

Wisconsin TAX BULLETIN

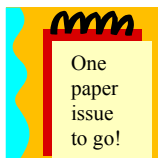
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New Tax Laws

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, 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. [↗](#)

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. [↗](#)

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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. [☞](#)

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. [☞](#)

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 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 or the Department of Revenue's website at 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 15th 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 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. [✉](#)

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. [✉](#)

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. [☞](#)

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. [☞](#)

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. 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.

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. 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. 

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.

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.

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.

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. [✎](#)