

Wisconsin TAX BULLETIN

www.revenue.wi.gov

Number 164

October 2009

Voluntary Disclosure Program for Foreign Bank Accounts

On March 23, 2009, the Internal Revenue Service (IRS) announced a voluntary disclosure program for previously unreported income derived from offshore bank accounts. Taxpayers were given until October 15, 2009, to declare their intent to participate in the program. Wisconsin is now offering a similar program, available to taxpayers with a Wisconsin filing requirement related to unreported income from foreign bank accounts. To participate in Wisconsin's program, taxpayers are required to contact the Department of Revenue by January 15, 2010.

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Fond du Lac and Superior Offices to Close

The Department of Revenue will close its Fond du Lac branch office effective the end of November 2009 and its Superior branch office effective the end of December 2009. Customer services for persons in these locations will be provided from the Appleton and Eau Claire district offices.

In addition to contacting the offices listed above, assistance and information are also available on the department's web site under [Contact Us](#). [☞](#)

Fond du Lac County Adopts County Tax

Effective April 1, 2010, the county sales and use tax will be in effect in Fond du Lac County. This brings to 62 the number of counties that have adopted the 1/2% county tax.

Information about which sales and purchases are subject to county sales or use tax and transitional provisions that apply to Fond du Lac County sellers can be found in Wisconsin [Publication 201](#), *Wisconsin Sales and Use Tax Information*. [☞](#)

Important Sales and Use Tax Changes Effective October 1, 2009

Effective October 1, 2009, a number of changes have been made to Wisconsin's sales and use tax laws which affect Wisconsin retailers. For additional information about some of these changes, click on the links below. Please also note that this list of changes is not all-inclusive. Additional sales and use tax changes were also included in 2009 Wisconsin Act 2 and 2009 Wisconsin Act 28.

- [All Registered Retailers Must Collect Sales and Use Taxes for All Wisconsin Counties and Stadium Districts](#)
- [Sales of Used Motor Vehicles, Boats, Snowmobiles, Recreational Vehicles as defined in s. 340.01 \(48r\), Wis. Stats., Trailers, Semitrailers, All-Terrain Vehicles, and Aircraft by Persons Who are Not Dealers](#)
- [Grocer's Guidelist – Emergency Rule Prepared](#)
- [Prepared Foods and Soft Drinks – Emergency Rule Prepared](#)
- [Medical Related Exemptions – Emergency Rules Prepared](#)
- [Telecommunications Industry – Emergency Rule Prepared](#)
- [Sourcing Transactions – Emergency Rule Prepared](#)
- [Leases, Licenses, and Rentals – Emergency Rule Prepared](#)
- [Bundled Transactions – Emergency Rule Prepared](#) [☞](#)

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Current Wisconsin Tax Law Treatment of 2010 IRA Conversions

As of this date (October 29, 2009), Wisconsin has not adopted the provisions of federal P.L. 109-222 related to converting a regular IRA to a Roth IRA in 2010. Until Wisconsin adopts P.L. 109-222, taxpayers who make the conversion from a regular IRA to a Roth IRA in 2010 will have different tax treatments for federal and state income tax purposes.

For federal income tax purposes, persons who make the conversion in 2010 may elect to postpone payment of tax on the converted amount until they file their 2011 and 2012 income tax returns. Because Wisconsin has not adopted the provisions of P.L. 109-222, the tax on the converted amount will be due with 2010 Wisconsin income tax returns.

Persons who make the conversion and who have modified adjusted gross income over \$100,000 will be subject to certain Wisconsin penalties.

If the person is under age 59 1/2, the person would be subject to an early distribution penalty. The penalty is equal to 3.33% of the amount converted. The person would also be subject to a 2% penalty for an excess contribution to the Roth IRA. This penalty would be applied each year until the excess contribution is withdrawn. Persons age 59 1/2 or over would only be subject to the excess contribution penalty.

The department will publish further guidance on this issue if P.L. 109-222 is adopted in the next legislative session that begins in January 2010. [!\[\]\(9c2e8d1b5bd77cb5c9f83b7a9cff79fd_img.jpg\)](#)

Premier Resort Area Tax Rates to Increase for City of Wisconsin Dells and Village of Lake Delton

Effective January 1, 2010, the premier resort area tax rates for the City of Wisconsin Dells and the Village of Lake Delton will be increasing from 0.5% to 1.0%. The authority to increase this tax was provided in 2009 Wisconsin Act 28. [!\[\]\(f60b7a900783ac3fd531bfd9c111be6d_img.jpg\)](#)

Emergency Rules Adopted to Administer New Penalties

The department has adopted [emergency rules](#) that, effective October 19, 2009, administer newly created penalties for failure to produce records. In addition, proposed [permanent rules](#) that will administer the penalties are in process. See *Wisconsin Tax Bulletin* 162 (July 2009), pages 41 and 52, for a summary of the statutory penalty provisions.

Information concerning all administrative rules of the Department of Revenue, as well as other state agencies, is available at the State of Wisconsin Administrative Rules [Home Page](#). 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. [!\[\]\(eabd9f9ababee93effadc3b380fe65fd_img.jpg\)](#)

Guidance Issued on Ponzi Schemes, Other Topics

The department recently published an [article](#) on its practitioner web page giving guidance on the tax treatment of income and losses from Ponzi schemes (for example, the Bernard Madoff fraud case). Guidance has also been published for tax year 2009 on the Wisconsin medical care insurance deduction, domestic production activities deduction, and Section 179 expense for farmers. For a complete list of topics, see [News for Tax Practitioners](#). [!\[\]\(166772600a13ad0a433053f90fe45649_img.jpg\)](#)

Wisconsin Tax Bulletin

Published quarterly by:

Wisconsin Department of Revenue
Income, Sales, and Excise Tax Division
Mail Stop 6-40
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Updates and Reminders: Filing and Paying Electronically

- A new TeleFile application will be available by January 1, 2010, to file and pay withholding tax. Look for updates on the department's web site later in the year.
- Over 160,000 letters have been sent to businesses, informing them of their requirement to file sales and use tax and withholding tax returns electronically. As part of this initiative, the department has discontinued mailing sales and use tax and withholding tax returns.
- Recently adopted emergency rules require corporation combined returns be filed electronically.
- Effective January 1, 2010, the threshold at which employers and other payers must electronically file has been reduced to 50 wage statements or information returns of any one type.
- After December 31, 2009, the electronic funds transfer (EFT) payment and registration system will not be available for taxes and fees available through *My Tax Account*.

Find out more about the variety of ways you can electronically file, pay, and otherwise do business with the department by visiting [E-Services](#). [🔗](#)

Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available on the Department of Revenue's web site in September. 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. The articles in the September 2009 [Sales and Use Tax Report](#) (4-09) are as follows:

- Reminder: Streamlined Sales and Use Tax Provisions Effective October 1, 2009
- Premier Resort Area Tax Rates to Increase for City of Wisconsin Dells and Village of Lake Delton
- Police and Fire Protection Fee
- Attention Payroll Department
- Fuel Surcharges, Energy Surcharges, and Mileage Charges Included in Amount Subject to Sales Tax
- Landscaping
- Remember to Report Use Tax on Fuel Taxes Refunded
- No More Paper Sales and Use Tax Returns will be Mailed
- Question and Answer [🔗](#)

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 (DOR) have been revised:

AB-103	Alcohol Beverage Tax Information (8/09)
MF-106	Alternate Fuel Tax Information (8/09)
MF-107	Motor Vehicle Fuel Tax Information (8/09)
MF-108	General Aviation Fuel Tax Information (8/09)
W-166	Wisconsin Employer's Withholding Tax Guide (7/09)
207	Sales and Use Tax Information for Contractors (6/09)
228	Temporary Events (8/09)

In addition, a new sales and use tax publication was introduced earlier this month. Publication 240, *Digital Goods, How Do Wisconsin Sales and Use Taxes Apply to Sales and Purchases of Digital Goods?*, provides information regarding Wisconsin sales and use taxes as they relate to sales and purchases of "specified digital goods," "additional digital goods," and "digital codes." It describes what these products are and what retailers and purchasers of such products must do to comply with the law.

All of the IS&E Division's publications may be found on DOR's web site under [Publications](#). There are over 70 publications available, covering a wide range of topics. [🔗](#)

Filing Wisconsin Tax Returns for a Deceased Taxpayer

More than one type of Wisconsin tax return may be required for a deceased taxpayer, such as:

- Individual income tax return
- Fiduciary income tax return(s) for an estate
- Estate tax return (for deaths prior to January 1, 2008)

- Inheritance tax return (for deaths prior to January 1, 1992).

The department's web site has a series of [frequently asked questions](#) (FAQs) devoted to this topic, as well as many other topics. A complete categorical listing is available at [FAQs](#). [↗](#)

Motor Vehicle Dealers' Measure of Use Tax Decreased to \$138

Wisconsin licensed motor vehicle dealers are permitted to report use tax on a certain dollar amount per plate per month for the use of motor vehicles assigned to certain employees and dealership owners.

Effective January 1, 2010, the amount subject to use tax is **decreased** from \$140 to \$138 per plate per month. (**Note:** The use tax per plate per month is not \$138. Rather, \$138 is multiplied by the use tax rate (5%, 5.1%, 5.5%, or 5.6%) to arrive at the use tax due per plate per month.)

The reason for the decrease to \$138 per plate is that sec. 77.53(1m)(a), Wis. Stats. (2007-08), requires that the Department of Revenue annually adjust the amount subject to use tax to reflect the annual percentage change in the U.S. Consumer Price Index for All Urban Consumers, U.S. City Average, as determined by the U.S. Department of Labor for the 12 month period ending June 30. The statutory provision requiring the annual adjustment has no restriction prohibiting or disallowing a decrease in the index. The percentage change in the index for the period July 2008 to June 2009 was -1.43% ($\$140 \times .9857 = \138 rounded to the nearest whole dollar). [↗](#)

Web Page Offers Additional Resources Relating to Combined Reporting

Effective for taxable years beginning on or after January 1, 2009, commonly controlled corporations (other than S corporations) are generally required to report their Wisconsin income or franchise taxes using combined reporting. The combined reporting law was enacted in February 2009 (Act 2), and subsequently amended in June 2009 (Act 28).

The Department of Revenue has developed a [web page](#) to serve as centralized source of information about combined reporting. The Combined Reporting Web Page has now been updated to include:

- The text of the department's administrative rules interpreting the combined reporting statute (Sections Tax 2.60 to 2.67, Wisconsin Administrative Code).
- Articles addressing various combined reporting issues.
- Frequently asked questions (FAQs) indexed by subtopic.

- Drafts of all forms that relate to combined reporting.
- A slide show which provides a detailed explanation of who is required to use combined reporting, what must be combined, and how to prepare a combined return. This slide show replaces the one dated April 22, 2009, which was previously available on the web page. The updated slide show reflects the amendments made in Act 28 and the administrative rules and draft forms which became available subsequent to the first version.

Additional resources that the department is currently developing and will add to the web page when available include:

- Instructions to the combined reporting forms.
- A publication, *Wisconsin Guide to Combined Reporting*, which covers the same topics as covered in the slide show mentioned above, but with examples and additional explanations provided as necessary. [↗](#)

Voluntary Disclosure Program for Foreign Bank Accounts

(continued from page 1)

Note: On August 19, 2009, the IRS and the U.S. Department of Justice announced that Swiss Bank UBS would provide information to the IRS regarding U.S. holders of accounts in Swiss Bank UBS. The Wisconsin Department of Revenue has requested information from the IRS regarding Wisconsin holders of Swiss Bank UBS accounts.

Although it is not illegal for a U.S. citizen to hold a foreign bank account, holding a foreign bank account is considered to be a reportable transaction. A reportable transaction is defined as a transaction, plan or arrangement, including a listed transaction, for which a taxpayer is required to submit information to the department because the taxpayer is required to disclose the transaction, plan, or arrangement for federal income tax purposes for the taxable year in which the transaction occurred, as provided for under U.S. Treasury Regulations. A listed transaction means any reportable transaction that is the same as, or substantially similar to, a transaction, plan, or arrangement specifically identified by the U.S. Secretary of the Treasury as a listed transaction for purposes of section 6011 of the Internal Revenue Code and that is specifically identified as a listed transaction on or after the date the transaction occurred.

Wisconsin's disclosure requirements for transactions the Internal Revenue Service has designated as reportable transactions or listed transactions is found in Section 71.81, Wis. Stats. (2007-08). Section 71.81, Wis. Stats. (2007-08), sets forth the penalties applicable for reportable transaction understatements occurring on or after January 1, 2001, and extends the statute of limitations to 6 years after the date on which the return for the taxable year in which the reportable transaction occurred was filed.

Wisconsin will allow residents and other entities with a Wisconsin filing requirement, who have not been contacted by the department regarding a foreign account, until January 15, 2010, to voluntarily disclose information regarding foreign accounts. To voluntarily disclose this information, a completed Form WI-VCP, *Wisconsin Tax Shelters Voluntary Compliance Program Participation and Agreement*, must be filed with the department by January 15, 2010. This form is available on the department's web site under [Forms](#) or by contacting the department at the address or phone number listed at the end of this article.

Taxpayers are required to file amended or original Wisconsin income or franchise tax returns, for the years 2003 through 2008, to report previously unreported income from foreign accounts within 90 days of a final determination by the IRS regarding the foreign income. A copy of Form WI-VCP (that was previously filed with the department by the January 15, 2010 deadline) must be attached to the amended and/or original Wisconsin returns. In addition, taxpayers must attach complete copies of all amended or original tax returns filed with the IRS, including copies of all paperwork provided to the IRS as a result of the disclosure. Taxpayers must provide an explanation for any differences between the Wisconsin and federal returns regarding the amount of unreported or underreported income or incorrectly claimed deductions or credits related to the foreign accounts.

Use Form 1X to amend individual income tax returns. For corporation franchise or income tax returns (Form 4 or Form 5), fiduciary income tax returns (Form 2), and partnership returns (Form 3), the appropriate box on the form should be checked identifying the return as an amended return.

Wisconsin income tax forms can be found on the department's web site under [Forms](#) or they can be requested by contacting the department at the address or phone number listed at the end of this article.

The benefits for taxpayers who voluntarily disclose information regarding income from foreign accounts that was not previously reported include the following:

- Criminal penalties provided for in sec. 71.83(2), Wis. Stats. (2007-08) (fines of up to \$10,000 per violation or imprisonment), will be waived.
- Penalties provided for in sec. 71.81(5)(a), Wis. Stats. (2007-08), of either 50% or 100% of the interest assessed under sec. 71.82, Wis. Stats. (2007-08), will be waived.
- Penalties for negligence (25%) and fraud (100%) provided for in sec. 71.83(1)(a) & (b), Wis. Stats. (2007-08), will be waived.

The following penalties and interest apply to taxpayers who voluntarily contact the department regarding income from foreign bank accounts:

- Interest at 12% per year on the additional tax owed – Section 71.82(1)(a), Wis. Stats. (2007-08).

- An understatement penalty equal to 20% of the reportable transaction understatement, or, in the case of a reportable transaction that is not disclosed as provided for in sec. 71.81(2), Wis. Stats. (2007-08), 30% of the reportable transaction understatement – Section 71.81(4)(a), Wis. Stats. (2007-08).
- A penalty of the lesser of \$15,000 or 10% of the tax benefit obtained from the reportable transaction – Section 71.81(3)(a)(1), Wis. Stats. (2007-08).
- Late filing fees for nonfilers as provided for in sec. 71.83(3), Wis. Stats. (2007-08).
- Underpayment interest (if applicable) as provided for in sec. 71.84(1) & (2), Wis. Stats. (2007-08).

The reduced penalties included in this voluntary disclosure program will not be offered to taxpayers with a Wisconsin filing requirement who do not file a Form WI-VCP with the department by January 15, 2010.

All applicable penalties and fines will be imposed on those taxpayers who do not participate in the voluntary disclosure program.

Form WI-VCP and the related amended and original returns should be sent to the following address:

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

If you have questions about reporting income from foreign accounts, please contact:

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


Telephone: (608) 266-1235

Fax: (608) 267-0834

Email address: wivoldis@revenue.wi.gov 



Boo!!

Now that we have your attention, do you have ideas, comments, or suggestions concerning the *Wisconsin Tax Bulletin*? If so, please take a few moments to share them with us. Contact Dale Kleven by e-mail at isetechsvc@revenue.wi.gov or by phone at (608) 266-8253. 



Enforcement Report

Portage Man Charged With Tax Crimes

Russell J. Schmid, 39, is facing criminal charges for filing fraudulent income tax returns. Schmid made his initial appearance in August 2009 before the Circuit Court – Criminal Division at the Columbia County Courthouse.

According to the criminal complaint filed on July 17, 2009, by the Columbia County District Attorney, Schmid was charged with six felony counts of filing fraudulent income tax returns for the years 2003 through 2008. The criminal charges are the result of an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section.

The complaint alleges that Schmid had total income of \$26,446 in 2003, \$31,853 in 2004, \$34,921 in 2005, \$27,285 in 2006, \$29,964 in 2007, and \$31,296 in 2008. The complaint further alleges that Schmid filed income tax returns for 2003 through 2008 on which he reported that he had no income whatsoever. With each tax return, Schmid included a letter indicating that the tax code does not include wages as "income."

The complaint goes on to state that as a result of Schmid's fraudulent representation that he had no income during 2003 through 2008, he underpaid and still owes Wisconsin income taxes totaling \$6,257.

Schmid was scheduled to return to court earlier this month.

If convicted on all counts, Schmid could face up to 36 years in prison and \$60,000 in fines, or both.

Husband and Wife Sentenced to Prison for Tax Fraud

Robert L. Brinson, 34, was sentenced in September 2009 in Milwaukee County Circuit Court to two and a half years in prison for his role in a \$175,000 tax scheme that took place during January 2008. His wife, Baszonnia Dickerson, was sentenced in August 2009 to three years in prison for her role.

According to the criminal complaints, together Brinson and Dickerson ran an operation that recruited up to 22 other people who they armed with phony tax documents to obtain fraudulent tax refunds from the Internal Revenue Service and the Wisconsin Department of Revenue.

The complaints further state that Dickerson manufactured phony W-2 forms on a home computer. Dickerson distributed those to the other people involved and directed them to have fraudulent tax returns prepared at the H&R Block Office on 52nd and Fond Du Lac Avenue in Milwaukee, where Dickerson worked as a customer care specialist.

According to the complaints, when the refund checks came in, Brinson would drive the recruits to a nearby check cashing location to cash the checks and divide up the money. The scheme began to unravel after one of the co-actors thought Dickerson was cutting her out of the profit and called police to report the scam.

Milwaukee County Circuit Court Judge Dennis R. Cimpr also sentenced Brinson to an additional two years of extended supervision after his release from prison and ordered him to make restitution of \$22,861 to the Wisconsin Department of Revenue and \$14,208 to HSBC Bank.

Criminal charges were filed against Brinson, Dickerson, and seven others by the Milwaukee County District Attorney's Office after an investigation by the Milwaukee Police Department and the Wisconsin Department of Revenue.

Milwaukee Woman Pleads Guilty to Filing Fake Tax Returns

A Milwaukee woman, Shana Marie Cooper, 30, pleaded guilty in September 2009 in Milwaukee County Circuit Court for her part in a scheme in which at least 66 fake income tax returns were filed over a two-year period in 2006 and 2007.

The fake returns were filed to fraudulently obtain over \$170,000 in income tax refunds from the Internal Revenue Service and the Wisconsin Department of Revenue.

According to the criminal complaint, Cooper and other co-actors used a computer to create fake wage statements (Forms W-2) using the names of various businesses that included QPS Companies Inc, Custom Staff Solutions, Spherion Atlantic Workforce, Crown Staffing Services, and Popeye's Restaurants.

The complaint further alleged that the identities of 40 deceased individuals, as well as the identities of several persons incarcerated in the Wisconsin Prison System, were used to perpetrate the crime.

Using an Internet Bank System, Cooper opened up at least 15 different bank accounts where the refunds were electronically deposited. She then used debit cards to make cash withdrawals and purchases from stores.

Cooper, who was arrested in May, was previously convicted of a similar scheme in 2003. She faces up to ten years in prison and up to \$25,000 in fines.

Criminal charges were filed by the Milwaukee County District Attorney's Office after an investigation by the Fraud Unit of the Wisconsin Department of Revenue.

Convenience Store Owner Charged With Sales Tax Theft

Rajnish Patel, 38, registered agent for Laxmigas LLC, appeared in Marathon County Circuit Court in August 2008 to answer charges filed against him. He was charged with eight felony counts and one misdemeanor count of theft of state sales taxes.

The charges were brought by the Marathon County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Fraud Unit.

According to the complaint, Patel failed to remit \$38,737.38 in sales taxes to the state that he had collected from January 2007 through September 2007. Laxmigas LLC operates two convenience stores in Wisconsin, located in Rothschild and Brokaw.

If convicted, Patel could face up to 36 years and 3 months in prison, \$90,000 in fines, or both.

Financial Advisor Charged With Tax Crimes

Todd Goedeke, 53, a self-employed Valders man, was charged in September 2009 in Manitowoc County Circuit Court with two counts of failure to file Wisconsin income tax returns.

The charges were brought by the Manitowoc County District Attorney's Office following an investigation by the Wisconsin Department of Revenue's Fraud Unit.

According to the criminal complaint, Mr. Goedeke operated as a financial advisor under several different names, including Investment Management and Wealthcare and Retirement Solutions.

The complaint alleges that Mr. Goedeke failed to file income tax returns for 2006 and 2007 with gross income from his financial advisory business of \$195,651 in 2006 and \$198,847 in 2007. The complaint further states that Mr. Goedeke failed to file income tax returns for 1992 through 1995 and filed his 1996 through 2001 and 2003 through 2005 income tax returns late.

If convicted on both counts, Mr. Goedeke could face up to 18 months in prison and fines totaling \$20,000. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the tax, penalties, and interest due follows a conviction for criminal violations.

Tax Protestor Convicted by Waukesha Jury

A Waukesha County jury found Michael L. Gengler, 34, guilty in October 2009 of willful failure to file state income tax returns. The verdict was reached after a two-day trial.

According to the criminal complaint, Gengler worked for Klockner KHS in Waukesha as an electrical engineer, where he earned \$88,988 in 2005, \$89,649 in 2006, and \$102,000 in 2007.

The complaint further alleged that Gengler refused to file income tax returns for these years and instead sent the Department of Revenue documents stating he had no income.

During the trial, a witness from Klockner KHS produced copies of Gengler's 2005, 2006, and 2007 W-2 forms, or wage and tax statements. A loan officer from the Citizens Bank of Mukwonago also testified about a residential loan application that Gengler signed in 2004, where he stated his income was \$5,848 per month.

Gengler is scheduled to be sentenced in November 2009 and faces up to 27 months in jail and \$30,000 in fines.

Gengler was prosecuted by the Waukesha County District Attorney's office after an investigation by the Wisconsin Department of Revenue's Criminal Investigation Section. [!\[\]\(7d1d6890825e83a6a4a51febe2dcc7f3_img.jpg\)](#)



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 decision is included:

Sales and Use Taxes, and Withholding of Taxes

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SALES AND USE TAXES, AND WITHHOLDING OF TAXES

Temporary Services. *Manpower Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 12, 2009). The issue in this case is whether the temporary help services Manpower Inc. (Manpower) provides to its clients in Wisconsin are taxable under sec. 77.52, Wis. Stats.

Manpower is in the business of placing temporary help workers with companies in need of additional help. The workers may be sent out for a day, or a week, or months. The following facts relate to Manpower's business:

- Manpower provides to its clients in Wisconsin workers with a wide range of skills who work under the direction and control of those clients.
- In the process of placing a worker, Manpower's client will typically request a worker who possesses certain skills, such as the ability to type at a certain speed, accounting skills, or the ability to program computers.
- Manpower pays the wages of the workers it places and also pays for withholding taxes, other payroll expenses and, in some circumstances, certain fringe benefits.
- Manpower does not contract to provide certain outcomes or results. Rather, it is the responsibility of Manpower's clients to ensure that any desired outcome or result is achieved.
- When Manpower places a worker, Manpower's client defines the scope of the duties to be performed by the worker by deciding the tasks to be assigned to that worker and the manner in which those tasks are to be carried out. Manpower's client also supervises and directs the worker with respect to the worker's activities for the client.
- Manpower does not supply tools or equipment necessary for its workers to perform tasks that are assigned to them by Manpower's clients. Rather, Manpower's clients provide the necessary tools and equipment.
- Manpower does not train its employees to provide a particular outcome. Any job training that is specific to the outcome desired by a Manpower client is provided by that client, not Manpower.
- Manpower's workers do not perform their activities for Manpower's clients at Manpower's offices.
- Manpower is a member of numerous groups and associations in the staff augmentation and personnel industry.
- Manpower is classified as a "temporary help company" under sec. 108.02(24m), Wis. Stats.
- Manpower is not a member of any professional or trade organization that consists primarily of any of the following types of service providers and does not hold itself out as a provider of such services:
 - a. Hotels, motels, and inns;
 - b. Providers of entertainment, athletic, recreational, or amusement events or facilities;
 - c. Providers of telecommunication services;
 - d. Providers who record and transmit telecommunications messages;
 - e. Laundries, dry cleaners, pressing and dyeing service providers;
 - f. Photographers and photographic studios;
 - g. Providers of parking services;

- h. Providers of information technology services and other computer-related services, or any other provider of services relative to tangible personal property;
- i. Firms that produce, print, fabricate, process, or imprint upon tangible personal property;
- j. Sellers of cable television services;
- k. Landscapers and lawn maintenance service providers.

The Department sought to impose sales tax on Manpower for the temporary help services performed by its employees that match any service listed in sec. 77.52(2), Wis. Stats. Manpower argued that the service it provides is “staff augmentation” and that this service is not specifically listed in sec. 77.52(2), Wis. Stats.

The Wisconsin Tax Appeals Commission concluded that sec. 77.52(2), Wis. Stats., is ambiguous as to whether or not temporary help services are included in the services listed therein.

The Commission looked to the substance and realities of the activities in question. First, the workers that Manpower sends out are in many ways essentially substitutes or stand-ins of the purchaser’s own workforce, and the wages of one’s own workforce are clearly not subject to sales and use tax. Second, once at a job site, a Manpower employee may wind up doing tasks that are clearly nontaxable based on the purchaser’s needs on that particular day, which calls into question the nature of the original transaction itself. Third, the minute-by-minute recordkeeping requirements suggested by the department are significantly more burdensome than those normally required of a seller subject to sales tax. Fourth, there are at least two major differences between a taxable service and a service provided by a temporary help company: (1) Manpower does not control the employee performing the taxable service; and (2) Manpower does not guarantee a particular result.

An examination of the substance and realities led the Commission to the conclusion that there is a reasonable doubt that temporary help services are the same as the services that the legislature has enumerated in sec. 77.52, Wis. Stats. The Commission did not see the “clear and express” language needed for tax imposition purposes.

The Department has not appealed this decision.