rate is 5.5%.

**Questions 15:**

- May the 6% state sales tax (\$1,200) paid to State R on a taxable measure of \$20,000 be claimed as a credit against the combined 5.5% Wisconsin state and county use taxes (\$1,375) imposed on a taxable measure of \$25,000?
- What amount of Wisconsin state and county use taxes must be paid to Wisconsin on this transaction?
- How should Individual P report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 15: (Refer to Chart 2)**

- Yes. The 6% state sales tax (\$1,200) paid to State R may be claimed under secs. 77.53(16), 77.71(4), and/or 77.54(1), Wis. Stats. (2005-06), as a credit against the combined 5.5% Wisconsin state and county use taxes (\$1,375) imposed on the same purchase.
- The Wisconsin state and county use taxes due is computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State and County Use Taxes Imposed (\$25,000 x 5.5%)	\$1,375.00
Less: State R's State Sales Tax Paid (\$20,000 x 6%)	\$1,200.00
Wisconsin State and County Use Taxes Due	\$ 175.00

- Individual P should report the Wisconsin state and county use taxes due as follows:

Referring to Chart 2, the Wisconsin state use tax is \$159.09 ( $10/11 \times \$175$ ). \$159.09 should be entered in Section D, Line 4 (State Sales Tax) of Wisconsin Department of Transportation Form MV-1, *Wisconsin Title & License Plate Application* (Rev. 01/2008). Also, enter code "5" on the "If other, list reason" line to the right of line 4 and attach a bill of sale or other verification of tax payment to the other state to the form.

Referring to Chart 2, the Wisconsin county use tax due is \$15.91 ( $1/11 \times \$175$ ). \$15.91 should be entered in Section D, Line 5 (Local Sales Tax) of Form MV-1, *Wisconsin Title & License Plate Application* (Rev. 01/2008).

**Note:** The Wisconsin state and county use taxes due may also be reported on Form ST-12, Form UT-5, or Form 1, when applicable.

**Facts 16 - Registered Property (Vehicles) and Extended Warranties: Vehicle and Extended Warranty Purchased From a Dealer in Other State. Combined State and Local Sales Taxes Paid to Other State on the Vehicle are Greater Than Wisconsin State, County, and Baseball Stadium District Use Taxes Imposed. Other State Does Not Impose Sales Tax on the Sale of the Extended Warranty Whereas Wisconsin Imposes Use Tax on the Purchase of the Extended Warranty.**

**Note:** “Registered property” means a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length (applies prior to January 1, 2008), recreational vehicle as defined in sec. 340.01(48r), Wis. Stats. (applies after December 31, 2007), trailer, semitrailer, all-terrain vehicle, or aircraft, if that property must be registered or titled in the State of Wisconsin.

- Individual R, a resident of Wisconsin, purchases an automobile in State T from Dealer Z for \$30,000.
- Individual R also purchases an extended warranty contract from Dealer Z for this automobile for \$2,000.
- Individual R properly pays State T’s combined 6% state and local sales tax on the automobile’s sales price of \$30,000.
- State R does not impose its sales tax on the sale of the extended warranty contract.
- Individual R subsequently registers the vehicle for use in Wisconsin. The applicable Wisconsin state and local use tax rate is 5.6%. The applicable measure for Wisconsin use tax is \$32,000 (the \$30,000 sales price of the automobile plus the \$2,000 sales price of the extended warranty).

**Questions 16:**

- a. May State T’s combined 6% state and local sales taxes (\$1,800) on the \$30,000 sales price of the automobile be claimed as a credit against the combined 5.6% (\$1,680) Wisconsin state and local use tax imposed on the purchase of the automobile?
- b. May any portion of State T’s combined 6% state and local sales tax (\$1,800) on the \$30,000 sales price of the automobile be claimed against the combined 5.6% (\$112) Wisconsin state and local use taxes imposed on the \$2,000 sales price of the extended warranty contract?
- c. What amount of Wisconsin state, county, and baseball stadium district use taxes must be paid on the purchase of the automobile?
- d. What amount of Wisconsin state, county, and baseball stadium district use taxes must be paid on the purchase of the extended warranty?
- e. How should Individual R report the Wisconsin state and local use taxes due (if any) on the purchase of the automobile and the extended warranty?

**Answers 16: (Refer to Chart 5)**

- a. Yes. The combined 6% state and local sales taxes (\$1,800) paid to State T may be claimed as a credit under secs. 77.53(16), 77.71(4), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.6% Wisconsin state and county use taxes (\$1,680) imposed on the purchase of the automobile.
- b. No. State T does not impose sales taxes on the sale of the extended warranty contract. No portion of State T’s combined state and local sales taxes imposed on the sale of the automobile may be used to offset the 5.6% combined Wisconsin use taxes (\$112) imposed on the \$2,000 sales price of the extended warranty contract.

- c. The Wisconsin state, county, and baseball stadium district use taxes due on the purchase of the automobile are computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State, County, and Baseball Stadium District Use Taxes Imposed (\$30,000 x 5.6%)	\$1,680.00
Less: State and Local Sales Tax Paid to State T (\$30,000 x 6%)	\$1,680.00*
Wisconsin State, County, and Baseball Stadium District Use Taxes Due:	\$0.00

\* **Note:** The credit for the state and local sales tax paid to State T is limited to the amount of combined Wisconsin state, county, and baseball stadium district use taxes imposed on that same property or service.

- d. The Wisconsin state, county, and baseball stadium district use taxes due on the purchase of the extended warranty are computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State, County, and Baseball Stadium District Use Taxes Imposed (\$2,000 x 5.6%)	\$112.00
Less: Sales Taxes Paid to State T (not subject to tax)	\$0.00
Wisconsin State, County, and Baseball Stadium District Use Taxes Due:	\$112.00

- e. Individual R should report the Wisconsin state and county and baseball stadium district use taxes due as follows:

Referring to Chart 5, the Wisconsin state use tax is \$100.00 ( $50/56 \times \$112$ ). \$100.00 should be entered in Section D, Line 4 (State Sales Tax) of Wisconsin Department of Transportation Form MV-1, *Wisconsin Title & License Plate Application* (Rev. 01/2008). Also, enter code “5” on the “If other, list reason” line to the right of line 4 and attach a bill of sale or other verification of tax payment on the sale of the automobile to the other state to the form.

Referring to Chart 5, the Wisconsin county and baseball stadium district use tax due is \$12.00 ( $6/56 \times \$112$ ). \$12.00 should be entered in Section D, Line 5 (Local Sales Tax) of Form MV-1, *Wisconsin Title & License Plate Application* (Rev. 01/2008).

**Note:** The Wisconsin state, county, and baseball stadium district use taxes due may also be reported on Form ST-12, Form UT-5, or Form 1, when applicable.

#### **Facts 17 - Registered Property (Aircraft): Sales or Use Taxes Paid to a State Other than the State in Which the Aircraft was Purchased.**

**Note:** “Registered property” means a motor vehicle, boat, snowmobile, mobile home not exceeding 45 feet in length (applies prior to January 1, 2008), recreational vehicle as defined in sec. 340.01(48r), Wis. Stats. (applies after December 31, 2007), trailer, semitrailer, all-terrain vehicle, or aircraft, if that property must be registered or titled in the State of Wisconsin.

- Company A, a nonresident of State X, purchases an aircraft for \$250,000 in State X. State X does not impose sales or use taxes on Company A's purchase of the aircraft.
- After Company A took possession of the aircraft in State X, Company A flew the aircraft to State Y. Company A registered the aircraft in State Y and properly paid State Y's combined state and local 6% sales or use tax (\$15,000).
- Subsequent to the aircraft's registration in State Y, Company A transferred the aircraft to, and registered the aircraft in, the State of Wisconsin. When not in use, the aircraft is usually kept in a Wisconsin county which imposes a county sales and use tax, but is not a part of either the baseball or football stadium district. The 5.5% combined Wisconsin state and county use taxes (\$13,750) are imposed on the original purchase price of the aircraft.

**Questions 17:**

- May Company A claim a credit for the combined 6% sales or use taxes (\$15,000) paid to State Y against the combined 5.5% Wisconsin state and local use taxes (\$13,750) imposed?
- What amount of Wisconsin state and county use taxes must be paid to Wisconsin on this transaction?
- How should Company A report the use taxes due (if any) to Wisconsin on this transaction?

**Answers 17: (Refer to Chart 2)**

- Yes. The combined 6% state and local sales or use taxes (\$15,000) paid by Company A to State Y may be claimed as a credit under secs. 77.53(16), 77.71(4), and/or 77.54(1), Wis. Stats. (2005-06), against the combined 5.5% Wisconsin state and county use taxes (\$13,750) imposed on the purchase of the aircraft.
- The Wisconsin state and county use taxes due are computed as follows:

	Combined State and Local Sales/Use Taxes
Wisconsin State and Local Use Taxes Imposed ( $\$250,000 \times 5.5\%$ )	\$13,750.00
Less: State Y's State and Local Use Taxes Paid ( $\$250,000 \times 6.0\%$ )	\$13,750.00*
Wisconsin State and County Use Taxes Due:	0.00

\* **Note:** The amount of credit for the state and local use taxes paid to State Y is limited to the combined Wisconsin state and county use taxes imposed on that same property or service.

- Since the state and local use taxes paid to State Y are equal to or greater than the Wisconsin state and county use taxes imposed, no Wisconsin state or county use taxes are due. Using the Wisconsin Department of Transportation's Form DT1556, *Aircraft Registration or Exemption* (Rev. 2/2008), in section F enter "zero" on line 9 (state sales tax), line 10 (county sales tax), and line 11 (local tax). Also, check the "Tax paid to another state" box in the Tax Exemption section, submit proof of purchase price of the aircraft, and submit evidence of the tax paid to the other state.

**Note:** The Wisconsin state, county, and baseball stadium district use taxes due may also be reported on Form ST-12, Form UT-5, or Form 1, when applicable.