Wisconsin Department of Revenue

TAX BULLETIN

April 2014
Number 184

If you would like to receive notification when a new *Wisconsin Tax Bulletin* is available, subscribe to the sales and use tax or tax professional electronic mailing list.

In This Issue

New Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. On pages 6 to 17 is an index and brief descriptions of the major individual and fiduciary income tax, homestead and farmland preservation credit, corporation franchise or income tax, sales and use tax, motor vehicle fuel tax, and general alcohol beverages, unclaimed property, and other provisions. These provisions are contained in 2013 Acts 128, 145, 184, 185, 204, 215, 227, 229, 249, 250, 268, 308, 324, 346, 349, and 364.

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

Reminder: Wisconsin Withholding Tables Revised April 1, 2014

Wisconsin withholding tables and alternate methods of withholding (A and B) have been revised for payroll periods beginning on or after April 1, 2014. The withholding tables are found in the back of the *Wisconsin Employer's Withholding Tax Guide* (Publication W-166). Employers should have implemented the revised withholding tables or alternate methods no later than April 1, 2014.

Phaseout of 2013 Itemized Deductions

An article about the effect of the federal phaseout of itemized deductions on the 2013 Wisconsin itemized deduction credit is available on the department's website. The article includes worksheets for determining the deductions allowable for the Wisconsin itemized deduction credit.

Do You Have Unclaimed Property?

Unclaimed property is generally any financial asset that is deemed by law to have been abandoned by its owner. Once the property is deemed abandoned by the owner, the person holding the unclaimed property is required to turn it over to the Department of Revenue (DOR). DOR acts as the custodian of the property on behalf of the owner and will return the property to the owner once the owner files a claim with DOR that establishes that person's right to the property.

Unclaimed property is generally "abandoned" by the owner after five years of no owner activity. For example, if you are a bank holding the proceeds from a matured certificate of deposit and the depositor has not made contact with you for five years, the funds are considered abandoned and must be reported as unclaimed property to DOR. **Note:** Certain types of property are deemed abandoned in as little as one year of no owner activity.

DOR recently issued Publication 83, *Reporting Unclaimed Property*. This publication provides guidance to holders of unclaimed property, including:

- what is unclaimed property,
- when it is deemed abandoned,
- when to submit unclaimed property to DOR,
- what reports to file with DOR.

Additional information on unclaimed property is also available in Publication 82: *Holder Report Guide*, and on the *Unclaimed Property* page on DOR's website.

Question and Answer – Manufacturing and Agriculture Credit

Question: Is property that is exempt from property taxes included in the numerator of the manufacturing property factor for purposes of computing the manufacturing and agriculture credit?

Answer: Yes. The manufacturing property factor under secs. 71.07(5n)(a)5.a. and 71.28(5n)(a)5.a., Wis. Stats., is defined as a fraction, the numerator of which is the average value of the claimant's real and personal property **assessed** under sec. 70.995, Wis. Stats., owned or rented and used in this state by the claimant during the taxable year to manufacture qualified production property, and the denominator of which is the average value of all the claimant's real and personal property owned or rented during the taxable year and used by the claimant to manufacture qualified production property. Real and personal property **assessed** under sec. 70.995, Wis. Stats., means property that has been **classified** as manufacturing property under sec. 70.995, Wis. Stats., regardless of whether or not a property tax exemption applies. As a result, inventory and any other real and personal property of a business that is classified as manufacturing in Wisconsin under sec. 70.995, Wis. Stats., is included in the numerator of the manufacturing property factor.

Question: Can the manufacturing and agriculture credit be used to offset Wisconsin's alternative minimum tax? Initially the manufacturing and agriculture credit could not offset Wisconsin alternative minimum tax. The department recently published information that the credit may now be used to offset Wisconsin alternative minimum tax. What changed and what is required if alternative minimum tax was computed as a result of claiming the credit?

Answer: Yes. 2013 Wisconsin Act 145 changed the order in which credits, specifically the manufacturing and agriculture credit, may be used to offset tax liabilities. The manufacturing and agriculture credit may now be claimed after the alternative minimum tax. This change applies retroactively to taxable years beginning on or after January 1, 2013. If the manufacturing and agriculture credit was claimed on an individual income tax return that was filed prior to the law change, and the claimant was subject to Wisconsin alternative minimum tax, the claimant should file a 2013 Wisconsin Form 1X (amended return) in order to reflect the law change.

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

Effective July 1, 2014, the premier resort area tax rates for the City of Wisconsin Dells and the Village of Lake Delton will be increasing from 1.0% to 1.25%. The authority to increase this tax was provided in 2013 Wisconsin Act 20.

Publication 403, *Premier Resort Area Tax*, and the Premier Resort Area Tax Common Questions available on the department's website, provide additional information about the premier resort area taxes.

Huber Law Fees

This article explains the proper Wisconsin sales tax treatment of certain charges made by Huber Law facilities. It also explains what Huber Law facilities should do if they have not been properly collecting and remitting the appropriate Wisconsin sales taxes.

1. Charges for lodging to Huber law inmates, including transfer fees, are not taxable.

2. Charges for electronic monitoring are taxable.

3. Sales of tangible personal property by Huber Law facilities, such as vending machine sales of candy, are taxable, unless an exemption applies.*

4. Separate and optional charges for meals to Huber law inmates are taxable, unless an exemption applies.*

5. Separate, but not optional, charges for meals to Huber law inmates are not taxable (this is considered part of the charge for the lodging).

6. If there is a single, non-itemized charge for both meals and lodging, the charge is not taxable.

   Note: Huber Law facilities may not have been aware of how a law change effective October 1, 2009 affected the Wisconsin sales tax due on a single, non-itemized charge that includes both meals and lodging. This may have resulted in some facilities charging more sales tax than what was due on these fees. (The "bundled transaction" provisions in secs. 77.51(1f)(b)1. and (d), 77.52(22), and 77.54(51), Wis. Stats., were created in 2009 Wisconsin Act 2.).

   If a Huber Law facility collected and paid sales tax on single, non-itemized charges that included both meals and lodging, the facility may choose to file a claim for refund with the Wisconsin Department of Revenue for the amount of tax it charged in error. The facility must then return the tax and related interest to the inmates from whom the tax was collected. If the facility is unable to return the tax and interest to the inmates, it must return the tax and interest to the Wisconsin Department of Revenue.

   Information about filing a claim for refund is provided in Publication 216, *Filing Claims for Refund of Sales or Use Tax*.

*Additional information about sales of tangible personal property, and exemptions that may apply, is provided in Publication 201, *Wisconsin Sales and Use Tax Information*, Parts X. and XI. Additional information about meals or "prepared food" is provided in Publication 220, *Grocers*, Part II.D.

Aircraft Parking

The service of providing parking or providing parking space for aircraft is subject to Wisconsin sales or use tax. "Parking" includes occupying space in a hangar when an aircraft is available for use without requiring a substantial expenditure of time or effort to make it operational.

For example, a ready-to-fly aircraft occupying space in a hangar when the aircraft is available for immediate use is "parked." However, an aircraft occupying space in a hangar with its wings off is not parked, since it would require a substantial expenditure of time or effort to make it operational.

Providing Space at Airports

An airport may provide space for an aircraft or an airline at the airport. These charges may or may not be taxable parking services.

"T" Hangar and "Tie-Down" Parking – Indoor parking, such as a single or multiple "T" hangar parking is taxable. Outdoor or "tie-down" parking is also a taxable parking service.

Apron Charge – The fee charged by an airport for use of the apron is not taxable when the fee includes use of gates and terminals and the airlines use the apron space typically to load and unload passengers and cargo, lavatory servicing, maintenance, cleaning, fueling, catering, replenishing potable water supply, deicing, and towing.

Storage After Repair – The charge for storing an aircraft that is not available for immediate use is not taxable. However, the charge for storing an aircraft after it has been repaired and is available for immediate use is taxable.

Example 1: Company repairs aircraft. Owner is unable to pick up the aircraft for a week. Company charges Owner $200 for “storing” Owner's aircraft until it can be picked up. Because the aircraft is available for immediate use upon repair of the aircraft, the $200 charge by Company is considered a charge for parking and is subject to Wisconsin sales tax.

Example 2: Company brings Owner's aircraft to its repair shop. The aircraft is damaged and cannot be used. Company charges Owner $300 for “storing” the aircraft until Owner's insurance company can estimate the cost of the damage and approve repairs. Because the aircraft is not available for immediate use, the $300 charge by Company is not considered a charge for parking and is not subject to Wisconsin sales tax.

Snowmobiles, ATVs, UTVs, and Similar Property Sold to Nonresidents

Sellers:

A dealer or other retailer is required to collect and remit Wisconsin sales or use tax on sales of tangible personal property in Wisconsin, including:

- Snowmobiles
- All-terrain vehicles (ATVs)
- Utility-terrain vehicles (UTVs)
- Non-motorized campers
- Trailers (e.g., trailers for snowmobiles, ATVs, and UTVs, utility trailers, cargo trailers)
- Off-road motorcycles
- Boats, including personal watercraft
- Recreational vehicles as defined in sec. 340.01(48r), Wis. Stats.

The dealer or other retailer's sale is taxable if the purchaser takes possession of the property in Wisconsin, regardless of whether the purchaser is a resident or nonresident of Wisconsin. The tax includes Wisconsin 5% sales tax, as well as any applicable 0.5% county and 0.1% or 0.5% stadium tax.

The chart titled "State, County, and Stadium Sales and Use Taxes Due on Items Registered or Titled in Wisconsin" is helpful in determining which tax rate applies to sales of certain vehicles that are required to be registered in the State of Wisconsin.

Exception: An exemption exists for motor vehicles that are sold to a nonresident whose only use of the motor vehicle is in the removal of the property from Wisconsin. This exemption does not apply to snowmobiles, ATVs, UTVs, off-road motorcycles, boats, and other motorized vehicles that are not designed or used primarily for transporting persons or property on a public highway. The exemption also does not apply to non-motorized campers, trailers, and recreational vehicles as defined in sec. 340.01(48r), Wis. Stats., that are not self-propelled.

> **Note:** An individual that sells a snowmobile, ATV, UTV, or other motorized vehicle is not required to collect the tax when selling his or her personal vehicle. If the purchaser is a nonresident of Wisconsin who does not register or title the snowmobile, ATV, UTV, or other motorized vehicle with the State of Wisconsin (e.g., Department of Transportation, Department of Natural Resources) and is not required to register the vehicle with the State, the nonresident does not owe Wisconsin use tax on its purchase of the vehicle.

The chart titled "State, County, and Stadium Sales and Use Taxes Due on Items Registered or Titled in Wisconsin" is helpful in determining which tax rate applies to sales of certain vehicles that are required to be registered in the State of Wisconsin.

The following articles that are posted on the department's website may also be helpful:

- Non-Motorized Campers Purchased by Nonresidents of Wisconsin
- Boats and Trailers: Determining Which County and Stadium Taxes Apply

Nonresident Purchasers:

A person who is not a resident of Wisconsin may be required to register his or her property with the Wisconsin Department of Natural Resources or Wisconsin Department of Transportation. If the property is registered or required to be registered, the nonresident is required to pay the applicable Wisconsin sales or use tax due at the time the property is registered or titled in Wisconsin. This includes snowmobiles, ATVs, and UTVs that are registered or titled in Wisconsin by nonresidents for the purpose of obtaining a trail pass from the Wisconsin Department of Natural Resources. However, if the person has already paid a sales or use tax that was legally due and owing to another state, the sales or use tax paid to the other state may be used to offset some or all of the sales or use tax due in Wisconsin.

Example 1: Nonresident purchases an ATV in the state in which he lives from a private party (as opposed to a dealer) for $5,000. Nonresident did not pay any sales or use tax on his purchase of the ATV since the state in which he lives does not impose tax on the purchase price of an ATV when it is purchased from a private party. If Nonresident wants to ride the ATV on public trails in his home state, he is required to pay a flat $25 trail fee every two years. Nonresident brings the ATV to Wisconsin to ride on Wisconsin trails in Jackson County. In order to get the required trail pass in Wisconsin, Nonresident registers the ATV with the Wisconsin Department of Natural Resources. At the time the ATV is registered in Wisconsin, Nonresident A is required to pay the applicable Wisconsin state and county use tax due ($5,000 x 5.5% = $275) on his purchase of the ATV. The $25 trail fee that Nonresident was required to pay to his home state may not be used to reduce the $275 Wisconsin use tax due on Nonresident's purchase of the ATV, since this was not a sales or use tax paid to the other state.

Example 2: Same as *Example 1* except that the $25 fee that Nonresident was required to pay to his home state was a sales, use, or excise tax imposed on the use of the ATV in his home state. The $25 may be used to reduce the $275 Wisconsin use tax due and Nonresident is only required to pay the $250 difference between the total Wisconsin use tax ($275) and the $25 use tax Nonresident previously paid to his home state.

Example 3: Same as *Example 1* except that Nonresident was required to pay 6.5% sales tax to his home state at the time the ATV was registered in his home state. Since the sales tax Nonresident was required to pay to his home state was equal to or greater than the Wisconsin use tax due, no additional sales or use tax is due to Wisconsin at the time Nonresident registers the ATV in Wisconsin if Nonresident provides proof (i.e., a copy of registration form and receipt from his home state showing the 6.5% sales tax was paid), that the sales tax was paid to his home state.

Sales and Use Tax Report Available

The latest issue of the *Sales and Use Tax Report* became available on the Department of Revenue's website in March. 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 March 2014 *Sales and Use Tax Report* (Issue 1-14).

- Premier Resort Area Tax Rates to Increase for City of Wisconsin Dells and Village of Lake Delton
- Wisconsin/Minnesota Sales Tax Seminars
- Online Filers: Don't Forget County and Stadium Taxes
- Aircraft Purchased by Nonresidents
- Alternative Energy Producing Products
- Tips and Gratuities
- Take and Bake Pizza
- Virtual Currency
- Sellers Using Distribution Facilities in Wisconsin Are Liable for Wisconsin Tax on Their Sales
- New Law – Tax Exemptions for Printers

Index and Descriptions of New Tax Laws

A. *Individual Income Taxes (also see Part B)*

1. **Subtraction Created for Amounts Received From the Primary Care and Psychiatry Shortage Grant Program** (2013 Act 128, create sec. 71.05(6)(b)51., effective for taxable years beginning on or after January 1, 2014).

   To the extent included in federal adjusted gross income, a subtraction is allowed for any amount received by a physician or psychiatrist, in the taxable year to which the subtraction relates, from the primary care and psychiatry shortage grant program under sec. 39.385, Wis. Stats.

2. **College Savings Accounts** (2013 Act 227, amend sec. 71.05(6)(b)32.(intro.) and a. and create sec. 71.05(6)(a)26., various effective dates).

   Current law provides a subtraction from income for amounts contributed to a Wisconsin state-sponsored college savings account (for example, EdVest or "tomorrow's scholar"). For taxable years beginning on or after January 1, 2014:

   - The deadline to make a contribution is extended to on or before the 15th day of the 4th month beginning after the close of the taxable year to which the subtraction relates. For example, the deadline for a calendar-year filer to make a contribution for 2014 will be April 15, 2015.
   - The subtraction is expanded to include a contribution made by the owner of the account or any other individual authorized by the owner of the account for the benefit of any beneficiary of the account.
   - The maximum allowable subtraction amount is increased each year by a percentage equal to the percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, between August of the previous year and August 2012, as determined by the federal Department of Labor. An adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. Each amount that is revised under this provision shall be rounded to the nearest multiple of $10 if the revised amount is not a multiple of $10 or, if the revised amount is a multiple of $5, the amount shall be increased to the next higher multiple of $10.
   - A contribution that exceeds the maximum allowable subtraction amount may be carried forward to the next taxable year and taxable years thereafter.

   For distributions from a Wisconsin state-sponsored college savings account received on or after June 1, 2014, an addition to income is required for:

   - Amounts received by the owner or beneficiary of the account that 1) result in a federal penalty under 26 USC 529(c)(6) for not being used for qualified higher education expenses and 2) were contributed to the account on or after January 1, 2014.
   - Amounts rolled over by an owner into another state's qualified tuition program, to the extent the amount was previously claimed as a subtraction from income.

3. **College Tuition and Expenses Program Subtraction Indexed** (2013 Act 227, amend sec. 71.05(6)(b)32.a., effective for taxable years beginning on or after January 1, 2014).

   Current law provides a subtraction from income for amounts contributed to a Wisconsin state-sponsored college tuition and expenses program.

   The maximum allowable subtraction amount is increased each year by a percentage equal to the percentage change in the U.S. consumer price index for all urban consumers, U.S. city average, between August of the previous year and August 2012, as determined by the federal department of labor. An adjustment may occur only if the resulting amount is greater than the corresponding amount that was calculated for the previous year. Each amount that is revised under this provision shall be rounded to the nearest multiple of $10 if the revised amount is not a multiple of $10 or, if the revised amount is a multiple of $5, the amount shall be increased to the next higher multiple of $10.

B. ***Individual and Fiduciary Income Taxes***

1. **Income Tax Rate Reduced** (2013 Act 145, amend sec. 71.06(1q)(a) and (2)(i)1. and (j)1., effective for taxable years beginning on or after January 1, 2014).

   The lowest tax rate is reduced from 4.4 percent to 4 percent.

2. **Exception to Limitation on Business Relocation Subtraction Created** (2013 Act 145, amend sec. 71.05(6)(b)47.am., b., and c. and create sec. 71.05(6)(b)47.dm., effective for taxable years beginning after December 31, 2012 and before January 1, 2014).

   No person may claim the business relocation subtraction for taxable years beginning after December 31, 2013, except that a claimant who is first eligible to claim a subtraction for a taxable year beginning after December 31, 2012, and before January 1, 2014, may claim the subtraction the following taxable year.

3. **Net Operating Loss Carry-Back and Carry-Forward Provisions Revised** (2013 Act 145, renumber sec. 71.05(8)(b) to 71.05(8)(b)1. and create sec. 71.05(8)(b)2. and (c), various effective dates).

   For taxable years beginning on or after January 1, 2014, a Wisconsin net operating loss may be carried back against Wisconsin taxable income of the previous two years and then carried forward against Wisconsin taxable incomes of the next 20 taxable years, if the taxpayer was subject to Wisconsin taxation in the taxable year in which the loss was sustained, to the extent not offset against other income of the year of loss and to the extent not offset against Wisconsin modified taxable income of the two years preceding the loss and of any year between the loss year and the taxable year for which the loss carry-forward is claimed.

   Act 145 makes the following revisions:

   - A taxpayer need not make the offset against Wisconsin modified taxable income of the two years preceding the loss if the taxpayer chooses not to carry back the net operating loss to the two years preceding the loss.
   - For refunds paid on or after January 1, 2014, the department shall not pay interest on any overpayment that results from the carry-back of a net operating loss.

4. **Limitation on Electronic Medical Records Credit Clarified** (2013 Act 145, create sec. 71.07(5i)(c)3., effective for amounts paid after December 31, 2013).

   Under current law, the electronic medical records credit may not be claimed for a taxable year beginning on or after January 1, 2014. This provision clarifies that the credit may not be based on an amount paid after December 31, 2013.

5. **Order of Credits Revised** (2013 Act 145, renumber sec. 71.10(4)(cr) to 71.10(4)(fn), 71.10(4)(dr) to 71.10(4)(fp), and 71.10(4)(er) to 71.10(4)(fr) and amend secs. 71.07(4k)(b)1., (5m)(a)4., (5n)(b)(intro.), and (9r)(a) and 71.08(1)(intro.), various effective dates).

   The computation order is revised to allow the following credits to offset alternative minimum tax:

   - For taxable years beginning on or after January 1, 2013, the manufacturing and agriculture credit.
   - For taxable years beginning on or after January 1, 2014, the research credit and state historic rehabilitation credit.

6. **Depletion Computation Changed** (2013 Act 145, amend sec. 71.98(3), effective for taxable years beginning on or after January 1, 2014).

   The provision in sec. 71.98(3), Wis. Stats., requiring depletion to be computed under the federal Internal Revenue Code in effect on January 1, 2014, is amended to provide that for purposes of computing depletion, the Internal Revenue Code means the federal Internal Revenue Code in effect for the year in which the property is placed in service.

7. **Transfer of Economic Development Tax Credit** (2013 Act 184, create sec. 238.3045, effective for taxable years beginning on or after January 1, 2014).

   See Item D.5.

C. ***Homestead Credit and Farmland Preservation Credit (Schedule FC)***

Definition of "Income" Revised (2013 Act 145, amend sec. 71.52(6), effective for taxable years beginning on or after January 1, 2012).

The definition of "income" is revised to include net operating loss carry-backs deducted in determining Wisconsin adjusted gross income.

D. ***Corporation Franchise or Income Taxes***

1. **Net Business Loss Carry-Forward Period Increased** (2013 Act 145, amend secs. 71.26(4)(a) and 71.45(4)(a), effective for taxable years beginning on or after January 1, 2014).

   The carry-forward period for net business losses is increased from 15 to 20 years.

2. **Exception to Limitation on Relocated Business Credit Created** (2013 Act 145, amend secs. 71.28(9s)(d)3. and 71.47(9s)(d)3., effective for taxable years beginning after December 31, 2012 and before January 1, 2014).

   No person may claim the relocated business credit for taxable years beginning after December 31, 2013, except that a claimant who is first eligible to claim the credit for a taxable year beginning after December 31, 2012, and before January 1, 2014, may claim the credit in the following taxable year.

3. **Limitation on Electronic Medical Records Credit Clarified** (2013 Act 145, create secs. 71.28(5i)(c)3. and 71.47(5i)(c)3., effective for amounts paid after December 31, 2013).

   Under current law, the electronic medical records credit may not be claimed for a taxable year beginning on or after January 1, 2014. This provision clarifies that the credit may not be based on an amount paid after December 31, 2013.

4. **Depletion Computation Changed** (2013 Act 145, amend sec. 71.98(3), effective for taxable years beginning on or after January 1, 2014).

   The provision in sec. 71.98(3), Wis. Stats., requiring depletion to be computed under the federal Internal Revenue Code in effect on January 1, 2014, is amended to provide that for purposes of computing depletion, the Internal Revenue Code means the federal Internal Revenue Code in effect for the year in which the property is placed in service.

5. **Transfer of Economic Development Tax Credit** (2013 Act 184, create sec. 238.3045, effective for taxable years beginning on or after January 1, 2014).

   Approval of Credit Transfer

   An applicant for certification for the economic development tax credit may submit with its application to the Wisconsin Economic Development Corporation (WEDC) an application to transfer the credit to another person. WEDC may approve the transfer of a credit if it certifies the applicant for the credit and finds that the applicant meets at least one of the following conditions:

   1. Is headquartered and employs at least 51 percent of its employees in Wisconsin.
   2. Intends to relocate its headquarters to Wisconsin and employ at least 51 percent of its employees in Wisconsin.
   3. Intends to expand its operations in Wisconsin, and that expansion will result in an increase in the number of full-time employees employed by the applicant in Wisconsin in an amount equal to at least 10 percent of the applicant's full-time workforce in Wisconsin at the time of application.
   4. Intends to expand its operations in Wisconsin, and that expansion will result in the applicant making a significant capital investment in property located in Wisconsin, as determined by WEDC.

   After WEDC authorizes the person to claim a credit and provides a notice of eligibility, the person may transfer the credit in accordance with the terms of its application. A credit may be transferred only in exchange for some consideration, other than money, in connection with the eligible activity for which the credit is initially awarded.

   WEDC may not authorize the transfer of credits that total more than $15,000,000 and may not authorize the transfer of credits after 36 months after April 4, 2014. Upon expiration of this 36-month period, with the approval of the Joint Committee on Finance WEDC may authorize the transfer of up to an additional $15,000,000 in credits for up to an additional 36 months.

   Carryforward of Transferred Credits

   The person to whom a credit is transferred may carry forward, beginning on the date of the notice of eligibility to the transferor, any unused credit for 15 years.

   Revocation and Administration of Transferred Credits

   If WEDC revokes a person's certification for a credit, and, at the time of revocation, the credit has been transferred, the transferor shall be liable for the full credit, and the transferee may not claim any credit that is not claimed prior to revocation.

   WEDC shall notify the Department of Revenue (DOR) of a revocation of a credit, including the amount of credit for which the transferor is liable.

   DOR has full power to administer transferred credits and may take any action, conduct any proceeding, and proceed as it is authorized in respect to income and franchise taxes. The income and franchise tax provisions relating to assessments, refunds, appeals, collection, interest, and penalties apply to transferred credits.

E. ***Sales and Use Tax***

1. **Aircraft Parts and Repair – New Exemptions** (2013 Act 185, amend sec. 77.52(2)(a)10. and (13) and repeal and recreate sec. 77.54(5)(a), effective July 1, 2014).

   Effective July 1, 2014, charges for the repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of any aircraft or any aircraft parts are no longer subject to sales tax.

   Effective July 1, 2014, the sales of and the storage, use, and consumption of parts used to modify or repair aircraft are exempt.

   Prior to July 1, 2014:

   - The repair, service, alteration, fitting, cleaning, painting, coating, towing, inspection, and maintenance of any aircraft is taxable, unless the purchaser of the service could buy the aircraft being serviced without tax at the time the service is performed.
   - Repair parts for any aircraft are taxable unless an existing exemption applies.

   Note: Sales of aircraft supplies are taxable both before and after July 1, 2014. For example, hydraulic fluid is an aircraft supply.

2. **Definition of Common Motor Carrier Amended** (2013 Act 364, amend sec. 194.01(1), first applies to motor carrier operations occurring on April 25, 2014).

   Wisconsin law provides an exemption from sales and use taxes for the sale of and the storage, use, or other consumption of motor trucks, truck tractors, road tractors, buses, trailers and semitrailers, and accessories, attachments, parts, supplies and materials therefor, sold to common or contract carriers who use such motor trucks, truck tractors, road tractors, buses, trailers and semitrailers exclusively as common or contract carriers. (Section 77.54(5)(b), Wis. Stats.)

   For purposes of this exemption, "common carrier" has the same meaning as "common motor carrier" in sec. 194.01(1), Wis. Stats. Therefore, the amendment of the definition of "common motor carrier" in 2013 Wis. Act 364 also applies to "common carrier," as used in sec. 77.54(5)(b), Wis. Stats.

   Notable changes in the definition of "common motor carrier" are:

   1. The requirement that a common carrier transports passengers "between fixed end points or over a regular route upon the public highways or property over regular or irregular routes" upon public highways was removed.
   2. The definition previously excluded the transportation of passengers in commuter car pool or van pool vehicles with a passenger-carrying capacity of less than 16 persons. The new law limits this exclusion to commuter car pool or van pool vehicles with a passenger-carrying capacity of 8 passengers, including the driver.

3. **Fertilizer Blending, Feed Milling, and Grain Drying Operations – New Exemptions** (2013 Act 324, renumber sec. 77.54(6) to 77.54(6)(am), renumber sec. 77.54(6r) to 77.54(6)(cn) and amend as renumbered, and create sec. 77.54(6)(am)4. and 5. and (bn), effective April 19, 2014).

   Effective April 19, 2014, sales and use tax exemptions are created for the following:

   - Machines and specific processing equipment used exclusively and directly in a fertilizer blending, feed milling, or grain drying operation, including holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer, wet corn holding bins, grain dryers, mixers, conveying equipment, and grinding, mixing, and saturation bins, regardless of whether such items become an addition to, a component of, or a capital improvement of real property. The exemption includes repair parts, replacements, and safety attachments for such machines and equipment.

- Building materials acquired solely for and used solely in the construction or repair of holding structures used for weighing and dropping feed or fertilizer ingredients into a mixer or for storage of grain, if such structures are used in a fertilizer blending, feed milling, or grain drying operation.

The exemptions apply only to:

- Items located on the same parcel of property where the fertilizer blending, feed milling, or grain drying operation activities are conducted, or on an adjoining parcel, including parcels that are separated only by a public road, and
- Persons who are primarily engaged in fertilizer blending, feed milling, or grain handling operations which include grain drying operations, or primarily engaged in any combination of fertilizer blending, feed milling, or grain handling operations which include grain drying operations, and to contractors providing real property construction activities to such persons.

The exemptions are to be strictly construed.

Prior to April 19, 2014, these items were taxable. However, an exemption may have applied if the item was tangible personal property and was used exclusively and directly in the business of farming or in manufacturing.

Also, prior to April 19, 2014, purchases of the building materials described above were taxable if they were used in the construction or repair of holding structures and the construction or repair was a real property improvement.

4. **Printers – Tax Exemptions** (2013 Act 145, amend sec. 77.54(61), as created by 2013 Act 20, and create sec. 77.54(61)(c), both effective retroactively to October 1, 2013).

Effective retroactively to October 1, 2013, the following sales and use tax exemptions apply to purchases by a person primarily engaged in, as determined by the Department of Revenue: (a) commercial printing as described under code 323111 of the North American Industry Classification System (NAICS); (b) book printing as described under code 323117 of the NAICS; or (c) support activities for printing as described under code 323120 of the NAICS:

(1) Purchases of computers and servers used primarily to store copies of the product that are sent to a digital printer, a plate-making machine, or a printing press or are used primarily in prepress or postpress activities.

- "Primarily" means more than 50%.
- "Prepress activities" include making print-ready plates, typesetting, trade binding, and sample mounting.
- "Postpress activities" include paper bronzing, die-cutting, edging, embossing, folding, gilding, gluing, and indexing.

(2) Purchases from out-of-state sellers of tangible personal property that are temporarily stored, remain idle, and not used in Wisconsin and that are then delivered and used solely outside Wisconsin. "Temporarily" means not more than 180 days.

NOTE: Wisconsin *Sales and Use Tax Report 2-13* (September 2013) Part V.B., provides eight examples of the application of sec. 77.54(61), Wis. Stats., as created by 2013 Act 20. These examples are not affected by 2013 Wis. Act 145 (i.e., the examples are still valid).

5. **Radio and Television Broadcasting Equipment Exemption** (2013 Act 346, create sec. 77.54(23n), effective July 1, 2014).

   A sales and use tax exemption is created for property that is sold to a person who is licensed to operate a commercial radio or television station in Wisconsin, if the property is used exclusively and directly in, or is fuel or electricity consumed in, the origination or integration of various sources of program material for commercial radio or television transmissions that are generally available to the public free of charge without a subscription or service agreement. This exemption applies to vehicles licensed for highway use and equipment used to transmit or receive signals from a satellite.

6. **Sellers Will be Allowed to Claim Bad Debt Deductions for Uncollectible Debts of Private Label Credit Card Company** (2013 Act 229, renumber sec. 77.585(1)(a) to sec. 77.585(1)(a)(intro) and amend as renumbered, amend sec. 77.585(1)(b) and (c), and create sec. 77.585(1)(a)2. to 6. and (bm), effective July 1, 2015).

   Effective July 1, 2015, a seller will be allowed to claim a deduction on its sales and use tax return for the amount of any bad debt that the seller or lender (see *Definitions*) writes off as uncollectible in the seller's or lender's books and records. In order to claim the deduction, the bad debt must be eligible to be deducted as a bad debt for federal income tax purposes, regardless of whether the seller or lender is required to file a federal income tax return.

   A seller who claims a bad debt deduction must claim the deduction on its sales and use tax return that is submitted for the period in which the seller or lender writes off the amount of the deduction as uncollectible in the seller's or lender's books and records and in which such amount is eligible to be deducted as bad debt for federal income tax purposes.

   If the seller or lender subsequently collects in whole or in part any bad debt for which a deduction is claimed, the seller must include the amount collected in the return filed for the period in which the amount is collected and must pay the tax with the return.

   A seller may compute the seller's bad debt deduction using an estimate, if the Department of Revenue approves the method for computing the estimate. The department may audit the seller's books and records to review the estimate and adjust the estimate as necessary to reflect the actual allowable bad debt amount.

   For purposes of computing a bad debt deduction or reporting a payment received on a previously claimed bad debt, any payment made on a debt or on an account is applied first to the price of the product or service sold, and the proportionate share of the sales tax on that product or service, and then to interest, service charges, and other charges related to the sale. If payment is received on an account for which the balance reflects multiple sales transactions, the payment is applied to the sales transactions in the same order in which the sales transactions occurred.

   Prior to July 1, 2015, a seller is not allowed to claim a bad debt deduction for amounts that the lender writes off as uncollectible in its books and records. A seller is, however, allowed to claim a bad debt deduction for amounts that the seller writes off as uncollectible in its books and records, as described above.

   Also, prior to July 1, 2015, a seller may not compute a bad debt deduction using an estimate.

   Definitions

   The following definitions apply with respect to bad debts:

   "Bad debt" means the portion of the sales price or purchase price that the seller has previously reported as taxable under this Chapter 77, Subsection III, Wis. Stats., and for which the seller has paid the tax, and that the seller or lender may claim as a deduction under section 166 of the Internal Revenue Code.

"Bad debt" does not include financing charges or interest, sales or use taxes imposed on the sales price or purchase price, uncollectible amounts on tangible personal property or items, property, or goods under s. 77.52 (1) (b), (c), or (d) that remain in the seller's possession until the full sales price or purchase price is paid, expenses incurred in attempting to collect any debt, debts sold or assigned to 3rd parties for collection, not including dual purpose credit debts and private label credit debts, and repossessed property or items.

"Dual purpose credit card" means a credit card that may be used as a private label credit card or to make purchases from persons other than the seller whose name or logo appears on the card or the seller's affiliates or franchisees, if the credit card issuer is able to determine the sales receipts of the seller and the seller's affiliates or franchisees apart from any sales receipts of unrelated persons.

"Dual purpose credit debt" means accounts and receivables that result from credit sale transactions using a dual purpose credit card, but only to the extent the account or receivable balance resulted from purchases made from the seller whose name or logo appears on the card.

"Lender" means any person who owns a private label credit debt, an interest in a private label credit debt, a dual purpose credit debt, or an interest in a dual purpose credit debt, if the person purchased the debt or interest directly from a seller who remitted the tax imposed under Chapter 77, Subchapter III, Wis. Stats., or from a third party or if the person originated the debt or interest pursuant to the person's contract with the seller who remitted the tax imposed under Chapter 77, Subchapter III, Wis. Stats., or with a third party.

"Lender" includes any person who is a member of the same affiliated group, as defined under section 1504 of the Internal Revenue Code, as a lender or is an assignee or other transferee of a lender.

"Private label credit card" means any charge card or credit card that identifies a seller's name or logo on the card and that may be used only for purchases from that seller or from any of the seller's affiliates or franchisees.

"Private label credit debt" means accounts and receivables that result from credit sale transactions using a private label credit card, but only to the extent the account or receivable balance resulted from purchases made from the seller whose name or logo appears on the card.

F. *Motor Vehicle Fuel Tax*

1. **Motor Vehicle Fuel Exemption Certificates** (2013 Act 204, create sec. 78.01(2t), effective for certificates issued on or after April 10, 2014).

   Exemption certificates used to claim exemption from the motor vehicle fuel tax on gasoline or diesel fuel are valid for 3 years unless cancelled by the Department of Revenue or the person claiming the exemption.

2. **Definition of "Common Motor Carrier" Revised** (2013 Act 364, amend sec. 194.01(1), effective for motor carrier operations occurring on or after April 25, 2014).

   For purposes of the exemption from motor vehicle fuel and alternate fuels tax for common motor carriers, "common motor carrier" means any person who holds himself or herself out to the public as willing to undertake for hire to transport passengers or property by motor vehicle upon the public highways. The transportation of passengers in taxicab service or in commuter car pool or van pool vehicles that are designed to carry less than 8 passengers, including the driver, or in a school bus under sec. 120.13 (27), Wis. Stats., is not transportation by a common motor carrier.

   Notable changes in the definition of "common motor carrier" are:

   1. The requirement that a common carrier transports passengers "between fixed end points or over a regular route upon the public highways or property over regular or irregular routes" upon public highways was removed.

2. The definition previously excluded the transportation of passengers in commuter car pool or van pool vehicles with a passenger-carrying capacity of less than 16 persons. The new law limits this exclusion to commuter car pool or van pool vehicles with a passenger-carrying capacity of 8 passengers, including the driver.

G. ***General Alcohol Beverages Provisions***

1. **Identification Scanners** (2013 Act 215, create sec. 125.09(7), effective April 10, 2014).

   No municipality may provide, to any retail alcohol beverage licensee, any device capable of scanning a valid operator's license issued by the Department of Transportation (DOT) that contains the photograph of the holder or an identification card issued by DOT.

2. **Exception to Alcohol Beverages Violations of Underage Persons Created** (2013 Act 249, create sec. 125.07(3)(a)16., effective April 10, 2014).

   Current alcohol beverage law generally prohibits underage persons (under 21 years of age) from being on alcohol beverage licensed premises, unless accompanied by a parent, guardian, or spouse who has attained the legal drinking age.

   This provision provides an additional exception for an underage person who enters or remains in a banquet or hospitality room on winery premises operated under a "Class A" or "Class B" license for the purpose of attending a winery tour.

3. **Trade Show Samples** (2013 Act 250, amend sec. 125.70, effective April 10, 2014).

   A winery may furnish, free of charge, on "Class B" premises, taste samples of intoxicating liquor to any person who has attained the legal drinking age and who is attending a trade show, conference, convention, or similar business meeting, that is held on those premises, of a bona fide national or statewide trade association that derives income from membership dues of "Class B" licensees. Taste samples may not be furnished at more than 2 such events of any one trade association per year. No intoxicating liquor brought on “Class B” premises under this provision may remain on those premises after the close of the trade show, conference, convention, or business meeting.

4. **Temporary Retail Licenses Issued to Fair Associations** (2013 Act 268, amend secs. 125.26(6), 125.32(2), 125.51(10), and 125.68(2), effective for licenses issued on or after April 18, 2014).

   Current alcohol beverage law generally prohibits a premises operated under a Class "B" or "Class B" license or permit from being open for business unless the licensee or permittee, the agent named in the license or permit, or a person with an operator's license who is responsible for all persons serving alcohol is on the premises.

   This provision provides an exception to this supervision requirement for a temporary Class "B" or "Class B" license issued to a fair association solely for the purpose of conducting on the licensed premises fermented malt beverages or wine judging or tasting events involving servings no greater than one fluid ounce each.

H. ***Unclaimed Property***

1. **Automatic Return of Unclaimed Property to Owners** (2013 Act 308, renumber and amend sec. 71.93(1)(d), amend sec. 71.93(3)(a)(intro.), and create secs. 71.93(1)(d)2. and 177.19, effective July 1, 2015).

   Beginning July 1, 2015, the Department of Revenue (DOR) will return unclaimed property to its owner, without the owner having to file a claim for the property, if the value of the property is $2,000 or less and DOR can identify and locate the owner through tax return information. Before the property is delivered to the owner, DOR shall first setoff the unclaimed property against any debt owed to DOR.

For purposes of refund setoffs for debts owed to DOR or other state agencies, municipalities, and counties, the definition of "refund" is expanded to include the amount owed to a debtor for the return of unclaimed property which exceeds a debtor's Wisconsin tax liability or any other liability owed to DOR.

If the value of the property is more than $2,000 after any setoff, DOR shall send written notice to the person, informing the person that he or she is the owner of unclaimed property and may file a claim for return of the property.

2. **Internet Notice and Publication of Lists of Unclaimed Property** (2013 Act 308, amend sec. 177.18(1), effective July 1, 2015).

Before July 1 of each year, the Department of Revenue (DOR) shall publish on its Internet site a notice of the names of persons appearing to be owners of unclaimed property. The notice shall contain the names in alphabetical order and last-known address, if any, of persons listed in the report and a statement that information concerning the property and the last-known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to DOR.

DOR may omit from the notice a person with an address outside of Wisconsin if DOR has entered into an information exchange agreement concerning unclaimed property with the state in which the person's address is located.

I. ***Other***

Entertainer's Surety Bond (2013 Act 349, renumber and amend sec. 71.80(15)(b), amend sec. 71.64(4), and create sec. 71.80(15)(b)2., effective for taxable years beginning on or after January 1, 2014).

The threshold total contract price or renumeration received that subjects an entertainer to the requirement to file a surety bond or make a cash deposit is increased from $3,200 to $7,000.

When determining if the above threshold is met, the total contract price may be reduced by travel expenses, or advance payments of travel expenses, made pursuant to an accountable plan under U.S. Treasury Regulation 1.62-2. For purposes of this provision, "travel expenses" means amounts paid to, or on behalf of, an entertainer for actual transportation, lodging, and meals that are directly related to the entertainer's performance in Wisconsin.

If a bond is not filed or a cash deposit is not made by the entertainer, the payment to the entertainer is subject to withholding, except travel expenses described above.

Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions.

The following decisions are included:

INDIVIDUAL INCOME TAX

Income earned on a tribal reservation. *Claude and Patricia Merckes vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, December 12, 2013). The issues in this case are whether 1) the department properly disallowed the taxpayers' deduction for income earned on a tribal reservation and 2) taxpayers are allowed a waiver of the interest assessed in conjunction with the tax due on the amounts disallowed.

By notices dated April 12, 2010, the department issued an income tax assessment against the taxpayers for the years 2003 through 2008 that disallowed the deduction for income earned on the reservation of the Stockbridge-Munsee Community ("Tribe"). The taxpayers filed timely petitions for redetermination of the department's assessments, which were denied by the department by notices dated December 12, 2011. The taxpayers filed timely petitions for review with the Commission on February 12, 2012.

The taxpayers argue they do not owe the additional income tax because they resided on tax-exempt land and, even if they do owe the tax, they are not liable for the resulting interest because they should be treated the same as those members of the Tribe who participated in an Escrow Plan. The Escrow Plan allowed members of the Tribe, who may or may not have resided on the reservation, who earned income on the reservation to pay disputed taxes into an escrow account until the resolution of litigation regarding reservation boundaries in *State of Wisconsin v. Stockbridge-Munsee Community*, 554 F.3d 657 (7th Cir. 2009) ("boundary case"). The taxpayers raise equal protection and due process arguments based on the fact that they never received notice of the Escrow Plan and therefore were not given the same opportunity as others to opt into it.

The Commission looked to the boundary case and other established case law to determine if 1) the taxpayers' residence was on tax-exempt land, either by virtue of being located within the boundaries of the reservation or classified as trust land and 2) the Escrow Plan applies to the taxpayers based on equal protection or due process.

The Commission concluded the taxpayers were not entitled to the deduction for income earned on the reservation because they did not reside on tax-exempt land during the years at issue. The taxpayers' residence did not fall within the boundaries of the reservation established by the boundary case, and the process to classify their property as trust land was not completed until 2011.

The Commission also concluded the taxpayers are not entitled to a waiver of interest because they were not participants in the Escrow Plan. They also are not entitled to treatment as though they were participants in the Escrow Plan based on equal protection or due process, because the department did not act in an intentional or purposeful way to exclude the taxpayers from the plan.

The taxpayers have not appealed this decision.

SALES AND USE TAX

Construction contractors – exempt entity construction. *Sullivan Brothers, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, January 30, 2014). This is an appeal of a February 22, 2013 order of the Circuit Court for Dane County affirming an August 14, 2012 Wisconsin Tax Appeals Commission decision.

See Wisconsin Tax Bulletin #177 (October 2012), page 7, for a summary of the Wisconsin Tax Appeals decision.

In this case the taxpayer, a contractor, bought materials from third parties that it would eventually use in real property construction for tax-exempt customers. The contractor did not pay tax on the materials. Instead it purchased the materials using resale certificates.

When a tax exempt customer needed an installation, the tax exempt customer issued two sets of purchase orders. One set to the contractor reflecting an order to install the materials at the customer's facility and another set to the contractor's sister company reflecting purported sales of materials by the sister company to the tax exempt customer.

Later the contractor would record the installed materials as having been "transferred" from the contractor to the sister company at cost as part of annual, year-end journal entries. The sister company did not pay tax on the materials.

The Commission concluded the contractor-sister company transactions lacked economic substance and a business purpose. The Court of Appeals focused on the Commission's reasonable conclusion under the "substance and reality" test.

The Commission provided four reasons why the contractor-sister company transactions fail the test: (1) there was "little or no independent substance to" the sister company, in that the ownership, location, and employees were identical, and its sole purpose appeared to be as a "device" to avoid the taxes at issue; (2) transactions between the contractor and sister company were at the contractor's cost, creating a pass-through situation; (3) "necessary entries" were made only at year end; and (4) Sullivan filed amended returns during the audit, acknowledging that the contractor "carried all of the materials on its return as its inventory for balance sheet purposes."

The Court of Appeals sustained the Commission's reasonable interpretation and affirmed the judgment of the Circuit Court, which affirmed the ruling and order of the Commission.

The taxpayer has not appealed this decision.

Claim for refund. *Telephone and Data Systems, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 28, 2014).

In this case the parties dispute the timeliness of the taxpayer's refund claim for sales tax the taxpayer should not have paid to a retailer from 1997 through 2000. The department conducted a Wisconsin sales and use tax audit of the taxpayer covering the periods from 1997 through 2000 and issued a Notice of Field Audit Action dated June 25, 2002. The taxpayer did not appeal the determination.

In 2003, the Commission concluded that SAP's R/3 system software was not subject to Wisconsin sales tax in the case of *Menasha Corporation vs. Wisconsin Department of Revenue*. The department offered a "Menasha Extension" to

taxpayers while the appeal was pending. Part of the department review process was to verify none of the periods were closed relating to the extension.

In February 2004, the taxpayer signed, dated, and filed two Menasha extensions - one for 2001 through 2003; another for 1997 through 2000. The department acknowledged the taxpayer's claim for refund with a receipt date of February 6, 2004.

In July of 2008, the Supreme Court of Wisconsin decided the Menasha case holding that sales such as those which are the subject of the TDS's refund claims were not taxable.

The Commission held that the taxpayer's claim for refund satisfied all of the requirements to file for a claim for refund within 2 years of the final audit determination; therefore, grounds did not exist for the granting of the department's Motion to Dismiss.

The department has not appealed but has adopted a position of nonacquiescence in regard to this decision. The effect of this action is that, although the decision is binding on the parties in this case, the Commission's conclusions of law, the rationale and construction of statutes in this case are not binding upon or required to be followed by the department in other cases.

Appeal – manufacturing sales tax credit. *Primera Foods Corporation vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 7, 2014).

In this case the Commission granted the department's Motion for Rehearing dated April 24, 2013. The Commission found that further consideration was warranted on the issues of: (1) statutory interpretation of the term "paid" for purposes of the manufacturing sales tax credit under sec. 71.28(3)(b), Wis. Stats. (2011-12); (2) the negligence penalty in relation to the sales and use tax assessment made by the department; and (3) the applicability of equitable recoupment to the cases at hand.

The taxpayer purchased natural gas which was used in manufacturing tangible personal property and did not report or pay sales tax on its purchases of natural gas. After an audit the taxpayer admitted it was liable for sales and use tax on those purchases. The taxpayer filed amended corporate franchise or income tax returns claiming tax credits on the unpaid sales tax liability.

The Commission reconsidered its original ruling and decision of March 14, 2013, and upheld the department's action denying the taxpayer's claim for manufacturing sales tax credits. The Commission found that under the plain language of sec. 71.28(3)(b), Wis. Stats. (2011-12), the taxpayer was not eligible for the manufacturing sales tax credits on its amended returns as the taxpayer did not pay sales or use tax on its purchases of natural gas for the years at issue. The Commission also upheld the department's assessment of penalty and declared the taxpayer was not entitled to an equitable offset of its invalid refund claim against the sales and use tax assessment.

The taxpayer has not appealed this decision.