

Wisconsin TAX BULLETIN

www.revenue.wi.gov

Number 173

October 2011

Annual Tax Booklet Mailings to Individuals Discontinued

In recent years, the Internal Revenue Service and several states have discontinued the practice of annually mailing individual income tax forms and instructions. These decisions have been prompted by the continued growth of electronic filing, the availability of free filing options, and the need to reduce costs. The Department of Revenue (DOR) has joined this trend by discontinuing its annual mailing of Form 1, 1A and WI-Z, 1NPR, and, with limited exceptions, Schedule H and H-EZ booklets for individual income tax.

Individual income tax forms and instructions for 2011 will be available from DOR's web site and participating libraries. DOR will also mail forms and instructions upon request. However, individuals are encouraged to file electronically, whether through Wisconsin *e-file* or other means. [↗](#)

Update: Health Care Benefits for Children Under Age 27

The department previously provided [tax information](#) relating to differences in the federal and Wisconsin treatment of health care benefits for children under age 27. To date these differences remain, and will continue until the provisions of the federal Affordable Care Act are adopted for Wisconsin income tax purposes.

The Wisconsin Legislature is currently in special session, and has passed legislation that would adopt the provisions of the Affordable Care Act for taxable years beginning on January 1, 2011. When this legislation or other pending special session legislation affecting Wisconsin taxes becomes law, information will be provided in [News for Tax Professionals](#) and the next issue of the *Wisconsin Tax Bulletin*. [↗](#)

More Individuals and Businesses Are Going Electronic

Listed below are the most recent e-file percentages for the more common types of tax returns the department processes:

- Sales and use taxes - 88%
- Withholding taxes - 86%
- Individual income tax - 80%
- Pass-through withholding - 77%
- Corporation taxes - 69%
- Partnership taxes - 66%
- Composite returns - 11%

Also, in 2011 the department received the first electronic Forms 2 for trusts and estates and Schedules CC for closing certificates. Beginning in 2012, trusts and estates will be able to use the department's free Wisconsin *e-file* application to file Form 2 and Schedule CC.

The department would like to thank all of the individuals and businesses that electronically file their tax returns and make payments using direct deposit or direct withdrawal. It's a simple yet important way that taxpayers are able to work with government to help it become more efficient and operate more effectively. [↗](#)

Draft Forms for Job Creation Incentives Available

The department recently posted draft forms that qualifying job-creating businesses will use to claim credits and deductions on their 2011 income and franchise tax returns. [Schedule JC](#) will be used to claim the job creation deduction, and [Schedule RB](#) will be used to claim the relocated business credit or deduction.

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Draft Forms for Job Creation Incentives Available

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Job Creation Deduction

Beginning with taxable years commencing on or after January 1, 2011, a subtraction from federal income is allowed based on the increase in the number of full-time equivalent employees that are employed in Wisconsin during the taxable year. The subtraction from federal income is equal to \$2,000 per eligible employee for businesses with gross receipts of greater than \$5 million and \$4,000 per eligible employee for businesses with gross receipts of \$5 million or less.

Relocated Business Credit or Deduction

Corporate Franchise and Income Tax:

For taxable years beginning on or after January 1, 2011, for two consecutive taxable years beginning with the year in which the taxpayer’s business relocates to Wisconsin from another state or country and begins doing business in Wisconsin, a credit is allowed equal to the amount of income or franchise tax liability after applying all other allowable credits, deductions, and exclusions.

Individual and Fiduciary Income Taxes:

For taxable years beginning on or after January 1, 2011, for two consecutive taxable years beginning with the year in which the taxpayer’s business relocates to Wisconsin from another state or country and begins doing business in Wisconsin, a subtraction from federal income is allowed for the net business income earned by the relocated business.

For further information, you may visit the Wisconsin Department of Revenue web site at www.revenue.wi.gov, write to the Wisconsin Department of Revenue, Mail Stop 5-144, PO Box 8906, Madison WI 53708-8906, or call the Department of Revenue at 608-266-2772. [↗](#)

DATCP Provides Information Concerning Farmland Preservation Credits

The Department of Agriculture, Trade and Consumer Protection (DATCP) recently posted an [information sheet](#) for tax preparers concerning the Working Lands Initiative and its effect on the farmland preservation program. Of particular interest is that, with the creation of about 200,000 acres of new Agricultural Enterprise Areas during 2011, more farmers have become eligible to participate in the program and claim the associated income tax credits. [↗](#)



New *My Tax Account* Functionality

In the near future, the department will be adding the functionality for employers to submit Forms W-2 through *My Tax Account*. Status updates will be provided through the department’s withholding tax e-mail list, click [here](#) to subscribe. [↗](#)

Wisconsin Tax Bulletin

Published quarterly by:

Wisconsin Department of Revenue
 Income, Sales, and Excise Tax Division
 Mail Stop 6-40
 P.O. Box 8933
 Madison, WI 53708-8933

DOR Routinely Receives Federal Audit Report Information

The Department of Revenue (DOR) routinely receives two types of federal audit reports from the Internal Revenue Service (IRS):

1. CP2000s - Federal adjustments for unreported income based on data matching between information returns from payers/employers and amounts reported on the recipient's federal income tax return. The IRS form number for the adjustment notice is "CP2000."
2. RARs - Federal adjustments resulting from an IRS audit for unreported business income, nondeductible expenses and incorrect credits claimed. These adjustments are discovered after a thorough review of taxpayer books and records by an IRS auditor.

Under Wisconsin law, a taxpayer must notify DOR within 90 days of the date the IRS adjustments are final (sec. 71.76, Wis. Stats. (2009-10)). The IRS notice of amount due advises taxpayers that the adjustments may apply to their state income tax return.

What If a Taxpayer Fails to Report IRS Adjustments to DOR?

DOR receives federal audit reports one to two years after the final IRS notice. If the taxpayer does not self-report the federal adjustments to DOR within 90 days, DOR has four years from the date it receives the federal audit report to adjust the Wisconsin return if appropriate (sec. 71.77(7)(b), Wis. Stats. (2009-10)).

DOR has automated some adjustments so that a system-generated notice is sent to the taxpayer as soon as the federal audit report is received from the IRS. The automated notice is identified as a "Federal to State Adjustment."

Also, DOR is just beginning to send system-generated letters to taxpayers as soon it receives their federal audit reports from the IRS. The letters request taxpayers to amend their Wisconsin returns rather than wait for DOR to bill them. It's in the taxpayer's best interest to amend their Wisconsin return in order to reduce interest and in many cases avoid a penalty.

What if the Taxpayer Can't Pay the Wisconsin Amount?

If you can't pay the amount due, you should still amend your Wisconsin return, pay what you can, and request an installment agreement to pay amounts owed over time. Information on installment agreements is available from the department's web site, see "Payment" under "Frequently Asked Questions" below.


Tips for Filing an Amended Return

See the article "Tips for Filing an Amended Return" on page 4 for information that applies to amended returns in general. If you are filing an amended return to report federal audit adjustments, also:

- Attach a copy of the IRS notice of tax due.
- If the IRS changed its original notice of tax due, include a copy of the IRS letter describing the change.
- If there was Wisconsin withholding on the additional income you are reporting, include a copy of the Form W-2, 1099-R, or W2-G (or other applicable information return form) to verify the withholding.

Frequently Asked Questions

DOR has published frequently asked questions (FAQs) on its web site to address some of the common questions that relate to federal audit reports. The FAQs that apply the most are:

- [Amended Returns](#)
- [Notice of Amount Due - Federal to State Adjustment](#)
- [Audits](#)
- [Payment](#) 

Have Frequently Asked Questions...Frequently?

Check out the wide variety of [FAQ categories](#) that are available. At the end of each FAQ is information regarding how to contact the department, if you have additional questions.

Tips for Filing an Amended Return

The following tips will help the department process an amended return faster:

- Make sure an original return was filed for the same tax year.
- File electronically using Wisconsin e-File (2009 and later returns).
- Full year residents - Use Form 1X, unless amending to change residency (use Form 1NPR).
- Part-year and nonresidents - Use Form 1NPR.
- Form 1NPR filers - Check the amended box near the top of the form.
- Use the correct year's amended form (same tax year as the original return you are amending).
- Attach Schedule H if first claiming homestead credit on the amended return or homestead credit was claimed on the original return.
- Complete Schedule 1 (itemized deduction credit) and Schedule 2 (married couple credit) if first claiming the credits on the amended return or changing the credits claimed.
- Include the refund or tax due from the original return, or as adjusted by the department, on the correct line. Do not include underpayment interest.
- Include a detailed explanation of the change(s) and any schedules that will further explain the changes.
- Do not include a copy of the original return. [☞](#)



As If You Didn't Know...

More specifically, we welcome your suggestions, comments, or ideas concerning the *Wisconsin Tax Bulletin*. Contact Dale Kleven by e-mail at isetechsvc@revenue.wi.gov or by phone at (608) 266-8253. [☞](#)

Reminders: Using Form W-RA

Form W-RA (Required Attachments for Electronic Filing) is used to submit supporting documentation when a Wisconsin income or franchise tax return or homestead credit claim is filed electronically. Form W-RA and attachments must be submitted to the department within 48 hours of receiving the Wisconsin acknowledgement.

The department encourages the use of its data file transmission [application](#) to send Form W-RA and attachments in an electronic file over the Internet. However, if Form W-RA and attachments are paper filed, the following reminders are offered to avoid processing delays:

- Do not send Form W-RA if the return or claim is filed on paper, even if you use software to fill in the return or claim. Form W-RA should be used only when a return or claim has been e-filed.
- Use Form W-RA only to send in supporting documentation for an e-filed return or claim. It should not be used for appealing a notice, answering correspondence, or sending any other information to the department. [☞](#)

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* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information. Listed below are the articles in the September 2011 *Sales and Use Tax Report* (Issue 3-11).

- Reminder of New Sales and Use Tax Laws That Go Into Effect September 1, 2011:
 - Products Provided Free of Charge
 - Modular and Manufactured Homes Used in Real Property Construction Activities Outside Wisconsin (New Exemption)
 - Vegetable Oil or Animal Fat Converted to Motor Vehicle Fuel (New Exemption)
- Motor Vehicle Dealers' Measure of Use Tax Increased to \$144 (Effective January 1, 2012)
- Thank You For E-Filing
- Multi-Level Marketing Companies and Their Distributors [☞](#)

Effect of IRC Section 338(h)(10) Election on Shareholders of Tax Option (S) Corporations

Under section 338(h)(10) of the Internal Revenue Code, a corporation which makes a qualified stock purchase of another corporation (the “target”) can elect to treat the stock purchase as an asset purchase. Under such an election, the target corporation is treated as if it sold all of its assets in a single transaction at the close of the acquisition date. The target corporation must report any resulting gain or loss on this deemed sale of its assets. Under this election, the purchasing corporation will receive a step-up (or step-down) basis for the business assets acquired.

The federal election to treat the stock purchase as an asset purchase also applies for Wisconsin. For further information on making the election, see the tax release “[Section 338\(h\)\(10\), IRC, Election](#)” in *Wisconsin Tax Bulletin* 71 (April 1991).

Shareholders are affected when the section 338(h)(10) election is made and the target corporation is a tax-option (S) corporation. Gain or loss from the deemed sale of assets passes through from the tax-option (S) corporation to the individual shareholders.

Shareholders are also affected in the following situations:

- Section 71.05(6)(b)6., Wis. Stats., provides an exclusion from income for net capital gains on small business stock, for the original purchaser of the small business stock, that is purchased at the time that the business is incorporated and where certain other conditions are met. Although the tax-option (S) corporation stock may meet the qualifications as small business stock, when the section 338(h)(10) election is in effect for Wisconsin, the reported sale of assets does not qualify as net capital gain on small business stock for purposes of the exclusion.
- Section 71.04(1), Wis. Stats., provides the situs of income. All items of income, loss and deductions of nonresident individuals derived from a tax-option corporation shall follow the situs of the business of the corporation. Income or loss derived from stocks, bonds, or securities or from the sale of similar intangible personal property shall follow the residence of the individuals. When the section 338(h)(10) election is in effect for Wisconsin, the reported sale of assets is business income and must be reported to Wisconsin by a nonresident shareholder of the tax-option (S) corporation. The sale of assets is not a sale of stock. [☞](#)

Updated Publications

The following publications of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue have recently been revised. All of the IS&E Division’s publications may be [downloaded](#) or [ordered](#) online. There are over 70 publications available, covering a wide range of topics.

Sales and Use Taxes

- 201 Wisconsin Sales and Use Tax Information (9/11)
- 203 Sales and Use Tax Information for Manufacturers (10/11)
- 207 Sales Tax Information for Contractors (10/11)
- 211 Cemetery Monument Dealers: How Do Wisconsin Sales and Use Taxes Affect You? (9/11)
- 217 Auctioneers: How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/11)
- 219 Hotels, Motels, and Other Lodging Providers (9/11)
- 222 Motor Vehicle Fuel Dealers: Do You Owe Use Tax? (9/11)
- 225 Barber and Beauty Shops – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (9/11)
- 228 Temporary Events (8/11)
- 230 Sales and Use Tax Information for Sellers of Antiques, Crafts, and Artwork (9/11)

Other Topics

- 505 Taxpayers’ Appeal Rights of Office Audit Adjustments (8/11)
- 506 Taxpayers’ Appeal Rights of Field Audit Adjustments (7/11) [☞](#)



Enforcement Report

Couple Sentenced for Income Tax Fraud

On July 22, 2011, Bryan D. Hoel and Amy L. Hoel were sentenced for multiple counts of state income tax fraud and bail jumping. Bryan Hoel was ordered to spend three years in prison, while Amy was ordered to spend two years and nine months in prison.

Judge Stephen Ehlke further sentenced Bryan and Amy Hoel to extended supervision of four years and two years, respectively. Judge Ehlke ordered the Hoels to pay all delinquent taxes, file all future tax returns in a timely manner, and pay court costs.

According to the criminal complaint, from 1997-2005 Bryan and Amy Hoel received more than \$400,000 in income. However, they reported total income of \$3,574 on their income tax returns for those years.

The complaint also indicated that the Hoels filed trust returns in their own names for 1997, 1998, and 1999; and that Amy Hoel filed trust returns for 2000 and 2001. They reduced their trust income to zero or a negative number through deductions. When the Department of Revenue requested each of them to provide supporting documentation, they did not provide any.

The couple was prosecuted by the Dane County District Attorney's office following an investigation by the Wisconsin Department of Revenue. The Hoels were found guilty on May 26, 2011, at the conclusion of a two-day jury trial. [↗](#)