

Wisconsin TAX BULLETIN

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New Electronic Filing Option for 2008 – Wisconsin e-file

The Department of Revenue is offering a new electronic filing option for the 2008 tax year. Through the new Wisconsin e-file application, you can fill in Adobe Acrobat PDF versions of our state income tax forms on-line, much as you would fill out a form on paper. You can then electronically submit your return directly to us. Wisconsin e-file does most of the math for you. And it's **free**. You can use the application to file a Form WI-Z, 1A, or 1 (with certain limitations), plus the Schedule H. To use this new electronic filing option and to find out more about it, visit the department's web site at www.revenue.wi.gov and click the "WI e-file" logo. **Note:** The department's FreeFile application is no longer available.

Tax Practitioner Workshops a Success

The Internal Revenue Service (IRS) and the Wisconsin Department of Revenue (DOR) held four workshops for tax practitioners across the state in October and November, including one workshop that was available for viewing online. If you missed the opportunity to attend one of these sessions, you can still view the presentations online; plus, you can obtain the power point presentations, training materials, and handouts at www.revenue.wi.gov/training/ero/index.html. (Please note that you are not eligible for any CPE credits if you did not participate on the day of the workshop.) The presentations covered topics such as Federal and State Tax Law Updates; State Electronic Filing Updates; How the Bank Secrecy Act Applies to Taxpayers; Tax Relief in Disaster Situations; and Preparer Penalty Provisions.

The workshops provided an opportunity to offer suggestions and feedback directly to DOR tax administrators. Based on discussions held during the workshops, DOR has developed a number of articles on different topics of interest to tax practitioners. Many of these articles will assist you with issues that may arise during the tax season. These articles are available on DOR's web site at

www.revenue.wi.gov/taxpro/news/pracmeet.html.

Reminder: Electronic Filing Required for Certain Practitioners

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

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Department Offers Taxpayer Assistance

Department of Revenue (DOR) personnel will be available through April 15, 2009, to provide taxpayer telephone and walk-in assistance. Assistance is provided Monday through Friday in many of the larger offices, and Mondays only in most other offices. A complete schedule of office hours and telephone numbers is available on the department's web site at www.revenue.wi.gov/faqs/ise/address.html.

In addition, the department will maintain office hours at libraries in the following communities on February 2, 9, and 23; March 9 and 23; and April 6 and 13:

Location	Address	Hours
Baraboo	230 4th Ave	9:00-2:30
Beaver Dam	311 N Spring St	9:00-2:30
Elkhorn	101 N Wisconsin St	9:00-2:30
Grafton	1620 11th Ave	10:00-3:30
Hayward	10788 Hwy 27 & 77	1:00-5:00
Kenosha	7979 38th Ave	9:00-2:00
LaCrosse	800 Main St	9:00-2:00
Lancaster	113 W Elm St	9:00-2:30
Sheboygan	710 N 8th St	9:00-2:30

Taxpayer assistance is also available at Volunteer Income Tax Assistance (VITA) sites across the state and via DOR's web site at www.revenue.wi.gov.

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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 March. The seminars will include information on similarities and differences in the two states' sales and use tax laws. All of the seminars are for general businesses.

The specific dates, times, and locations of the seminars, as well as registration information, is available on the "Training" page of the Department of Revenue's web site at www.revenue.wi.gov/training/events.html. 

Recent Federal Law Changes Do Not Apply for Wisconsin

For taxable years beginning in 2008, Wisconsin generally follows the Internal Revenue Code enacted as of December 31, 2006. Unless later adopted by the Wisconsin Legislature, changes to federal law enacted after December 31, 2006, do not apply for Wisconsin. Taxpayers who file Form 1 or 1NPR must use 2008 Wisconsin Schedule I to adjust for Wisconsin and federal differences in the definition of the Internal Revenue Code. Schedule I provides a listing of the various items that must be adjusted.

An additional federal law was enacted after the 2008 Schedule I was sent to the printer. Listed below are additional changes to federal law that must be considered when completing Schedule I. These law changes were made by Public Law 110-458, enacted December 23, 2008.


1. Rollover of Amounts Received in Airline Carrier Bankruptcy to Roth IRAs

Federal – For transfers after December 23, 2008, an airline employee whose defined benefit pension plan was terminated or frozen due to bankruptcy filed after September 11, 2001 and before January 1, 2007 may roll over

bankruptcy payments intended to replace lost retirement income to a Roth IRA. (Public Law 110-458)

- b) Wisconsin – The rollover provision does not apply for Wisconsin.

2. State/Local Health Insurance Reimbursements

- a) Federal – For purposes of the exclusion from income for amounts received from accident and health plans (sec. 105, IRC), amounts paid (directly or indirectly) from certain governmental accident and health plans to a taxpayer (including employees, former employees, and dependents and beneficiaries of the employees or former employees) will not fail to qualify for the gross income exclusion solely because the plan provides for reimbursements of health care expenses of a deceased plan participant's beneficiaries on or before January 1, 2008. (Public Law 110-458)
- b) Wisconsin – Payments from plans that allow payment of amounts upon the death of the employee or retired employee to a designated beneficiary other than the employee's spouse or dependent in the form of a reimbursement of medical expenses do not qualify for the exclusion. 

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Electronic Filing Required for Certain Practitioners

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The department allows for a waiver in the case of undue hardship, and in specific cases when the individual taxpayer does not want to file electronically. A taxpayer who prefers to file a paper return may write “no e-file” before his or her signature on the tax return; this will relieve the practitioner of the e-filing requirement for that return. A practitioner may request a waiver by mailing a letter to Wisconsin Department of Revenue, Mail Stop 5-77, P.O. Box 8903, Madison, WI 53708-8903. The request should clearly indicate why the e-filing requirement causes an undue hardship.

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

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

MY *tax* ACCOUNT Opens DOR's Integrated Tax System to Business Taxpayers

The Department of Revenue (DOR) continues the process of integrating its tax computer systems with the unveiling of My Tax Account, an online functionality for business taxpayers. My Tax Account will allow business taxpayers and their representatives to have online access to their tax accounts. Taxpayers will be able to do the following:

- Electronically file original and amended tax returns and make payments for sales and use tax, premier resort area tax, local exposition center tax, rental vehicle fee, and withholding tax.
- View information about those same tax programs, such as filing history, payments made, and balance due information.
- Review the demographic information on file for their account and submit requests to update that information, such as address changes.
- View and print selected notices and correspondence from DOR.
- Initiate certain kinds of requests, such as requesting an extension to file a return or applying for an installment payment agreement.
- Authorize a tax practitioner to take these actions on their behalf.


This marks the first time that taxpayers will be able to electronically file premier resort area tax, local exposition center tax, and rental vehicle fee. This new

offering should ease the filing burden for taxpayers who owe these taxes.

My Tax Account will be available for taxpayers to use in February 2009. Instructions on how to register to use My Tax Account have been posted on DOR's web site and will be inserted in many DOR mailings over the next few months.


DOR's current sales tax electronic filing option, Sales Internet Process (SIP), will remain available through June 5, 2009; however, no new registrations to use SIP will be accepted after February 2, 2009. The SIP sign-on page will provide a link to instructions on how SIP users can convert their logon ID to a My Tax Account ID. The XML bulk file transmission process for sales tax returns and sales tax TeleFile will remain available.

Taxpayers with a withholding account will also need to transition to using My Tax Account over the next year. The EFT Registration and Payment System will no longer accept withholding tax payments after December 31, 2009. No new registrations to use the EFT Registration and Payment System for withholding tax will be accepted after March 1, 2009. Watch for instructions on how to reregister on DOR's web site.

My Tax Account is a module of the Wisconsin Processing and Audit System (WINPAS), which was first put into production on December 1, 2005. WINPAS now includes corporation income/franchise tax, premier resort area tax, local exposition center tax, state rental vehicle fee, individual income tax, fiduciary income tax, sales and use tax, business tax registration, occasional consumer use tax, withholding tax, pass-through withholding tax, partnership returns, and composite tax returns. 

Corporation Estimated Tax Voucher Mailings to be Reduced

As part of our ongoing efforts to reduce costs and expand electronic filing, the department is substantially reducing the number of corporation estimated tax vouchers (Forms 4-ES) that will be mailed in 2009. While in past years the department has mailed estimated tax vouchers to all corporation franchise and income

taxpayers, vouchers will only be mailed to those accounts that filed DOR-generated vouchers in 2008. Taxpayers that made these payments via EFT, used forms generated by third-party vendors, or used the department's on-line fill-in form available at our web site (www.revenue.wi.gov/html/taxcorp.html) will not receive estimated tax vouchers from the department in 2009. 

Reminders for Filing Form 1-ES

Use Form 1-ES for extension payments

A payment of tax made by April 15, 2009, for a 2008 Wisconsin individual income tax return that will be filed under extension should be submitted with a 2008 Form 1-ES. Do **not** submit an extension payment with Form EPV, as this will misdirect the payment and delay the processing of the return. Form EPV is supplied by tax software as a means of paying tax due on an electronically filed return, and should only be used for that purpose.


Verify address information

The mailing address for estimated income tax payments was changed some time ago, however some payments are still being sent to the old address. Please take a

moment to verify your mailing address of record for Form 1-ES is:

Wisconsin Department of Revenue
PO Box 930208
Milwaukee WI 53293-0208

Although the department is currently forwarding payments sent to the old address, this practice will be discontinued in the future. This will result in payments being returned as undeliverable.

It is also important that the address information contained in the numeric scan line at the bottom of Form 1-ES is correct. The address information is the first three digits of the scan line, which should be "208." If the information in the scan line is incorrect, a payment could be delayed or misapplied. 


Sales and Use Tax Treatment of Fuel and Energy Surcharges

Rather than increasing the selling price of property or services sold, many businesses choose to pass on their fuel cost as a separate line item on the invoice given to their customers. For example, rather than increasing room rates by a certain percentage, some hotels add an "energy surcharge" to each customer's lodging bill. Other sellers, rather than increasing the selling price of their merchandise or services, add a "fuel surcharge" to each customer's bill.

The "energy surcharge" or "fuel surcharge" is included in the selling price of tangible personal property or taxable services sold for purposes of computing Wisconsin sales or use tax. Therefore, if the property or service sold is subject to Wisconsin sales or use tax, the amount of the energy surcharge is subject to Wisconsin sales or use tax (and local exposition taxes, if applicable).

Example 1: Hotel A charges \$70 per night of lodging. To recover some of its heating costs, Hotel A also charges an "energy surcharge" equal to 2% of the room rate ($\$70 \times 2\% = \1.40). The amount subject to Wisconsin sales or use tax (and local exposition room tax, if applicable) is \$71.40.

Example 2: Furnace Repair Company B charges Customer C \$100 for cleaning Customer C's furnace. Furnace Repair Company B adds a \$50 "fuel surcharge" for its cost of fuel to travel to Customer C's house. Because the furnace cleaning services sold by Furnace Repair Company B are subject to Wisconsin sales or use tax, the "fuel surcharge" is also subject to Wisconsin sales or use tax.

Note: The tax treatment would be the same if Furnace Repair Company B listed the fee as "service call," "mileage charge," or by any other name. 

Claiming Section 179 Expense

Section 179 of the Internal Revenue Code allows taxpayers to elect to deduct (in lieu of depreciation) the cost of certain property used in a trade or business. For federal tax purposes, for tax years beginning in 2008, the maximum sec. 179 expense deduction is \$250,000.

The maximum sec. 179 expense deduction allowable for Wisconsin for tax years beginning in 2008 is generally \$25,000. However, for taxpayers who are actively engaged in farming the maximum sec. 179 expense deduction is \$115,000 for property used in farming. There is a question as to the allowable amount when a taxpayer has qualifying sec. 179 property from both a farm and nonfarm business.

When a taxpayer may claim a sec. 179 deduction for both farm and nonfarm property, it is the department's policy that the sec. 179 deduction should be applied first to the farm property. If the sec. 179 deduction for the farm property is \$25,000 or more, no sec. 179 deduction may be claimed for the nonfarm property. If the sec. 179 deduction for the farm property is less than \$25,000, the difference between the sec. 179 deduction for the farm property and \$25,000 may be applied to other than farm property.

Example 1: The taxpayer is actively engaged in farming. During 2008, the taxpayer placed in service \$40,000 of farm property that qualified for the sec. 179 deduction. The taxpayer also had a nonfarm business and placed in service \$20,000 of property that qualified for the sec. 179 deduction. For Wisconsin tax purposes, the taxpayer may claim a sec. 179 deduction of \$40,000 based on the farm property. The taxpayer cannot claim any sec. 179 deduction for the nonfarm property.


Example 2: The facts are the same as in Example 1, except that the cost of the farm property was \$22,000. For Wisconsin tax purposes, the taxpayer may claim a sec. 179 deduction of \$22,000 based on the farm property plus a \$3,000 (\$25,000 less \$22,000) sec. 179 deduction based on the nonfarm property.

Individuals use Wisconsin Schedule I to adjust for the difference between the sec. 179 deduction allowed for federal and Wisconsin purposes. [✍](#)

Tips for Successful Preparation of Form 1NPR

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

1. **Include all required enclosures.** Copy of the federal return, withholding statements, Legal Residence (Domicile) Questionnaire, etc.
2. **Verify your client's current mailing address.** Do not use the former Wisconsin address if your client has moved out of state, as their account will be updated with the address on the return and a refund check or bill will be sent to that address.
3. **Only claim the credit for net tax paid to another state when it is allowed.** The credit is not allowed when the income taxed by the other state is not included in Wisconsin income or when the income was received while a nonresident of Wisconsin. If claiming the credit, include copies of the other state(s) income tax return(s) and Form(s) W-2.
4. **Verify the accuracy of state wage information provided on Form(s) W-2.** A taxpayer may not provide timely notification to their employer of a change in residency to or from Wisconsin, which may result in incorrect state wage information on Form W-2.
5. **Only claim Wisconsin withholding on line 68.** Check the state abbreviation on each wage statement to ensure that withholding paid to other states is not included in the Wisconsin withholding claimed.
6. **Enter withholding and estimated tax payments on the correct lines.** This is a common error, as the estimated tax payments line is directly below the withholding line.
7. **If each spouse has a different residency status, check two resident status spaces on the return.** Some software does not allow more than one space to be selected. This is an error that should be reported to the software developer.

8. **Do not claim a change of resident status for a temporary absence.** Taxpayers who live outside Wisconsin for the winter months or have relocated from Wisconsin to another state temporarily for work are generally considered full-year Wisconsin residents.
9. **Do not claim a subtraction on line 15 for income not reportable to Wisconsin.** This income should not be included in the Wisconsin column on lines 1 through 14, so it should not be subtracted.
10. **Avoid common mistakes in preparing returns for members of the military:**
 - Report to Wisconsin all of the income of a military member who was stationed in another state but was still a Wisconsin resident.
 - If claiming an exemption for the military pay of a National Guard or Reserve member, include an explanation with the return as to why the wages are not included in Wisconsin income.
 - If excluding the wages of a nonresident military member from federal adjusted gross income for Wisconsin tax purposes, include a copy of the federal return and Form W-2 to verify the amount of nonresident wages. 



Administrative Rules in Process

Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of January 1, 2009, and at each step where action occurred during the period from October 1, 2008, through January 1, 2009.

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

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

Pending Submission to Legislative Council Rules Clearinghouse


- 1.12 Electronic funds transfer – A
- 2.03 Corporation returns – A
- 2.04 Information returns and wage statements – A
- 2.08 Returns of persons other than corporations – A
- 4.001 Motor vehicle, alternate fuels, and general aviation fuel tax return and refund claim forms – NR

- 7.001 Fermented malt beverage tax return and refund claim forms – NR
- 8.001 Intoxicating liquor report, tax return, and refund claim forms – NR
- 9.001 Cigarette and tobacco products report, tax return, and refund claim forms – NR
- 11.01 Sales and use tax, local exposition tax, and premier resort area tax return forms – A

Pending Submission for Legislative Committee Review

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

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 at <https://apps4.dhfs.state.wi.us/admrules/public/Home>. At this web site 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. 

New and Updated Publications

Since the last issue of the *Wisconsin Tax Bulletin*, the following publications of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue have been revised:

Income and Franchise Taxes

- 103 Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/08)
- 104 Wisconsin Taxation of Military Personnel (11/08)
- 106 Wisconsin Tax Information for Retirees (1/09)
- 109 Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2008 (11/08)
- 113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (12/08)
- 116 Income Tax Payments are Due Throughout the Year (1/09)
- 120 Net Operating Losses for Individuals, Estates, and Trusts (11/08)
- 122 Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2008 (11/08)
- 125 Credit for Tax Paid to Another State (11/08)
- 126 How Your Retirement Benefits are Taxed (11/08)
- 127 Wisconsin Homestead Credit Situations and Solutions (12/08)

- 503 Wisconsin Farmland Preservation Credit (12/08)
- 600 Wisconsin Taxation of Lottery Winnings (1/09)
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/09)

Sales and Use Taxes

- 410 Local Exposition Taxes (11/08)

Other Topics

- 115 2009 Handbook for Federal/State Electronic Filing (12/08)
- 117 Guide to Wisconsin Information Returns (1/09)
- 505 Taxpayers' Appeal Rights of Office Audit Adjustments (11/08)
- 508 Wisconsin Tax Requirements Relating to Nonresident Entertainers (1/09)
- 515 Non-Statistical Sampling (1/09)

In addition, a new sales and use tax publication became available earlier this month. Publication 209, *Sales and Use Tax Information for Wisconsin Counties and Municipalities*, includes examples of nontaxable and taxable sales and purchases of Wisconsin counties and municipalities.

All of the IS&E Division's publications may be downloaded or ordered online at www.revenue.wi.gov/html/taxpubs.html. There are over 75 publications available, covering a wide range of topics. [✎](#)

Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available in December. The *Sales and Use Tax Report* contains summaries of recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the December 2008 *Sales and Use Tax Report* (4-08) include:

- Important Notice About the *Sales and Use Tax Report*;
- Reminder - Clark County Tax Becomes Effective January 1, 2009;

- Motor Vehicle Dealers' Measure of Use Tax Increased to \$140;
- Cylinders Rented to Transport Exempt Gas – Clarification of Previous Article;
- Office Closings; and
- Snowplowing, Sanding, and Salting Services.

The Report is available on the Department of Revenue's web site at www.revenue.wi.gov/ise/sales/08-4.pdf. [✎](#)

FAQs: Schedule RT Filing Requirements

Pages 16 to 19 of this Bulletin contain Part 2 of a two-part series of frequently asked questions.

Part 1 appeared in *Wisconsin Tax Bulletin* 158 (October 2008), pages 16 to 23. *Wisconsin Tax Bulletin* 157 (July 2008), page 13, provides more details of the statutory provisions regarding related entity expenses. [✎](#)



Enforcement Report

Eight People Charged in Tax Fraud Conspiracy

Criminal charges were filed in October 2008 in Milwaukee County Circuit Court against eight Milwaukee residents involved in a scheme to obtain \$175,050 in fraudulent 2007 tax refunds using fake W-2s. Baszonias Dickerson, Robert Brinson, and Pamela Winzer were all charged with conspiracy to commit theft by fraud. April Gooden, Akiyyah Jones, Keana Jones, Chiffon Howard, and Sean Quezaire were charged with unauthorized use of a business' identifying information. The charges were filed after an investigation by the Milwaukee Police Department and the Wisconsin Department of Revenue.

According to the complaints, during January 2008, 22 fraudulent income tax returns were filed using fake W-2s from one of four different businesses; Kubin Nicholson Corporation, Amalga Composites, Catholic Knights Insurance, or Southeastern Youth and Family Services. Nineteen of these fraudulent returns were prepared at the H&R Block Office located at 5209 West Fond Du Lac Avenue, where Baszonias Dickerson worked as a part-time customer care specialist.

The complaint alleges that Dickerson and her live-in boyfriend, Robert Brinson, supplied fake W-2s to individuals who generally had no filing requirement. These people, who were recruited by Dickerson, Brinson, and Winzer, took the W-2s to a tax office where the preparers were unaware of the scheme. When the refund checks came in, the money was split up by Dickerson and Brinson, with some given to Winzer and the person who had been recruited. While many of the refunds were stopped, a total of \$88,464 in state and federal tax refunds was paid out.

In addition, Baszonias Dickerson was charged with filing a fraudulent 2006 state income tax return. According to the complaint, Dickerson falsified the return by altering her W-2 and underreporting the wages she received from the Wisconsin Department of Health and Family Services. She listed her total income as \$26,412 when it was actually \$38,127.

If convicted on all counts, Dickerson could face up to 22 years in prison and \$45,000 in fines. The other co-conspirators face from 6 to 10 years in prison and fines from \$10,000 to \$25,000.

Neillsville Man Charged With Tax Fraud

Richard H. Harrison, Jr., 32, was charged in October 2008 by Clark County District Attorney Darwin Zwieg with two felony counts for Wisconsin tax violations. The first count states that Harrison filed a fraudulent 2006 Wisconsin income tax return on February 26, 2007. The second count states that the fraudulent tax return included a fraudulent claim for the Wisconsin earned income credit.

According to the complaint, Harrison received \$61,500 from a woman who hired him to tear down her fire damaged home and erect the shell of a new home. The complaint states that Harrison did not perform all of the work and diverted the funds he received from the woman to his personal gain. District Attorney Zwieg charged Harrison with theft on October 16, 2007. That matter is pending before the Clark County Circuit Court.

The complaint alleges that Harrison failed to report all the receipts from this transaction, resulting in his income being understated by \$49,813. As a result, Harrison evaded Wisconsin income tax of \$2,907. Considering the additional income, Harrison did not qualify for the earned income credit.

If convicted on both counts, Harrison faces 12 years in prison and \$20,000 in fines. The tax charges are the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

Buffalo County Man Sentenced to Prison for Theft in Tax Refund Scheme

On November 5, 2008, Judge Robert Wing sentenced Jason R. Herrmann, 27, to prison for two years for defrauding the State of Wisconsin out of \$24,906 in a scheme to claim tax refunds to which he was not entitled. He was also ordered to serve three years of extended supervision. He was given credit for 120 days already served in the Buffalo County Jail. As a condition of the extended supervision, Herrmann was ordered to pay restitution of \$24,906. In September 2008, Herrmann entered a no contest plea to one count of felony theft. Two additional counts were dismissed and read into the record for purposes of sentencing and restitution.

Buffalo County District Attorney Tom Clark asked that Herrmann be imprisoned for two years. Clark stated that although not a violent crime, this was a major crime against the state and as bold a fraud as he has seen.

The felony theft count to which Herrmann pled no contest was for an electronically filed 2006 Wisconsin income tax return on which he claimed a refund of \$22,253. The refund was to be direct deposited to an account at Citizen's Community Federal in his name with his fiancée, Rose Hagenbarth, who was also authorized on the account.

The tax return Herrmann filed had three altered W-2 wage statements attached to it that showed inflated Wisconsin wages and Wisconsin withholding, which formed the basis for the fraudulent refund claim.

A second felony theft count considered for sentencing and restitution involved the electronic filing of a 2006 Wisconsin income tax return in the name of Herrmann's fiancée, Rose Hagenbarth. This return claimed that Hagenbarth was due a refund in the amount of \$2,653. That refund was also supposed to be direct deposited to the account at Citizen's Community Federal. This return had one altered W-2 wage statement attached to it. When confronted with the evidence, Herrmann confessed that he electronically filed both returns and altered the Wisconsin wage and withholding information on the W-2 wage statements.

Judge Wing agreed that the two year prison term was appropriate, as Herrmann's extensive criminal record indicated he was likely to reoffend. Wing stated that Herrmann has a pattern of taking money from others rather than earning it, and that probation had been tried on previous occasions and revoked. Wing noted that a prison sentence is necessary to get Herrmann's attention.

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

Elm Grove Businessman Gets Jail Time for Tax Violations

Timothy M. Ebert, 40, a self-employed Elm Grove businessman, was sentenced to six months in jail in November 2008 for failing to file state income tax returns. In addition to the jail sentence, Circuit Court Judge Davis ordered Ebert to pay \$20,000 in fines, serve two years probation, and make restitution of \$4,908 to the Department of Revenue. Ebert was prosecuted by the Waukesha County District Attorney's Office after an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

Ebert was charged with failure to file Wisconsin income tax returns for the years 2004, 2005, and 2006 on November 27, 2007. As part of the plea agreement, Ebert had entered guilty pleas to two of the counts on October 2, 2008.

According to the criminal complaint, Ebert operated a number of businesses over the years related to carpet and air duct cleaning, including White Glove Professional Cleaners, Wisconsin Professional Cleaners, Cooper Professional Cleaners, Cooper Ducts, White Glove Duct Cleaning, Wisconsin Carpet Outlet, and Air Duct Pros.

The complaint alleged that Ebert had not filed income tax returns since 1996 and that during the 2004 through 2006 years Ebert's businesses had gross sales of \$175,766, \$418,062, and \$224,042, respectively. During the years Ebert didn't file or pay his taxes, he was driving a 2004 Porsche 911 in the summer and a 2005 Cadillac Escalade in the winter and living in Elm Grove homes that were valued between \$477,000 and \$533,000.

According to a Better Business Bureau (BBB) web site, 13 complaints had been processed against Ebert, or one of his businesses, in the last thirty-six months and Ebert has an unsatisfactory record with the BBB due to his failure to respond to complaints.

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

Mukwonago Man Charged With Tax Crimes

Michael L. Gengler, 34, of Mukwonago is facing criminal charges for refusing to file state income tax returns. According to the criminal complaint filed in November 2008 by the Waukesha County District Attorney's Office, Gengler was charged with two counts of willful failure to file Wisconsin income tax returns for the years 2005 and 2006. The criminal charges are the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

The complaint alleges that during 2005 and 2006, Gengler worked for Klockner KHS, located in Waukesha, where he earned \$88,988 in 2005 and \$89,649 in 2006.

The complaint further alleges that Gengler also refused to file income tax returns for 2003 and 2004. He sent the Department of Revenue documents in which he argued he did not have any income as it was defined in the Internal Revenue Code. However, in a residential loan application that Gengler signed in March 2004, he indicated that his monthly base income was \$5,848.12.

The complaint alleges that Gengler evaded approximately \$10,000 in Wisconsin income taxes for the years 2004 through 2006. If convicted on both counts, Gengler could face up to 18 months in jail and \$20,000 in fines.

Gengler was also involved in a mortgage elimination scheme between 2004 and 2007. According to court records, in 2004 the Genglers got involved with the Dorean Group out of Union City, California. After taking out a \$225,000 mortgage on their home in Mukwonago, the home was quit-claimed to a trust set up by the Group. The Group then filed fictitious documents with the county to make it appear as if the mortgage on the home was satisfied. Citizens Bank of Mukwonago, which held the mortgage on the home, eventually forced a sheriff's foreclosure sale of the property in February 2007. The California operators of the scheme were indicted and received prison sentences in March 2008 for mortgage fraud.

Arizona Woman Charged With Homestead Credit Fraud

A former Milwaukee woman was jailed in November 2008 after making her initial appearance in Dane County Circuit Court, where she was charged with filing over \$133,000 in fraudulent homestead credit claims.

Susanna R. Terrell, 39, of El Mirage, Arizona was charged with five felony counts of filing fraudulent claims for credit with the Wisconsin Department of Revenue between 2006 and 2008. Terrell received a two year prison sentence when she was convicted in Milwaukee County for a similar crime in 2000.

According to the complaint, Terrell began filing fraudulent homestead credit claims again in 2006 because she had maxed out several credit cards, had unpaid bills, and had a gambling addiction. Terrell admitted to spending up to \$200 a day on lottery tickets. Terrell confessed to the scheme in June 2008, when agents from Wisconsin executed a search warrant at her El Mirage home.

The case was investigated by agents of the Wisconsin Department of Revenue and the U.S. Postal Inspection Service after the Department of Revenue noticed a large number of refund checks that were mailed to Wisconsin addresses had been cashed in Arizona.

Terrell told investigators she obtained identifying information of individuals through her employment at ACE Cash Express and Circle K Convenience stores and also from the Maricopa County Arizona web site. She said she used the Wisconsin Circuit Court System (CCAP) web site to search for eviction cases to find landlord names and addresses to use on the fraudulent homestead credit claims. Shortly after filing the fraudulent claims, Terrell would file change of address requests with the Post Office in order to have the checks forwarded to a mailbox under her control. The complaint alleges that Terrell filed 139 false homestead credit claims using 92 different names and cashed \$79,896 of the \$133,292 she attempted to obtain.

If convicted on all counts, Terrell faces up to 30 years in prison and \$50,000 in fines.

Weston Tavern Fined for Refilling Liquor Bottles

Kimberly Roloff-Hafenbreidl of Weston, Wisconsin was convicted on November 20, 2008, of five counts of possessing refilled intoxicating liquor bottles, resulting in fines of \$1,500. She is the former operator of the tavern known as the Rumor Nightclub in Weston.

According to the complaint, on April 16, 2008, Rumor Nightclub was found in possession of thirty-six bottles of intoxicating liquor which showed signs of refilling. Agents seized a total of 58 bottles of liquor, cash register receipts, empty liquor bottles, a bag of bottle caps, and two funnels. Test results of several bottles indicated they had been refilled with different brands than what was on the label. In some cases, the liquor in the bottles had a different alcohol content level than the label indicated.

The Marathon County District Attorney's Office issued the criminal complaint charging Ms. Roloff-Hafenbreidl with five misdemeanor counts of refilling. The case was investigated by agents of the Wisconsin Department of Revenue's Alcohol and Tobacco Enforcement Unit. [Ⓜ](#)



Report on Litigation

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

The following decisions are included:

Corporation Franchise and Income Taxes

Apportionment – Apportionable Income
Louis Dreyfus Petroleum Products Corp...... 11

Sales and Use Taxes

Rebate
Douglas Suiter..... 11

CORPORATION FRANCHISE AND INCOME TAXES

Apportionment – apportionable income.
Louis Dreyfus Petroleum Products Corp. vs. Wisconsin Department of Revenue (Dane County Circuit Court, October 7, 2008). This is a judicial review of the Wisconsin Tax Appeals Commission decision dated January 2, 2008. See *Wisconsin Tax Bulletin* 156 (April 2008), page 15, for a summary of the Wisconsin Tax Appeals Commission's decision.

The issue in this case is whether Louis Dreyfus Petroleum Products Corp.'s (LDPPC's) capital gain income from the sale of a partnership interest is apportionable to Wisconsin.

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

The Wisconsin Tax Appeals Commission, applying sec. 71.25(5)(a)5., Wis. Stats., previously determined the sale of LDPPC's partnership interest was a sale of specific partnership assets, thus the gain from the sale is apportionable to Wisconsin. They also determined that such apportionment is constitutionally permissible under

the unitary business and operational function tests established in the Supreme Court decision *Allied Signal v. Director, Div. of Tax.*, 504 U.S. 768 (1992).

LDPPC, citing an IRS Revenue Ruling, contends that the sale was of its partnership interest and not of the underlying assets of the corporation. Thus, instead of sec. 71.25(5)(a)5., Wis. Stats., the department must rely on sec. 71.25(5)(a)10., Wis. Stats., which requires the application of the unitary business rule to the sale outside Wisconsin of an intangible asset.

The department agrees that it cannot rely on sec. 71.25(5)(a)5., Wis. Stats. It contends, however, that it may apply sec. 71.25(5)(a)14., Wis. Stats., which authorizes apportionment of a partner's share of income or loss from a partnership. The Circuit Court rejected this argument on the basis that the income from the sale of a partnership interest cannot be characterized as a partner's share of income or loss from the partnership.

The Circuit Court determined that the Commission erred when it characterized the sale of LDPPC's partnership interest as the sale of tangible personal property within the meaning of sec. 71.25(5)(a)5., Wis. Stats. The Commission correctly applied the unitary business rule, however, to conclude that the capital gain from the sale of the partnership asset was apportionable to Wisconsin. Accordingly, the Circuit Court modified the Commission's decision to eliminate its reliance on sec. 71.25(5)(a)5., Wis. Stats., and affirmed the decision as modified.

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

SALES AND USE TAXES

Rebate. *Douglas Suiter vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 31, 2008).

The issues in this case are whether (1) a direct-to-dealer rebate on a motor vehicle is subject to Wisconsin sales and use tax; and (2) the taxpayer owes interest on the tax.

In September of 2005 the taxpayer purchased a 2005 Ford Truck in Omaha, Nebraska and subsequently regis-

tered the vehicle in Wisconsin. No Wisconsin sales or use tax was paid upon registration. The Wisconsin Department of Revenue assessed the taxpayer use tax on his purchase price, including the amount of a direct-to-dealer rebate received, and interest.

The taxpayer acknowledged that the tax on the truck was not paid after being told by his banks that no check on his account had been written to Registration Fee Trust; however, the taxpayer continued to dispute the tax on the direct-to-dealer rebate. The taxpayer contended that the failure to pay the tax was unintentional and that the taxpayer thought that someone else involved in the transaction had taken care of the tax when he registered the vehicle in Wisconsin and obtained Wisconsin license plates. The taxpayer also challenged the assessment of interest, stating that he would pay the sales tax if it was due, but would not pay interest on an honest mistake made two and a half years ago by someone else.

The Commission ruled that the Department of Revenue was entitled to summary judgment on both issues. Rebates paid to an auto dealer related to a taxpayer's purchase of a motor vehicle are subject to Wisconsin sales and use taxes, as provided in sec. Tax 11.28(6), Wis. Adm. Code, which states that "[a] manufacturer's rebate to a person who purchases tangible personal property ... from a retailer is not a reduction of the retailer's gross receipts or sales price for the item ..." The assessment of interest is mandatory and not reviewable by the Commission.

The taxpayer has not appealed this decision.



Private Letter Rulings

“Private letter rulings” are written statements issued to a taxpayer by the department, that interpret Wisconsin tax laws based on the taxpayer’s specific set of facts. Any taxpayer may rely upon the ruling to the extent the facts are the same as those in the ruling.

The ruling number is interpreted as follows: The “W” is for “Wisconsin”; the first four digits are the year and week the ruling becomes available for publication (80 days after it is issued to the taxpayer); the last three digits are the number in the series of rulings issued that year. The date is the date the ruling was issued.

Certain information that could identify the taxpayer has been deleted. Additional information is available in Wisconsin Publication 111, “How to Get a Private Letter Ruling From the Wisconsin Department of Revenue.”

The following private letter ruling is included:

Sales and Use Taxes

Equipment used exclusively for recycling
W 0848002 (p. 14)

✱ **W 0848002** ✱

September 5, 2008

Type Tax: Sales and Use Taxes

Issue: Equipment used exclusively for recycling

Statutes: Section 77.54(26m), Wis. Stats. (2005-06)

This letter responds to your request for a private letter ruling dated March 24, 2008.

Facts, as provided:

In your letter, you indicated Company A is in the process of building a waste recycling facility. Company A is preparing to buy a front-end loader, a small back-hoe, and eight roll-off containers to separate recyclable materials.

In a subsequent telephone conversation, you indicated Company A will transport the recyclable materials to its new waste recycling facility. The front-end loader and back-hoe will be used at the new facility to load and unload the recyclable materials to and from trucks, as well as to move the recyclable materials throughout the facility.

At the new facility, the recyclable materials will be hand-sorted. The hand-sorting of recyclable materials is the only activity that will be performed at the new facility. The sorted materials will then be transported to other locations where recycling activities will be performed by other parties.

It is my understanding that the roll-off containers will be used to separate the recyclable materials at the point of collecting the waste from consumers and then will be used to bring such waste materials to the new facility. The roll-off containers may also be used to separate the waste once it has come into the new facility and to transport the sorted materials to the other parties’ facilities where the recycling activities will be performed.

Question:

Do Company A’s purchases of the front-end loader, back-hoe, and roll-off containers qualify for exemption under sec. 77.54(26m), Wis. Stats. (2005-06)?

Answer:

No, Company A’s purchases of the front-end loader, back-hoe, and roll-off containers do not qualify for exemption under sec. 77.54(26m), Wis. Stats. (2005-06), since the equipment is not used exclusively and directly in waste reduction and recycling activities.

Analysis:

Section 77.54(26m), Wis. Stats. (2005-06), provides an exemption from Wisconsin sales and use taxes for machinery and equipment used exclusively and directly in waste reduction and recycling activities which **reduce the amount of solid waste generated, reuse solid waste, recycle solid waste, compost solid waste, or recover energy from solid waste**. Company A’s collection equipment (roll-off containers) is used *prior* to the waste reduction or recycling activities. The conveyance equipment (front-end loader and back-hoe) is not used *directly* in the waste reduction and recycling activities.

In the case of *Wisconsin Department of Revenue v. Parks-Pioneer Corporation* (Wisconsin Court of Appeals, District IV, June 25, 1992), the Court held that lugger and roll-off boxes used to collect solid waste and transport it to Parks-Pioneer's facility for further processing did not perform an integral function in waste reduction or recycling activities because the actual recycling took place **after** the materials were collected and transported to Parks-Pioneer's facility.

Relying on the decision in *Parks-Pioneer*, the Commission concluded, in *Ruef's Sanitary Service, Inc. v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 13, 1994) (CCH 400-064), that "curb sorters" that were mounted on motor vehicle chassis and used to collect, sort, and transport recyclable materials did not qualify for exemption from sales tax as equipment used exclusively and directly for waste reduction or recycling. While the curb sorters at issue may have been used exclusively for waste reduction or recycling activities, the Commission stated that they were not used "directly" in these activities, because they did not perform an "integral function" in the activities.

In addition, the Wisconsin Tax Appeals Commission held in the case of *Browning-Ferris Industries of Wisconsin, Inc. v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission 97-S-282, January 13, 2000) (CCH 400-469), that bins and storage containers "are simply receptacles into which recyclable and waste material is placed prior to petitioner's collecting and transporting it to a facility where the actual recycling occurs. These items do not perform an 'integral function' in recycling activities and are therefore not 'directly' used in recycling activities under the test articulated in *Parks-Pioneer*." This decision was affirmed by the Dane County Circuit Court on September 28, 2000. In that decision, the Dane County Circuit Court held that although the bins and storage containers "are related to an activity that recycles solid waste, they are not used *directly* in that activity." This decision was affirmed by the Court of Appeals on June 18, 2001 (CCH 400-549). The Wisconsin Supreme Court denied the taxpayer's petition for redetermination.

Based on the above court decisions, the collection, sorting, and transporting of waste that occurs *prior to* the recycling activity is not a waste reduction or recycling activity for purposes of the exemption in sec. 77.54 (26m), Wis. Stats. (2005-06).

Front-end loaders and back-hoes that are used to load a motor vehicle that is collecting and transporting recyclable materials to a recycling facility or used to unload the recyclable materials after they have arrived at a recycling facility are not used *directly* in a waste reduction or recycling activity and do not qualify for the exemption provided in sec. 77.54(26m), Wis. Stats. (2005-06).

I have enclosed a copy of the article titled "Motor Vehicles, Machinery, and Equipment Used in Waste Reduction or Recycling Activities," which was published in *Wisconsin Tax Bulletin* 123 (January 2001). Examples of equipment that does and does not qualify for exemption are provided in this tax release. The tax release can also be accessed at www.revenue.wi.gov/ise/wtb/123tr.pdf.

NOTE: The new recycling facility is not a manufacturing facility for Wisconsin sales and use tax purposes. If, in the future, the facility engages in the business of manufacturing, as described below, purchases of machinery and equipment, such as the front-end loader and back-hoe, may qualify for the exemption under sec. 77.54(6)(a), Wis. Stats. (2005-06), if this equipment is used *within the scope of the manufacturing process*.

Section 77.54(6m), Wis. Stats. (2005-06), provides that "manufacturing" for purposes of the exemption under sec. 77.54(6)(a), Wis. Stats. (2005-06), is (1) the *production by machinery* of (2) a new article with a different (3) form, (4) use and (5) name from existing materials (6) by a process popularly regarded as manufacturing. Each of these six elements of manufacturing must be met for a process to fall within the definition of manufacturing.

Section 77.54(6)(a), Wis. Stats. (2005-06), provides an exemption from Wisconsin sales and use tax for "[m]achines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property and safety attachments for those machines and equipment."

Therefore, if machinery and equipment, such as a front-end loader and back-hoe, are used exclusively and directly within the scope of a process that is manufacturing, as defined above, Company A may purchase the front-end loader and back-hoe without tax by providing its vendor with a properly completed exemption certificate (Form S-211, *Wisconsin Sales and Use Tax Exemption Certificate*) claiming the exemption for manufacturing machinery and

specific processing equipment. The scope of the manufacturing process includes "...the conveyance of raw materials and supplies **from plant inventory to the work point of the same plant**, conveyance of work in progress directly **from one manufacturing operation to another in the same plant** and conveyance of finished products **to the point of first storage on the plant premises...**" (Section Tax 11.39(2)(a), Wis. Adm. Code (October 1997 Register).) Section Tax 11.39(2)(b), Wis. Adm. Code (October 1997 Register), also provides that **"(m)anufacturing does not include storage, deliv-**

ery to or from the plant, repairing or maintaining facilities or research and development." (Emphasis added.)

You may wish to refer to Publication 203, *Sales and Use Tax Information for Manufacturers*, for additional information about what businesses meet the definition of manufacturing, the scope of the manufacturing process, and the exemption for manufacturing machinery and specific processing equipment (copy of publication enclosed). This publication may also be accessed at www.revenue.wi.gov/pubs/pb203.pdf.

Wisconsin Department of Revenue

Frequently Asked Questions: Schedule RT Filing Requirements

For taxable years beginning in 2008, taxpayers may be required to file Schedule RT as part of their Wisconsin income or franchise tax return if they are claiming a deduction for certain expenses paid, accrued, or incurred to a related entity (including a natural person or other type of entity).

Below are answers to frequently asked questions about the Schedule RT filing requirements. The questions are broken down into four categories:

- A. Who Must File Schedule RT
- B. What Must Be Reported on Schedule RT
- C. When to File Schedule RT
- D. Effect of an Unfiled, Late, or Incorrect Schedule RT

A. Who Must File Schedule RT

Question A1. Types of Taxpayers Affected. What types of taxpayers must file Schedule RT?

Answer A1: Schedule RT can be required for any type of taxpayer, including individuals, corporations, limited liability companies, and insurance companies; as well as for pass-through entities such as tax-option (S) corporations, partnerships, limited liability companies treated as partnerships, estates, and trusts.

Question A2: Determining if Schedule RT Is Required. How do I know if I must file Schedule RT for 2008?

Answer A2: Schedule RT is required if the taxpayer or pass-through entity is

- Reporting expenses on its 2008 Wisconsin return which are paid, accrued, or incurred to a related entity,
- Those expenses are of the type described on Schedule RT, and
- The \$100,000 threshold exception does not apply.

A “related entity” is any related person under sections 267 or 1563 of the Internal Revenue Code, and can include a related individual, corporation, tax-option (S) corporation, partnership, limited liability company, estate, or trust. (For more details, see the answer to Question A1 on page 16 of *Wisconsin Tax Bulletin 158*).

The expenses described on Schedule RT are:

- Interest expenses
- Rental expenses
- Royalty expenses
- Management and service fee expenses
- Inventory purchases
- Other related entity expenses if more than 10% of total expenses

See Question A3 for details of the \$100,000 threshold exception.

Question A3: \$100,000 Threshold Exception. How does the \$100,000 threshold exception apply?

Answer A3: Schedule RT is not required if the total of the expenses reportable on Schedule RT, multiplied by the Wisconsin apportionment percentage (if applicable) is \$100,000 or less. Expenses reportable on Schedule RT which are not attributable to apportionable income may not be multiplied by the Wisconsin apportionment percentage.

Question A4: Reporting of Expenses Not Required to Be Added Back. Do I need to file Schedule RT even if none of my expenses paid to related entities are required to be added back?

Answer A4: Yes, provided the \$100,000 threshold exception does not apply. This means that you may have to report royalty expenses, management and service fee expenses, inventory purchases, and other related entity expenses exceeding 10% of total expenses on Schedule RT even if you were not required to add them back.

Question A5: Reporting of Expenses Required to Be Added Back. Is Schedule RT always required if I have related entity interest or rental expenses, since I am required to add those back?

Answer A5: Schedule RT would not necessarily be required. Even though you must add back related entity interest and rental expenses, you are not required to report those expenses on Schedule RT if the \$100,000 threshold exception applies.

If you have interest or rental expenses paid, accrued, or incurred to a related entity but aren't required to file Schedule RT, you must still refer to Schedule RT, Part II and to the Schedule RT instructions for guidelines to determine if those expenses meet the necessary conditions to be deducted.

Question A6: Schedule RT Requirements for Pass-Through Entities. How do the Schedule RT requirements apply to pass-through entities?

Answer A6: A pass-through entity must file Schedule RT if the entity is reporting expenses on its 2008 Wisconsin return which are paid, accrued, or incurred to a related entity and those expenses are of the type described on Schedule RT. The \$100,000 threshold is determined at the pass-through entity level. It does not matter if those expenses are deducted against income taxed at the entity level or if they are deducted against income passed through to the entity's shareholders, partners, members, or beneficiaries.

A shareholder, partner, member, or beneficiary of a pass-through entity is not required to file Schedule RT to disclose expenses that the pass-through entity has already disclosed on Schedule RT.

Question A7: Effect of Schedule RT on Disregarded Entities. How do the Schedule RT requirements affect transactions involving disregarded entities?

Answer A7: A disregarded entity, such as a single member limited liability company (SMLLC), is not considered a separate taxpayer from its owner for purposes of Wisconsin income or franchise taxes. Thus, a transaction between a disregarded entity and its owner is not required to be reported on Schedule RT.

B. What Must Be Reported on Schedule RT

Question B1: Sufficient Disclosure. Is it sufficient to enter "available upon request" on Schedule RT?

Answer B1: No. Lines which indicate "available upon request" will be treated as if they are blank.

Question B2: Supporting Documentation. What supporting documentation is required to be filed with Schedule RT?

Answer B2: If there is not enough space on Schedule RT to list all entities to which you paid, accrued, or incurred expenses, submit with Schedule RT a supplemental schedule to identify those additional entities and provide the information required on Schedule RT regarding expenses paid, accrued, or incurred to those additional entities.

You must also submit a supplemental schedule for any related entity expenses other than interest, rent, or royalty expenses; management or service fees; or inventory purchases; if the total amount of such expenses paid, accrued, or incurred to related entities is more than 10% of total expenses claimed for the taxable year. See the instructions for Schedule RT, Part I, line 4c for details of the information that must be included in this supplemental schedule.

You may also submit any other documentation you believe would enhance the department's understanding of the transactions. However, this additional documentation is not required.

Question B3: Cash Basis vs. Accrual Basis. I incurred an expense during my 2008 taxable year that must be reported on Schedule RT but since I'm on a cash basis I won't deduct the expense until I pay it in 2009. Should I report the expense on my 2008 Schedule RT?

Answer B3: No, you do not need to report the expense on Schedule RT until the taxable year in which you deduct it for federal income tax purposes.

Question B4: Multiple Transactions. If I have more than one type of related entity expense or if I pay expenses to more than one related entity, do I need to file more than one Schedule RT for the taxable year?

Answer B4: No, you do not have to file more than one Schedule RT for a taxable year. If there is not enough space on Schedule RT to list all entities to which you paid, accrued, or incurred expenses, submit with Schedule RT a supplemental schedule to identify those additional entities and to provide the information required on Schedule RT regarding expenses paid, accrued, or incurred to those additional entities.

Question B5: Taxpayers Subject to Apportionment. If a taxpayer is subject to apportionment, are the amounts reportable on Schedule RT before or after applying the apportionment percentage?

Answer B5: Enter the amounts before applying the apportionment percentage. However, note that for purposes of determining the \$100,000 threshold exception, the apportioned amounts are used (See Question A3).

C. When to File Schedule RT

Question C1: Due Date. What is the due date for filing Schedule RT?

Answer C1: You must file Schedule RT by the due date of your Wisconsin return for the year in which the expense is reported for tax purposes, including extensions. **Caution:** The department will not accept Schedule RT if it is filed after the extended due date of your Wisconsin return.

Question C2: Short Periods Beginning in 2008. I had a short period beginning in 2008 and my filing deadline, including extensions, has already passed. Do I still have to file Schedule RT?

Answer C2: Yes, Schedule RT is required for all taxable years, including short taxable years, beginning on or after January 1, 2008. A special deadline applies to short taxable years beginning in 2008. If you

had a short period for a taxable year beginning in 2008 and had expenses reportable on Schedule RT for that short period, you must file an amended 2008 return which includes Schedule RT no later than **October 15, 2009**.

D. Effect of an Unfiled, Late, or Incorrect Schedule RT

Question D1: Unfiled Schedule RT. What happens if Schedule RT is not filed in cases where it is required?

Answer D1: The answer depends on what type of related entity expenses were required to be reported on Schedule RT:

Related Entity Interest and Rental Expenses. A Wisconsin deduction will not be allowed for related entity interest or rental expenses if a taxpayer fails to report them on Schedule RT when required.

However, if any interest or rental expense is not allowed as a deduction because the taxpayer failed to file Schedule RT, the related entity to whom the taxpayer paid, accrued, or incurred the expense may exclude the resulting income from its Wisconsin income. In order for this exclusion to apply, the taxpayer must complete Schedule RT-1, *Statement of Disallowed Related Entity Interest Expense or Rental Expense*, and provide it to the related entity. The related entity must file the completed Schedule RT-1 with his, her, or its return to substantiate the amount excluded. (The related entity may file an amended return to claim this exclusion.)

All Other Related Entity Expenses Reportable on Schedule RT. A deduction may still be allowed if a taxpayer fails to file Schedule RT to report a related entity expense other than related entity interest or rent. However, if additional tax is subsequently discovered, a penalty of 25% of the additional tax may apply if the failure to meet all requirements was not due to good cause.

Question D2: Late-Filed Schedule RT. Can I file Schedule RT on an amended return after the due date?

Answer D2: The department will not accept Schedule RT if it is filed after its due date. Thus, it is important to evaluate your records and identify any related entity expenses reportable on Schedule RT at the time you file your original return.

Question D3: Incorrect Amounts. What happens if a taxpayer reports related entity interest or rent expenses on Schedule RT, but the amount disclosed is incorrect?

Answer D3: If the amount disclosed is less than the amount required to be disclosed, a deduction may be allowed to the extent of the amount disclosed. However, for each type of expense reportable on Schedule RT, the disclosure will be considered correct if the total amount disclosed (for amounts paid, accrued, or incurred to all related entities) is within 10% of the actual amount of the expense.