Wisconsin Tax Bulletin

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In This Issue

Income and Franchise Tax Updates and Reminders

Individual and Fiduciary Income Tax Rates Reduced

As provided by 2019 Wis. Act 10, the individual income tax rates for the first and second tax brackets under sec. 71.06, Wis. Stats., are reduced for taxable year 2020 based on estimated amounts of additional sales and use tax revenue reported to the department from out-of-state retailers and marketplace providers.

For 2020, the individual income tax rate for the first tax bracket is reduced from 4.00 percent to 3.54 percent, and the individual income tax rate for the second tax bracket is reduced from 5.21 percent to 4.65 percent. The individual income tax rates in effect for taxable year 2020 will continue for taxable years going forward.

For additional information about the 2019 and 2020 rate reductions, see the article titled *Additional Individual and Fiduciary Income Tax Rate Decrease* on page 3 of *Wisconsin Tax Bulletin* 206 (July 2019).

We're All In Small Business Grant Program

The Wisconsin Department of Revenue partnered with the Wisconsin Economic Development Corporation (WEDC) to administer Phase 2 of the We're All In Small Business Grant program. This program is funded by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act and will provide relief to over 10,000 small business owners who have suffered economic damages in 2020 as a result of the COVID-19 pandemic.

Business owners apply for the grant online through an unregistered My Tax Account (MTA) application. The application period ends November 2, 2020. To be eligible for the program, the business must have filed a 2019 federal and Wisconsin income tax return and reported annual business revenue of more than $0 and less than $1 million. Other criteria are described on the department's We're All In common questions web page.

Eligible applicants will be ranked with priority given to businesses that did not receive a grant from WEDC in Phase 1, have minority ownership, and are in an industry with the greatest negative impact due to the pandemic. The grants will be disbursed to business owners in early December.

Wisconsin Farm Support Program

The Wisconsin Department of Revenue partnered with the Wisconsin Department of Agriculture, Trade and Consumer Protection (DATCP) to administer the Wisconsin Farm Support program. This program was funded by the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act, providing $50 million of relief to farmers who suffered economic damages in 2020 as a result of the COVID-19 pandemic.

Farmers applied for the relief payment online through an unregistered My Tax Account (MTA) application.

The initial application period for the program closed in June and required that gross income from farming was at least $35,000 but not more than $5,000,000. Due to low application volume, each eligible applicant was awarded $3,500 in relief.

A second application period opened in August to distribute excess program funds to eligible applicants who did not receive a payment during the initial application period. The threshold for gross income from farming was reduced to $10,000 for the second application period. Eligible applicants received a minimum payment of $1,000 and maximum payment of $3,000.

Revised Form 804, *Claim for Decedent's Wisconsin Income Tax Refund*

Form 804, *Claim for Decedent's Wisconsin Income Tax Refund*, has been redesigned to include a barcode to allow for submitting the form with the Wisconsin income tax return. Previously, this form was only used to claim a refund on behalf of a decedent after the refund check was issued. In order to claim a refund on behalf of a decedent, a taxpayer has the following options:

- If the taxpayer is filing the decedent’s income tax return, submit Form 804 with the return. Also, check the box below the special conditions box on page 1 of Form 1 or 1NPR indicating the taxpayer is filing Form 804 with the return. If filing a paper return, place Form 804 on top of Form 1 or Form 1NPR. If filing electronically, attach Form 804 as a PDF to the return.
- If the refund check was issued in the decedent’s name, and the taxpayer is unable to cash the check, send Form 804 along with the decedent’s refund check to:

Wisconsin Department of Revenue
PO Box 8903
Madison WI 53708-8903

Disclosing Schedule CC and Closing Certificate Information

Wisconsin Schedule CC, *Request for Closing Certificate*, is filed with the department to request a closing certificate when a Wisconsin probate court requires it to close a proceeding for an estate or trust.

When requesting information from the department about the status of a closing certificate and the related Schedule CC, the department may only disclose information to certain persons if the closing certificate has not been issued at the time of the request. If a closing certificate has been issued, the department may inform any person of the certificate issued because it is public information at that time.

If the closing certificate has not been issued, the department may only disclose information to the following individuals:

- Third party designee listed on the Schedule CC
- Personal representative
- Special administrator
- Power of attorney
- Trustee (if a trust)

Prior to issuing the closing certificate, the department will not disclose to anyone else, including, but not limited to:

- Attorney of record
- Schedule CC preparer
- Paralegal, administrative assistant or any other employee for the attorney or preparer
- Beneficiaries
- Family or friends of the decedent
- Register in probate

Apportionment – Intangible Income from a Unitary, Multistate Tax-Option (S) Corporation

A tax-option (S) corporation engaged in a unitary business both in and outside Wisconsin determines the portion of business income attributable to Wisconsin using Schedule A-01, *Wisconsin Single Sales Factor Apportionment Data for Nonspecialized Industries*, unless one of the industry-specific Schedules A-02 through A-11 apply.

Pursuant to sec. 71.362(2), Wis. Stats., intangible income (e.g., interest, dividends, and capital gains) of a unitary, multistate tax-option (S) corporation is considered business income subject to apportionment when determining the income attributable to Wisconsin for nonresident shareholders.

Example

Facts:

- Tax-Option (S) Corporation ABC is a unitary, multistate tax-option (S) corporation consisting of two shareholders:
  - Individual D is a 50 percent shareholder and a resident of Wisconsin
  - Individual E is a 50 percent shareholder and a resident of Texas
- ABC has a Wisconsin apportionment percentage of 10 percent
- ABC does not make an election under sec. 71.365(4m)(a), Wis. Stats., to pay tax at the entity level
- ABC reports the following items on its federal Form 1120-S, Schedule K:
  - Line 1, Ordinary business income $100,000
  - Line 4, Interest income $ 50,000
  - Line 8a, Net long-term capital gain (loss) $ 40,000
- ABC does not have any Wisconsin adjustments for differences between federal and Wisconsin law

Table 1: Resident Individual D's Wisconsin Schedule 5K-1

	Federal column b	WI adjustment column c	WI income column d	WI sourced income column e
Line 1, Ordinary business income	$50,000	$0	$50,000	
Line 4, Interest income	$25,000	$0	$25,000	
Line 8, Net long-term capital gain	$20,000	$0	$20,000	

Table 2: Nonresident Individual E's Wisconsin Schedule 5K-1

	Federal column b	WI adjustment column c	WI income column d	WI sourced income column e
Line 1, Ordinary business income	$50,000	$0	$50,000	$5,000
Line 4, Interest income	$25,000	$0	$25,000	$2,500
Line 8, Net long-term capital gain	$20,000	$0	$20,000	$2,000

Individual E is required to include the income from column e of Schedule 5K-1 on Form 1NPR, *Nonresident and Part-Year Resident Income Tax Return*.

Research Credit – Funded Research Expenses

One of the primary adjustments to a Wisconsin research credit is for research expenses claimed by the incorrect entity because the expenses are funded or reimbursed by another party. The credit must be claimed by the entity that incurred the qualified research expenses as provided in sec. 71.28(4)(ad)4.b., Wis. Stats., which defines qualified research expenses as those under sec. 41 of the Internal Revenue Code. However qualified research expenses only include expenses incurred by the claimant for research conducted in Wisconsin for the taxable year and does not include compensation used in computing the Wisconsin developmental zone credit.

Wisconsin did not adopt sec. 41(f)(5), IRC, relating to the definition of a controlled group of corporations. Pursuant to sec. Tax 2.61(10), Wis. Adm. Code, a tax credit is an attribute of the separate corporation rather than of the combined group, and credits are computed for each corporation separately. An exception is provided in sec. Tax 2.61(10)(d), Wis. Admin. Code, so that if a combined group member incurs qualified research expenses in Wisconsin and the research is funded by another member of the same Wisconsin combined group, the expenses are considered qualified research expenses of the combined group member performing the research, and not a qualified research expense of the funding member.

Except for research funded by members of the same Wisconsin combined group, research funded by any grant, contract, or otherwise by another person or government entity is not qualified research and may not be used to claim the credit.

Example 1

Facts:

- Combined Group AB consists of Member A and Member B.
- Member B performs research in Wisconsin that would be qualified research under sec. 41(d), IRC, except for the fact that A and B have entered into a contract where A provides funding for all of B's qualified research expenses at a markup of 10 percent.
- Neither A nor B perform any other research.
- During the year, A paid B $220,000 for research services, all of which would be qualified research for B if the research were not funded by A.

Question: Who can claim the research credit?

Answer: Member B. On AB's combined return, B may include $200,000 of qualified research expenses ($220,000 - $20,000 markup) in its computation of the research credit. Member A may not compute a research credit. Since A and B are members of the same combined group, the funding arrangement between A and B is ignored for purposes of computing the research credit.

Example 2

Facts:

- Combined Group AB consists of Member A and Member B.
- Member A owns a controlling interest in Foreign Subsidiary C that qualifies as an 80/20 corporation for Wisconsin tax purposes (80 percent or more of its worldwide gross income is active foreign business income so it is not included in the combined group).
- Member B performs research in Wisconsin that would be qualified research under sec. 41(d), IRC, except for the fact that Member B and Foreign Subsidiary C have entered into a contract where Foreign Subsidiary C provides funding for all of B's qualified research expenses at a markup of 10 percent.
- Member A, Member B, nor Foreign Subsidiary C perform any other research.
- During the year, Foreign Subsidiary C paid Member B $220,000 for research services, all of which would be qualified research for Member B if the research were not funded by Foreign Subsidiary C.

Question: Who can claim the research credit?

Answer: Foreign Subsidiary C. Foreign Subsidiary C would be able to claim 65 percent of the contract research expenses if they are required or choose to file a tax return in Wisconsin; however, since they qualify as an 80/20 corporation, it is unlikely they have a filing requirement in Wisconsin. Member B does not qualify to claim the credit for the research funded by Foreign Subsidiary C because Foreign Subsidiary C is outside of the Wisconsin combined group.

Example 3

Facts:

- Combined Group AB consists of Member A and Member B.
- Member A has a 75 percent ownership in Partnership C.
- Member B performs research in Wisconsin that would be qualified research under sec. 41(d), IRC, except for the fact that Partnership C and Member B have entered into a contract where Partnership C provides funding for all of B's qualified research expenses at a markup of 10 percent.
- Member A, Member B, nor Partnership C perform any other research.
- During the year, Partnership C paid Member B $220,000 for research services, all of which would be qualified research for Member B if the research were not funded by Partnership C.

Question: Who can claim the research credit?

Answer: Member A and whoever owns the other 25 percent of Partnership C**.** Partnerships and limited liability companies treated as partnerships cannot claim the credit; however, the eligibility for and the computation of the credit is based on the amount the entity pays for qualified research expenses. The credit computed is passed through and claimed by the partners or members.

In this example, the research is funded by Partnership C, who is not a member of the Wisconsin combined group, so Member B cannot claim the credit based on funded research. Partnership C computes the credit on Schedule R, *Wisconsin Research Credits,* based on 65 percent of their contract research expenses paid to Member B. Partnership C would report partner Member A's share of the credit in proportion to its ownership interest on Schedule 3K-1, *Partner's Share of Income, Deductions, Credits, etc*.

For more information about the research credit, please refer to the following:

- Publication 131, *Tax Incentives for Conducting Qualified Research in Wisconsin*
- Research credit common questions
- Schedule R instructions
- *Wisconsin Tax Bulletins*: 67-4, 104-17, 137-31, 138-26, 169-2, and 189-10

My Tax Account – Corporation Franchise Tax Accounts

The department's My Tax Account (MTA) application provides a convenient way to access your business tax accounts 24 hours a day, seven days a week. You can view letters, schedule estimated tax payments, and much more. For more information, please visit the MTA Common Questions page on the department's website.

Corporations which have previously made an estimated or return payment to their franchise tax account can self-register by entering the payment amount on the MTA registration screen. All corporations new to Wisconsin must contact the department's MTA team for assistance adding access to their corporation franchise tax accounts in MTA. Email DORMyTaxAccountHelp@wisconsin.gov or call (608) 261-5338.

Registration of Qualified Wisconsin Business for Capital Gain Exclusion and Deferral

Registration Requirements

A business must register with the department by the close of each calendar year to be considered a qualified business for that year. The registration deadline for 2020 is January 4, 2021.

Exception: A business that seeks qualification for the tax year in which it begins doing business in Wisconsin must register with the department during the following calendar year.

A business may register as a qualified Wisconsin business if all the following apply as of the tax year ending immediately before the date of registration:

- The business has at least two full-time employees.
- The amount of payroll compensation paid by the business in Wisconsin is at least 50 percent of all payroll compensation paid by the business.
- The value of real and tangible personal property owned or rented and used by the business in Wisconsin is at least 50 percent of the value of all real and tangible personal property owned or rented and used by the business.

For more information, refer to Registration of Qualified Wisconsin Businesses on the department's website.

Benefits of Registering

For Wisconsin income tax purposes, an individual may:

- Defer a long-term capital gain if the gain is reinvested in a qualified Wisconsin business.
- Exclude certain long-term capital gains from the sale of an investment in a qualified Wisconsin business. The exclusion applies if the business was a qualified Wisconsin business for the year of the investment and for at least two of the four subsequent years, the investment was made after December 31, 2010, and the investment was held for at least five uninterrupted years.

For more information, see Fact Sheet 1102-2, *Deferral and Exclusion of Long-Term Capital Gains for Investments in Wisconsin Businesses* and Qualified Wisconsin Business Capital Gain Exclusion on the department's website.

Withholding Tax Updates and Reminders

Telecommuting Employees and Employer Withholding Tax During the COVID-19 Pandemic

On March 13, 2020, President Donald Trump proclaimed a national emergency concerning the COVID-19 pandemic. Around the same time, Wisconsin and many other states declared a public health emergency and ordered individuals to stay at home. As a result, many employees are telecommuting from their homes instead of working at their employer's business location. For the duration of this national emergency, the following apply for Wisconsin purposes:

- Nexus – Wisconsin will not consider an out-of-state business to have nexus in Wisconsin if its only Wisconsin activity is having an employee working temporarily from the employee's home during this national emergency (COVID-19).
- Income Tax on Wages – Telecommuting employees continue to report their income based on the guidance in the article titled *Telecommuting and Mobile Employees* on page 13 of *Wisconsin Tax Bulletin 171* (April 2011).
- Employer Withholding Tax – Wisconsin's withholding tax requirements regarding wages paid to an employee have not changed.

Although Wisconsin has not changed its methods of determining income tax on wages or employer withholding tax during this national emergency, employers and employees may be subject to different tax requirements when an employee telecommutes from his or her home instead of working at the employer's business location. See examples in the Withholding Tax Update linked below.

Withholding Tax Update Available

The 2020 Withholding Tax Update has been posted to the department's website. Topics covered include:

- Withholding Tax Rates
- What's New?
  - Telecommuting Employees and Employer Withholding Tax During the COVID-19 Pandemic
  - New Form 1099-NEC and Redesign of Form 1099-MISC
  - Truncated Taxpayer Identification Numbers on Forms W-2 and 1099
  - New Electronic Filing Option for the Redesigned Form PW-2
- Withholding Deposit Reports (Form WT-6) and Annual Reconciliation (Form WT-7)
- Electronic Filing Mandate – Forms WT-6 and WT-7
- Form WT-7 – Filing an Amended Annual Reconciliation
- Form WT-7 – Reporting by Financial Institutions and Insurance Agencies
- Filing Wage Statements and Information Returns
  - Verify that the Information You File Is Accurate
  - When and Where to File
  - Penalties for Filing Late or Failing to File Electronically
  - Reporting Requirements
- Filing Extensions – Form WT-7, Wage Statements, and Information Returns
- Transportation Fringe Benefits
- Single-Member LLCs – Are You Registered Correctly?
- Employees Claiming More than 10 Exemptions or Complete Exemption from Withholding (Form WT-4)
- Redesigned Federal Form W-4
- Withholding Lock-In Letters
- Election Workers Exempt from Income Tax Withholding

- Retirement and Pension Payments Exempt from Income Tax Withholding
- Reporting Nonresident Entertainer Withholding on Income/Franchise Tax Returns
- My Tax Account Webinars
- Withholding Tax Webinars
- Withholding Tax Electronic Mailing List
- Employer's Responsibility for Unclaimed Property

Reminder: Nonemployee Compensation – New Federal Form 1099-NEC and Redesign of Form 1099-MISC

The Internal Revenue Service (IRS) created Form 1099-NEC and redesigned Form 1099-MISC. Beginning with tax year 2020, businesses use Form 1099-NEC instead of Form 1099-MISC to report to the IRS amounts paid for services performed by someone who is not an employee of the business (nonemployee compensation).

For information about reporting nonemployee compensation to the department, see the article titled *Nonemployee Compensation – New Federal Form 1099-NEC and Redesign of Form 1099-MISC*, on pages 13 and 14 of *Wisconsin Tax Bulletin* 209 (April 2020).

Wage and Information Return Reporting Requirements

Employers and other persons who make payments that must be reported on federal Forms W-2, 1099-R, 1099-MISC, or 1099-NEC must also submit these forms to the department, regardless of whether Wisconsin tax has been withheld. This includes:

- Payments made to Wisconsin residents, regardless of where services are performed
- Payments made to nonresidents for services performed in Wisconsin

If payers are required to file 10 or more wage statements (W-2s) or 10 or more of any one type of information return (Forms 1099-R, 1099-MISC, 1099-NEC, etc.), they must file them with the department electronically.

If payers did not withhold Wisconsin income tax during the year, were not required to withhold, and have never held a Wisconsin withholding tax number, they must enter 036888888888801 in the wage or information return box titled "Employer State ID Number."

For more information, see Wisconsin Publication 117, *Guide to Wisconsin Wage Statements and Information Returns*.

Sales and Use Tax Updates and Reminders

Tax Treatment of Purchases Used to Prevent the Spread of COVID-19

Due to the outbreak of COVID-19, many businesses have had to change the way they are doing business with more focus on disposable products and personal protective equipment.

Disposable Products Used by a Restaurant or Bar

Disposable products that are transferred to customers in conjunction with a restaurant or bar's sale of food, food ingredients, and beverages may be purchased without tax for resale. This applies to sales of food for dine in, carry out, or delivery. Examples include (list is not all inclusive):

- "Take out" containers
- Disposable eating utensils
- Doggie Bags
- Paper / Plastic cups and lids
- Paper Napkins
- Straws
- Moist Towelettes

Example: Customer orders a salad and a soda and chooses to dine in the restaurant. The restaurant serves the salad in a disposable container, provides disposable utensils and a paper napkin. The soda is served in a paper cup with lid and a straw. The restaurant requires the customer receive a new cup for any refills of the soda. The disposable container, utensils, napkin, cup(s), lid, and straw may be purchased without tax for resale.

Note: Certain disposal products listed above may also qualify for the exemption for containers used to transfer merchandise to customers in sec. 77.54(6)(am)2., Wis. Stats.

See Publication 236, *Restaurants and Bars,* for additional information.

Cleaning Supplies, Protective Equipment, and Other COVID-19 Supplies

A business or personal purchase of products used to prevent the spread of COVID-19 are taxable, unless an exemption applies. Examples include (list is not all inclusive):

- Cleaning supplies
- Sanitizer/sanitizing stations
- Disposable gloves
- Facemasks/shields/goggles
- Plexiglass barriers
- Signage alerting customers of requirements/mandates
- Social distancing/store flow signage and stickers
- Capacity/customer counting equipment and software

Example 1: A business requires a facemask be worn for entrance into the building. If a customer does not have a facemask, the store will offer a mask at no charge. The business's purchase of the masks is taxable.

Example 2: A retailer adds signs alerting customers to a mask mandate, sanitizing stations, floor stickers showing customers the recommended flow of the store, plexiglass barriers at checkout, and also cleans all checkout surfaces in-between customers. The retailer's purchaser of the signs, sanitizing stations, sanitizer, stickers, plexiglass barriers, and cleaning supplies are taxable.

Example 3: A manufacturer requires disposable gloves to prevent contamination of the product. Due to COVID-19 the manufacturer is also requiring employees to wear a facemask. The disposable gloves that are consumed during the manufacturing process are exempt under sec. 77.54(2), Wis. Stats., however, the manufacturer's purchase of the facemasks does not qualify for the exemption and are taxable.

Motor Vehicle Dealers' Measure of Use Tax Increased to $166

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

Effective January 1, 2021, the amount subject to use tax is increased from $165 to $166 per plate per month. To calculate use tax, $166 is multiplied by the appropriate use tax rate (5 percent or 5.5 percent) to arrive at the use tax due per plate per month.

Why is the rate increasing?

Under Wisconsin law (sec. 77.53(1m), Wis. Stats.), the department must 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. Since the index for the period July 2019 to June 2020 increased 0.6 percent, the amount subject to use tax on dealers' motor vehicle plates increases $1 starting January 1, 2021.

Reminder: Local Exposition Room Tax Rate to Increase to 3 Percent

Beginning January 1, 2021, the 2.5 percent local exposition basic room tax rate in Milwaukee County increases to 3 percent. The following local exposition district taxes and rates in Milwaukee County continue:

- Additional room tax – 7 percent (City of Milwaukee only)
- Food and beverage tax – 0.5 percent
- Rental car tax – 3 percent

Publication 410, *Local Exposition Taxes,* will be revised to reflect this change.

General Updates and Reminders

Fall Tax Update Seminars

Historically, the Wisconsin Department of Revenue (the department) presented in-person seminars to provide information for the current tax filing season. Due to the COVID-19 pandemic, the seminars for the 2021 tax filing season will be hosted virtually.

For additional information and to register for a webinar, visit our Tax Update Training Page.

How would you improve My Tax Account?

We will be updating My Tax Account in the fall of 2021 and we want your input. Send your ideas or suggestions for how to improve My Tax Account in an email with the subject line "MTA Suggestions" to DORMyTaxAccountHelp@wisconsin.gov.

Reports on Litigation

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

Individual Income Tax

Homestead Credit – Earned Income Eligibility

Carol J. Reinhardt vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, July 2, 2020).

The issue in this case is whether an individual may use the farm optional method to figure net earnings from farm self-employment income in order to meet the earned income eligibility requirement to qualify for the homestead credit.

In order to claim the homestead credit, a taxpayer must be 62 years of age or older, be disabled, or have earned income. For federal income tax reporting purposes, the taxpayer elected to use the farm optional method to figure net earnings from farm self-employment income to calculate the self-employment tax. The taxpayer reported $5,200 as optional self-employment income on her 2017 federal Form 1040, Schedule SE.

The taxpayer is not age 62 years of age or older or disabled. Therefore, she must meet the earned income eligibility requirement to claim the homestead credit. The taxpayer asserts she did have earned income based upon a theory of extending a federal definition of earned income through the farm optional method created for the federal self-employment tax to the Wisconsin homestead credit. The taxpayer had no earned income by any other means.

The taxpayer reasons that this optional calculation of earned income using the federal self-employment tax definition of earned income is used to calculate the federal earned income credit (EIC). The taxpayer notes that Wisconsin has adopted the federal EIC definition of earned income for determination of the Wisconsin EIC.

The taxpayer filed a timely petition for redetermination with the department which was denied by the department by notice dated September 21, 2018. The taxpayer filed a timely petition for review with the Commission.

The Commission concluded that the homestead credit statute does not incorporate the expanded definition of earned income from the federal self-employment tax, and the taxpayer's optional farm income calculations do not qualify as earnings for purposes of meeting the earned income qualification for the credit. Since the taxpayer had no taxable wages, salaries, tips, other employee compensation, or net earnings from self-employment, the taxpayer is not eligible for the homestead credit.

Sales and Use Tax

Sales Price of Aircraft Lease

Citation Partners, LLC vs. Wisconsin Department of Revenue (Dodge County Circuit Court, August 20, 2020). See page 13 of *Wisconsin Tax Bulletin 208* (January 2020) for a summary of the Wisconsin Tax Appeals Commission decision.

The issue in this case is whether the taxpayer, a lessor of aircraft, is required to pay sales tax on charges to its customers for aircraft repair, maintenance, and parts costs. Under the lease agreement, the taxpayer schedules and pays for all repairs and maintenance costs and the lessees are required to reimburse the taxpayer for their proportionate share of those costs.

The department assessed tax on the portion of the lease payments representing amounts paid by the taxpayer for aircraft maintenance, engine maintenance and parts costs, noting that sales price is the total consideration received without any reduction for such expenses of the seller.

The taxpayer claims these amounts, when separately invoiced to its lessees, are exempt under Act 185, which creates exemptions for the sale of aircraft parts and the repair and maintenance of aircraft. The taxpayer states it is in an agency position with their lessees, and as an agent, the exemptions should apply to the taxpayer as they would to any direct purchaser of repairs, maintenance or parts.

The Circuit Court reversed the Commission's ruling and order. The Court found that an agency relationship does exist, and the intent of the Legislature was to not tax these types of services and property.

The department is appealing this decision.

Applicable Laws and Rules

This document provides statements or interpretations of the following provisions of Wisconsin Statutes and Administrative Rules enacted as of November 2, 2020: Chapters 66, 71, 73, 77, and 139, Wis. Stats., and chs. Tax 1, 2, and 11, Wis. Adm. Code.

Laws enacted and in effect after November 2, 2020, new administrative rules, and court decisions may change the interpretations in this document. Guidance issued prior to November 2, 2020, that is contrary to the information in this document is superseded by this document, pursuant to sec. 73.16(2)(a), Wis. Stats.

Public Comments

The public may submit comments on guidance documents at any time.