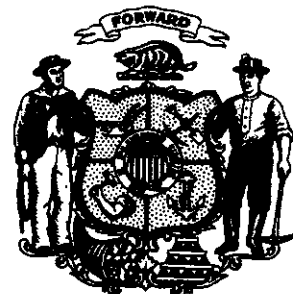


WISCONSIN TAX BULLETIN

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Income, Sales, Inheritance and
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FILING DEADLINES FOR 1980 RETURNS

Income Tax

April 15, 1981 is the deadline for filing a 1980 calendar year Wisconsin individual income tax return. Taxpayers waiting until the deadline to file should be sure that their returns bear an April 15 postmark. Returns postmarked after April 15 will be subject to late filing penalties.

Homestead Credit

The Wisconsin Homestead Credit Claim (Schedule H) for 1980 is not due until December 31, 1981. However, if an individual is filing a 1980 income tax return and also claims homestead credit, the department prefers that the Schedule H accompany the 1980 income tax return.

Farmland Preservation Credit

December 31, 1981 is also the filing deadline for a 1980 Wisconsin Farmland Preservation Credit Claim (Schedule FC) filed by a calendar year taxpayer; however, claimants are encouraged to attach Schedule FC to their 1980 Wisconsin income tax returns which are required to be filed earlier.

EXTENSIONS OF TIME TO FILE TAX RETURNS FOR INDIVIDUALS

Forms 1 and 1A

Any extension of time granted by the Internal Revenue Service for filing federal returns also extends the time for filing the corresponding Wisconsin individual income tax returns, provided that a copy of the federal extension (Form 4868 for a 60-day extension, or Form 2688 for an additional extension) is filed with the Wisconsin return. If the Internal Revenue Service for any reason

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refuses to grant an extension or terminates one previously granted, the Wisconsin income tax return is due on the same date as the federal return.

Instead of an extension allowed by the Internal Revenue Service, extensions may also be granted by the Wisconsin Department of Revenue for 30 days. A request for such a 30-day extension must be filed with the department prior to the due date of your return.

U.S. citizens who are not in the United States or Puerto Rico on April 15, 1981 are allowed an automatic extension until June 15 to file their returns. These persons do not have to request an extension, but should attach a statement to their returns indicating that they were out of the United States and Puerto Rico on April 15.

If an individual who has been granted an extension files a return and has a tax due, the amount due is subject to interest at the rate of 9% per year for the extension period (s. 71.10 (5) (b)). To avoid the payment of interest, individuals may pay the tax due on or before the original due date of the return.

Applications for extensions and related correspondence should be sent to:

Wisconsin Department
of Revenue
P.O. Box 8903
Madison, WI 53708

Schedules H (Homestead) and FC (Farmland Preservation Credit)

No extensions of time are available for filing claims for the above credits.

1980 Homestead claims must be filed no later than December 31, 1981. Farmland Preservation Credit claims for 1980 must be filed no later than 12 months after the farmland owner's 1980 taxable year ends (e.g., December 31, 1981 for calendar year taxpayers).

FIRST 1981 ESTIMATED TAX PAYMENT IS DUE APRIL 15

Every individual, whether or not a resident of Wisconsin, is required to file a 1981 declaration of Wisconsin estimated tax (Form 1-ES) if the individual expects his or her Wisconsin income tax liability to exceed withholding upon wages, if any, by \$100 or more.

A trust or estate is not required to file a declaration.

Individuals required to file a 1981 declaration during the first quarter of 1981 must do so on or before April 15, 1981. Installment payments are also due on June 15, 1981, September 15, 1981, and January 15, 1982.

FILING INFORMATION REPORTS FOR NONRESIDENT ENTERTAINERS AND ATHLETES

A Wisconsin employer of an entertainment corporation or nonresident entertainer or athlete is required to report (on Wisconsin Form 9C) to the Department of Revenue certain information about each Wisconsin performance within 90 days of the performance. Only performances for which the contract price exceeds \$1,950 must be reported.

An "employer" is any Wisconsin resident person or firm which engages the services of a nonresident entertainer or athlete or an entertainment corporation. In the absence of such "employer", the person required to report to the department is the resident person last having receipt, custody or control of proceeds of the entertainment event.

An "entertainment corporation" is a domestic or foreign corporation which derives income from amusement, entertainment or sporting events in this state or from the services of an entertainer.

The information report (Form 9C) requires the name, address and Wisconsin tax identification number (if any) of the employer; the entertainer's stage name, true name, address and social security number or the name and address of the entertainment corporation; and the date, place and total amount of remuneration received for each performance.

Copies of Form 9C may be obtained by writing:

Wisconsin Department
of Revenue
Central Services Section
P.O. Box 8903
Madison, Wisconsin 53708

Any questions about the requirements of this law may be directed to:

Wisconsin Department
of Revenue
Compliance Bureau
P.O. Box 8902
Madison, Wisconsin 53708
Telephone (608) 266-2776

NEW ISI & E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

The following table shows the proposed new administrative rules and

amendments to existing rules that have been approved by the Secretary of Revenue and are currently in the rule adoption process outside the Department of Revenue at the stage shown. The proposed rules are shown at their stage in the rule adoption process as of March 1, 1981. Some of the rules listed as being at the Legislative Council stage have been reported out of the Council but have not yet been forwarded to the Legislature for review by standing committees.

Rules At Legislative Council Rules Clearinghouse

- 1.11 , Requirement for examination of returns
- amendment
- 11.12 , Farming, agriculture, horticulture and floriculture
- amendment
- 11.16 , Common or contract carriers
- amendment
- 11.40 , Exemption of machines and processing equipment
- amendment
- 11.71 , Automatic data processing
- new rule

Rules At Legislative Standing Committees

- 2.081, Indexed income tax rate schedule
- new rule
- 8.87 , Intoxicating liquor tied-house prohibitions
- new rule
- 11.56 , Printing industry
- new rule
- 11.83 , Motor vehicles
- amendment
- 11.925, Sales and use tax security deposits
- new rule

Rules At Revisor Of Statutes For Final Publication In Administrative Register

- 2.955, Credit for taxes paid to other states
- amendment

Rules Effective January 1, 1981

- 2.31 , Taxation of personal service income of nonresident professional athletes
- new rule

- 2.505, Apportionment of net business income of professional sports clubs

- new rule

- 4.53 , Certificate of authorization

- new rule

- 11.88 , Mobile homes

- amendment

A complete set of the Department of Revenue's administrative rules and an updating service to keep it current is available on a subscription basis from the Wisconsin Department of Administration, Document Sales and Distribution, 202 South Thornton Avenue, Madison, WI 53702. Currently the cost of this service is \$6.24 (\$3.12 for the set of rules, plus \$3.12 for the update service) for the first year. In subsequent years the cost of the update service is \$3.12 each year. As part of the update service, subscribers receive the Wisconsin Administrative Register (published semi-monthly) whenever it contains material relating to Department of Revenue rules. The notice section of the Wisconsin Administrative Register will contain analyses of proposed new rules and amendments to existing rules and/or the complete text of such rules. It will also contain notices of public hearings regarding new or amended rules.

Copies of rules which are in the process of being created or amended can also be obtained by writing to Wisconsin Department of Revenue, Technical Services Section, P.O. Box 8910, Madison, WI 53708. Single copies of rules in effect are available at the department's Income, Sales, Inheritance and Excise Tax Division offices located throughout Wisconsin.

DON'T OVERLOOK GIFT TAX RETURNS

With the exception of gifts of real estate and tangible personal property located outside of Wisconsin, all gifts made by Wisconsin residents are taxable. It does not matter whether the recipient lives in Wisconsin or in another state; a gift received from a Wisconsin resident is still taxable.

Also taxable are all gifts made by nonresidents of Wisconsin of property (both real estate and tangible personal property) which is located in Wisconsin. Such gifts are taxable

regardless of where the recipient resides.

Wisconsin gift tax reports must be filed for any calendar year in which the total value of taxable gifts made by one donor (person giving the gift) to one donee (person receiving the gift) in that year exceeds \$3,000. Gift tax reports of the donee and donor for 1980 must be filed by April 15, 1981.

The donor reports gifts made on Form 7. On this form the donor enters the description and value of the gifts made to each donee.

The donee reports the gifts he or she received on Form 6, and includes the description and value of the gifts received from one donor. If the donee receives gifts from more than one donor during that year, the donee must file a separate report of gifts received from each donor. The computation of the gift tax due must be made on Form 6.

DO YOU HAVE SUGGESTIONS FOR 1981 TAX FORMS?

Each year the department receives helpful suggestions from the public regarding changes or improvements to the Wisconsin income tax forms.

You may wish to communicate your suggestions as to how the department might improve Forms 1 (individual long form) and 1A (individual short form), Forms 4 and 5 (corporation franchise/income tax returns) and Schedule H (Homestead). You may send them to the Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8910, Madison, WI 53708. Please submit your suggestions by July 1, 1981.

WISCONSIN SALES AND USE TAX RETURN HAS BEEN REVISED

Form ST-12, the Wisconsin Sales and Use Tax Return, has been redesigned. A copy of the new form appears below. All identification and

filing status data relating to the seller's permit holder is on the front of the new form. The back side of the return contains entry areas for gross receipts, deductions, amount of tax due, etc.

The area of the form in which deductions are listed has been expanded and some of the line descriptions have been revised. Line 7, which is used for reporting use tax on purchases, has also been expanded. It now includes a listing of several common types of purchases which may result in use tax being payable. (Note: The copy of the department's sales and use tax newsletter entitled "Tax Report" which is included on page 11 of this bulletin gives more information on how to report use tax.)

The new ST-12 was first mailed to seller's permit holders who had a reporting period ending in January, 1981.

(FRONT SIDE OF REVISED FORM ST-12)

FORM ST-12 WISCONSIN SALES AND USE TAX RETURN		DO NOT WRITE IN THIS SPACE	
IF THE FEDERAL EMPLOYER NUMBERS BELOW ARE BLANK OR IN ERROR PLEASE COMPLETE OR CORRECT. FED. EMP. IDENT. NO. SOCIAL SECURITY NO.	WISCONSIN DEPARTMENT OF REVENUE POST OFFICE BOX 38, MADISON, WI. 53787		NEW OWNERS: Do not use previous owner's tax return. Apply for seller's permit immediately.
	▼ PERMIT NUMBER	PERIOD COVERED	DUE DATE
	For use only by permit holder named on this return. New owners must apply for their own permit.		OWNERSHIP CHANGE: If your business was discontinued or if there has been any change in ownership, indicate date and type of change.
			Date _____ Sold _____ <input type="checkbox"/> Discontinued <input type="checkbox"/> Incorporated <input type="checkbox"/> Owner died <input type="checkbox"/> Partner added or dropped.
			New Owner's Name And Address _____
			Name or Address Change _____
	IF NAME OR ADDRESS IS IN ERROR PLEASE CORRECT →		
YOUR SIGNATURE →	DATE _____		DO NOT WRITE IN THIS SPACE

(BACK SIDE OF REVISED FORM ST-12)

1. GROSS RECEIPTS		4A. SALES TAX (FROM LINE 4) _____	
2. DEDUCTIONS: Sales For Resale	A	IF THIS RETURN IS FILED LATE OR	5. 1% DISCOUNT _____
Exempt Certificate Sales	B	WITHOUT FULL PAYMENT THE 1%,	6. NET SALES TAX _____
Sales Tax Included in Line #1	C	DISCOUNT ON LINE 5 IS NOT ALLOWABLE.	7. USE TAX ON PURCHASES:
Sales in Interstate Commerce	D	INTEREST AND PENALTIES ON SUCH	Asset Addition(s) A
Exempt Property & Services Sold	E	RETURNS SHOULD BE ADDED ON LINE 8	Repair & Supply Expense B
Groceries & Hwy. Fuel Sold	F	(SEE INSTRUCTIONS): THIS RETURN MUST	Promotional Material C
Returns, Allowances & Bad Debts	G	BE FILED WHEN DUE EVEN THOUGH YOU	Construction Material D
Other:	H	HAVE NO TAX TO REPORT.	Research Material E
Other:	I		Other: F
			Total of Purchase Price G
TOTAL DEDUCTIONS (ADD LINES 2A THRU 2I) _____		8. USE TAX (LINE 7G x 4%) _____	
3. TAXABLE RECEIPTS _____		9. INTEREST AND PENALTY _____	
4. SALES TAX (LINE 3 x 4%) _____		10. TOTAL DUE / PAID (LINE 6, 8 & 9) _____	
		DO NOT WRITE IN THIS SPACE	
		T M P C LEAVE BLANK	

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher court.)

The following decisions are included:

Income and Franchise Taxes

- Kenneth F. DeBoer and Sandra L. DeBoer vs. Wisconsin Department of Revenue
- Mark H. Eslinger and Lorraine R. Eslinger vs. Wisconsin Department of Revenue
- Sheri A. Glewen and Vance A. Glewen vs. Wisconsin Department of Revenue
- J. John Gudenschwager, and J. John Gudenschwager Family Estate (A Trust) vs. Wisconsin Department of Revenue
- Midland Financial Corporation vs. Wisconsin Department of Revenue
- Wisconsin Department of Revenue vs. Milwaukee Mutual Insurance Company
- Anna K. Rees vs. Wisconsin Department of Revenue
- Superior Industrial, Inc. vs. Department of Revenue

Sales/Use Tax

- Sister Mary Joanne Kollasch, et. al. and Sisters of St. Benedict, of Madison Wisconsin vs. David W. Adamany, Secretary of Revenue
- Wisconsin Department of Revenue vs. Trudell Trailer Sales, Inc.

Gift Tax

- Estate of John F. Stratton, et. al. vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

- Kenneth F. DeBoer and Sandra L. DeBoer vs. Wisconsin Department of Revenue (Fond du Lac County Circuit Court, November 12, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the DeBoers had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by the Circuit Court on procedural grounds.
- Mark H. Eslinger and Lorraine R. Eslinger vs. Wisconsin Department of Revenue (Chippewa County Circuit Court, November 21, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the Eslingers had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by

the Circuit Court on procedural grounds.

Sheri A. Glewen and Vance A. Glewen vs. Wisconsin Department of Revenue (Fond du Lac County Circuit Court, November 12, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the Glewens had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by the Circuit Court on procedural grounds.

J. John Gudenschwager, and J. John Gudenschwager Family Estate (A Trust) vs. Wisconsin Department of Revenue (Milwaukee County Circuit Court, November 24, 1980). In Wisconsin Tax Bulletin #21 it was indicated that the Gudenschwagers had appealed a Wisconsin Tax Appeals Commission decision to the Circuit Court. This appeal was dismissed by the Circuit Court on procedural grounds.

Midland Financial Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 20, 1980). In 1971, the taxpayer, a Wisconsin corporation, received \$112,633.00 of dividend income, \$423,102.00 of rental income and \$69,000.00 from financial consulting services. After deducting the \$112,633.00 of dividend income from its taxable income, the taxpayer reported a loss of \$156,534.00 on its 1971 Wisconsin

corporation franchise or income tax return.

The department offset the \$112,633.00 of dividend income against the taxpayer's 1971 loss of \$156,534.00, thus reducing the loss carry forward to \$43,901.00. Subtracting the loss carry forward of \$43,901.00 from the taxpayer's 1972 net business income of \$94,744.00 resulted in taxable income of \$50,843.00 for the year 1972.

The issue in this case is whether the taxpayer in carrying forward its net business loss from the year 1971 must under section 71.06, Wis. Stats., first offset against such loss "other items of income of the same year", 1971, which had been deducted from taxable income. The statute involved was s. 71.06 of the 1971 Wis. Stats., which reads in part:

"71.06 Corporation business loss carry forward. If a corporation in any year sustains a net business loss, such loss, to the extent not offset by other items of income of the same year, may be offset against the net business income of the subsequent year and, if not completely offset by the net business income of such year, the remainder of such net business loss may be offset against the net business income of the following year. For the purposes of this section, net business income shall consist of all the income attributable to the operation of a trade or business regularly carried on by the taxpayer, less the deduction of business expenses allowed in s. 71.04. . . ."

The Commission concluded that the dividend income received by the taxpayer in 1971 constitutes "other items of income" as that term is used in section 71.06 of the 1971 Wis. Stats., and thus reduces the loss carry forward claimed by the taxpayer for the year 1972.

The taxpayer has appealed this decision to Circuit Court.

Wisconsin Department of Revenue vs. Milwaukee Mutual Insurance Company (Circuit Court of Milwaukee County, January 8, 1981). The Department of Revenue appealed to the Circuit Court a Wisconsin Tax Appeals Commission decision. The Circuit Court affirmed the Tax Ap-

peals Commission judgment that the taxpayer was entitled to exclude from its 1974 underwriting income amounts which were added to its PAL account prior to 1972. The Circuit Court held that the statute lacked clear intention of retroactivity of s. 71.01 (4) (a) and that the Tax Appeals Commission properly construed the statute to operate only prospectively. (A summary of the Tax Appeals Commission decision is in Wisconsin Tax Bulletin #19.)

The department has appealed this decision to the Court of Appeals.

Anna K. Rees vs. Wisconsin Department of Revenue (Circuit Court of Washington County, December 18, 1980). The Circuit Court affirmed the Tax Appeals Commission judgment that the entire amount of the lump sum distribution made to the taxpayer under Western Electric Co., Inc.'s profit sharing and savings plan should have been included in her 1977 Wisconsin taxable income. (A summary of the Wisconsin Tax Appeals Commission decision is in Wisconsin Tax Bulletin #19.)

The taxpayer has appealed this decision to the Court of Appeals.

Superior Industrial, Inc. vs Department of Revenue (Circuit Court of Racine County, Branch 1, January 23, 1980). Section 71.043, Wis. Stats., provides that sales and use taxes paid by a corporation on fuel and electricity consumed in manufacturing may be used to reduce income/franchise taxes payable for the year. This section indicates that "manufacturing" has the meaning designated in s. 77.51 (27) (i.e., the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing). The department disallowed a reduction of the income/franchise taxes payable by the taxpayer on the grounds that taxpayer was not engaged in manufacturing.

The taxpayer owned 2 plants in Racine and was engaged in the business of coating component parts for various manufacturers. Taxpayer has an investment of \$300,000 in heavy machinery which is used in a variety of mechanical operations. The most common operation involved rinsing and rerinsing the product in a chemical solution, blowing it dry, coating it, then baking and curing it in an oven. The

Court stated that after the coating processes are completed the products have different properties, uses and names than they did prior to going through the taxpayer's processes. The testimony indicated that the coating causes changes in the physical, chemical, electrical, heat conductivity, rust proofing, insulation, light reflectivity and texture of the product. The testimony also indicated that the activities were "popularly regarded as manufacturing".

The Court found that the taxpayer was engaged in manufacturing as that term is defined in s. 77.51 (27), Wis. Stats. As a result the taxpayer could use sales taxes it paid during the year on fuel and electricity consumed in manufacturing to offset income/franchise taxes payable for the year.

The department has not appealed this decision.

SALES/USE TAX

Sister Mary Joanne Kollasch, et. al. and Sisters of St. Benedict, of Madison Wisconsin vs. David W. Adamany, Secretary of Revenue (Court of Appeals, District IV, November 24, 1980). The Sisters of St. Benedict ("taxpayer") is a religious corporation organized exclusively for religious and charitable purposes. Taxpayer commenced this judicial proceeding seeking a declaratory judgment declaring that it is not required to obtain a seller's permit and report sales tax based on its gross receipts for the activities it engages in. Primarily, this permit would be required to account for the sales tax on meals served to members of organizations which are not exempt from paying sales tax.

Taxpayer owns a building at which it rents out its facilities. These facilities include board and room, meeting rooms, and the availability of projectors, screens and tape recorders; space is provided for business and professional conferences, training sessions, weekend seminars, and other meetings which are both religious and non-religious in nature. The conferences and meetings are held under agreements made in advance by which the sponsor of the meeting promises that agreed rates will be paid for the services and facilities used.

The taxpayer contended that it is not a retailer and that the tax does not apply to its sales. However, the Court found the taxpayer is a seller under s. 77.51 (9), Wis. Stats., making sales of tangible personal property (meals). Thus, it is a retailer under s. 77.51 (7) (a), Wis. Stats., subject to taxation under s. 77.52 (1), Wis. Stats. Taxpayer also contends that it is exempt from the sales tax because it makes only occasional sales. The Court indicated s. 77.51 (10) (c), Wis. Stats., established a 3-event standard for organizations which are not engaged in a business, and that the taxpayer's sales exceeded this standard. Therefore, the sales were not exempt occasional sales under s. 77.54 (7), Wis. Stats.

Taxpayer also contends that serving meals at the center is both religious and secular, and that the purpose of the center is for study and religious meetings, without commercial taint. Taxpayer also contends that requiring it to comply with the sales tax statutes infringes on its constitutional rights to free exercise of religion.

The Court accepted the taxpayer's contention that it is engaged in a religious activity in serving meals to guests when the Sisters join the guests in dining. The Court concluded that the Sisters were at no time engaged in a commercial enterprise in furnishing meals to business groups. The Court then had to determine whether the sales tax is a tax on their religious activities, or, if not, whether it is a burden on the free exercise of their religion.

The Court indicated that a taxing statute is not contrary to the provisions of the first amendment to the U.S. Constitution unless it directly restricts the free exercise by an individual of his or her religion. Unless the tax is imposed as a condition on the right to exercise one's religion, or unless its imposition is a burden to free exercise, the tax does not violate the first amendment. The Court concluded that, while the Sisters are engaged in a religious activity in furnishing meals to their guests for consideration, the requirement that they collect a sales tax on the sale of those meals is neither a tax on religion nor a burden to their ex-

ercise of religion. Accordingly, the Court sustained the constitutionality of the statute as applied to the Sisters, and their gross receipts from sales of meals were subject to the sales tax.

Taxpayer has appealed this decision to the Wisconsin Supreme Court.

Wisconsin Department of Revenue vs. Trudell Trailer Sales, Inc. (Court of Appeals, District IV, November 23, 1980). Taxpayer was engaged in the business of selling semitrailers both inside and outside Wisconsin. Some semitrailers were sold to customers located outside Wisconsin and these semitrailers were to be used outside the state. The issue before the Court was whether semitrailers come within the language of s. 77.54 (5) (a), Wis. Stats., exempting from the sales and use tax "motor vehicle or truck bodies sold to persons who are not residents of this state and who will not use such . . . motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such . . . motor vehicles or trucks from this state".

The sales and use tax statutes do not define "motor vehicle", "truck body" or "semitrailer", so the Court used the dictionary definitions of those words. Webster's Third New International Dictionary indicates a motor vehicle is self-propelled. The Court found that a semitrailer is not considered a self-propelled vehicle, except when it is used with a tractor. There was no evidence indicating the taxpayer sold semitrailers in combination with tractors. Accordingly, the Court of Appeals ruled that the taxpayer's sales of semitrailers were not exempt from the sales tax under s. 77.54 (5) (a), Wis. Stats. (Note: A summary of the Circuit Court's decision of January 29, 1980, which ruled that the semitrailers were exempt under s. 77.54 (5) (a), is found in Wisconsin Tax Bulletin #19.)

The taxpayer has appealed this decision to the Wisconsin Supreme Court.

GIFT TAX

Estate of John F. Stratton, et. al. vs. Wisconsin Department of Revenue (Circuit Court of Milwaukee County, November 19, 1980). This case involved the distribution of the assets of two trusts. The first was a testamentary trust under the will of Harold M. Stratton for the benefit of John F. Stratton and his family. The second was the Bessie A. Stratton Living Trust, also for the benefit of John F. Stratton and his family. Harold M. and Bessie A. Stratton were the parents of John F. Stratton. John had a general power of appointment over both trusts. A codicil to his father's will provided that John was to be the primary beneficiary whose interests were to outweigh those of other beneficiaries.

The issue was whether a trustee's discretionary distributions in 1968, on termination of the trusts, to John's daughters constituted taxable gifts.

The Wisconsin Tax Appeals Commission held that John had the power to control disposition of the trust assets and that by releasing his power of appointment under sec. 232.09, Stats. 1967, he made taxable gifts to his daughters.

The Circuit Court reversed the Commission. In the opinion of the Court, John had only a contingent power of appointment which did not ripen until 1971, well after the 1968 distribution.

The Court also ruled that a signed writing was necessary to legally release a power. John's failure to object did not constitute a release. As to the testamentary trust, John signed a petition for allowance of accounts, but the Court decided that the petition did not constitute a release. As to the Bessie Stratton Living Trust, there was no written instrument which could have been a release.

Also regarding the testamentary trust, the trustee completely distributed the assets prior to John's signature on the petition, and the Court felt no assets were subject to such release.

The department has appealed this decision to the Court of Appeals.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. Unless otherwise indicated, Tax Releases apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.)

INCOME TAXES

I. Proration of Tax Paid to Another State

Facts & Question: A part-year resident of Wisconsin who moved into Wisconsin in July of 1980 received income during 1980 which was taxable both by Wisconsin and another state. A total of \$10,000 of income was taxed by the other state. For Wisconsin purposes \$1,000 of this same income was required to be included in Wisconsin taxable income. This individual's net tax computed on the other state's income tax return was \$450.

What amount may be claimed under s. 71.09 (8) (c), Wis. Stats., as credit for tax paid to another state on line 57 of this individual's 1980 Wisconsin Form 1?

Answer: \$45. Since only part of the income taxed by the other state was also taxable by Wisconsin, the total tax paid to the other state may not be claimed as a credit. The total tax must be prorated using the following formula to determine the amount allowable as a credit:

$$\frac{\text{Income Taxable to Both Wisconsin and Other State}}{\text{Total Income Taxable to Other State}} = \text{Proration Ratio}$$

$$\text{Proration Ratio} \times \frac{\text{Total Net Income Tax Paid to Other State}}{\text{Amount of Net Income Tax}} = \text{Allowable as a Credit Against Wisconsin Tax}$$

Based on the facts given above, the credit in this case would be computed as follows:

$$\frac{\$1,000 \text{ (Income taxed by both states)}}{\$10,000 \text{ (Total income taxed by other state)}} = 10\% \text{ proration ratio}$$

$$10\% \text{ (proration ratio)} \times \$450 \text{ (total net tax paid to other state)} = \$45 \text{ (credit allowable)}$$

This credit would be claimed on line 57 on page 2 of the 1980 Form 1.

II. Gain or Loss on U.S. Government Obligations

Wisconsin Statute 71.05 (1) (b) provides for a subtraction modification for U.S. government interest which is exempt from state taxation under federal law. Although U.S. government interest is not taxable for Wisconsin income tax purposes, gains resulting from the disposition of negotiable government securities are taxable. Therefore, when a sale occurs, a taxpayer must distinguish between tax-exempt interest income and any gain realized.

Long-term (maturity in excess of one year from date of issue) government obligations such as treasury notes and treasury bonds are interest-bearing securities which are originally issued at par and are redeemable at par on the maturity date. These securities are freely negotiable instruments and will fluctuate in price in the open market. If held for investment purposes they qualify as capital assets.

Interest income received on long-term government obligations is not subject to Wisconsin income tax. If the securities are sold between interest dates, the accrued interest is not taxable to the seller.

Although originally issued at par, U.S. Treasury notes and bonds are often purchased at a discount or premium by subsequent holders. Neither the discount nor the premium paid has any effect on the amount of tax-exempt interest income. The discount or premium will affect the gain or loss realized on the sale or redemption of the securities.

Example 1:

On July 5, 1978 a two-year \$10,000 U.S. Treasury note is issued to "A" at par. Interest of 7% is paid semi-annually on January 5 and July 5. "A" holds the note for investment purposes. On April 5, 1980 "A" sells the note to "B" for \$10,050. "B" holds the note to maturity. "A" is entitled to treat the accrued interest of \$175 for the period January 5, 1980 to April 5, 1980 as tax-exempt. "A" sustains a capital loss of \$125 in the transaction, computed as follows:

Cost of the note	\$10,000
Deduct:	
Amount realized from the sale	\$10,050
Less: Tax-exempt interest	
(10,000 x 7% x 3/12)	175
Amount of capital loss	\$ 125

Since the sales price of \$10,050 included \$175 for accrued interest (January 5 to April 5), "B's" basis in the note is \$9,875. "B" realized a capital gain of \$125 (\$10,000 minus \$9,875) upon redemption.

Of the \$350 interest payment received by "B" on July 5, 1980, \$175 (the interest for January 5 to April 5) is merely a return of capital and is not taxable for federal purposes. The \$175 of interest from April 6 to July 5 which accrued after "B" purchased the note, is taxable interest income for federal income tax purposes, but exempt for Wisconsin.

U.S. Treasury bills are short-term obligations (one-year or less) that are issued at a discount and are redeemable at par. They are non-interest bearing securities but the original issue discount earned is treated as interest. These securities are excluded from the definition of capital assets under Internal Revenue Code section 1221 (5).

The original issue discount on Treasury bills does not accrue until the bills are sold or redeemed. If the securities are sold prior to maturity, the original issue discount accrued will be considered tax-exempt interest to the seller.

As with long-term government obligations, any additional discount which results from a subsequent sale of the securities will not affect the amount of tax-exempt

interest income. The discount will affect the gain or loss realized on the sale or redemption of the securities.

Example 2:

A 90-day U.S. Treasury bill is issued to "A" on January 5, 1979 for \$9,800. The security has a maturity value of \$10,000 on April 6, 1979. "A" sells the obligation to "B" on February 5, 1979 for \$9,890. "B" holds it to maturity. "A" is entitled to treat \$67 (30/90ths of the \$200 discount) as tax-exempt interest.

"A" realizes a taxable gain of \$23, computed as follows:

Amount realized from sale	\$9,890
Deduct tax-exempt interest	67
Balance realized from sale	\$9,823
Cost of the Treasury bill	9,800
Amount of ordinary gain realized by "A"	\$ 23

"B" is entitled to treat \$133 (60/90ths of the \$200 discount) as tax-exempt interest. "B" sustains a deductible loss of \$23, computed as follows:

Cost of U.S. obligation	\$9,890
Deduct:	
Amount realized at maturity	\$10,000
Less: Tax-exempt interest	133
Amount of ordinary deductible loss	\$ 23

CORPORATION INCOME/FRANCHISE TAX

I. Deduction of Cost of Pollution Abatement Equipment by Second Owner

A. Facts & Question: Corporation A purchased the inventory, property, plant and equipment (including pollution abatement facilities) of Corporation B. After the acquisition, Corporation A operated the same as Corporation B did prior to the purchase. May the acquiring corporation elect (under s. 71.04(2g) (a), Wis. Stats.) to deduct the cost of the pollution abatement equipment, even though such equipment was deducted (under s. 71.04(2g) (a), Wis. Stats.) by the original owner? If deductible, when is the deduction allowed?

Answer: Yes, when a corporation acquires by purchase used pollution abatement equipment, the acquiring corporation does qualify for the election under s. 71.04(2g) (a), Wis. Stats.. The deduction is allowed in the year of acquisition. Depreciation or amortization, if elected, starts with the month or year following acquisition.

B. Facts and Questions: Corporation X, which first acquired and wrote off the cost of the pollution abatement equipment, was acquired by Corporation Y through purchase of its outstanding stock. Within two years of the stock purchase, Corporation Y liquidated Corporation X and allocated its cost of stock to the assets acquired from X. (1) Is the amount of the prior year's deductions attributable to Corporation X's write-off of pollution abatement equipment recaptured as ordinary income by Corporation X under s. 71.03 (1), Wis. Stats., when its stock is sold or when it is completely liquidated? (2) Can Corporation Y allocate a part of Corporation X's purchase price to the pollution abatement equipment acquired and then deduct such purchase price immediately, pursuant to s. 71.04(2g) (a), Wis. Stats.?

Answers: (1) No, Wisconsin law does not require Corporation X to restore the pollution abatement equipment write-off to income either at the time Corporation Y acquired its stock or at the time X was liquidated into Y, since neither transaction involved the disposition of X's assets involving a sale and purchase in which gain or loss was recognized. (2) The liquidation of X, by which Y acquired the pollution abatement equipment, does not qualify as being "purchased or constructed" as a waste treatment facility under s. 71.04(2g), Wis. Stats., and therefore an immediate write-off is not allowed. At the time of acquisition by Y, the transaction involved the purchase of stock and not the purchase of qualifying waste treatment facilities. The depreciation or amortization permitted to be deducted by Y is limited to the amount deductible under the Internal Revenue Code pursuant to s. 71.04(15), Wis. Stats..

II. Television Film Rentals Included in Property Factor for Apportionment

Facts & Question: A corporation conducting business activities in Wisconsin and in other states operates a television station in Wisconsin. In operating the television station, the corporation rents films which it is entitled to show a specified number of times.

Does the rental of these films constitute the rental of tangible personal property, and if so, should the rental be capitalized at 8 times the net annual rental and included in the property factor for apportionment purposes under s. 71.07(2) (a) 3, Wis. Stats.?

Answer: Yes, the rental of these films is considered the rental of tangible personal property and all of the net annual rental is multiplied by 8 and included in the property factor for apportionment purposes.

III. Treble Damages Under Federal Antitrust Laws

Facts & Question: A corporation was assessed treble damages in a class action suit under the Federal Antitrust Laws. Is this expense deductible for Wisconsin purposes as an ordinary and necessary business expense under s. 71.04, Wis. Stats.?

Answer: Yes, the deduction is allowed in full for Wisconsin purposes, as an ordinary and necessary business expense. Wisconsin's treatment of this item is based on federal Revenue Ruling 64-224 which states that amounts paid or incurred in satisfaction of claims for treble damages under Sec. 4 of the Clayton Act are deductible as ordinary and necessary business expenses. In Revenue Ruling 64-224, the Internal Revenue Service held these payments to be remedial in nature and intended as reparation for a private injury so that they may be deducted for income tax purposes.

Two exceptions to full deductibility are made for federal purposes, as follows: (1) no deduction is allowed if payment of a penalty is made to the United States government, since such a payment is not remedial in nature but is punishment for injury to the public, and (2) under Internal Revenue Code section 162(g), two-thirds of payments to parties other than the federal government are not deductible in cases of hard-core violations where intent has been clearly proven in a criminal proceeding. Two-thirds of the payment represents the penal portion of the damage claim.

Wisconsin follows only the first of the federal exceptions. The second exception does not apply to Wisconsin tax returns since Wisconsin has no law similar to federal section 162 (g).

SALES/USE TAX

I. Photocopy Charges

Facts & Question: A law firm bills clients separately for photocopies it provides clients. These charges for photocopies approximate \$5,000 each year. Are these charges for photocopies subject to the sales tax?

Answer: Yes, charges for photocopies in this case constitute the sale of tangible personal property and are taxable under s. 77.52 (1). Also, receipts of \$5,000 in a year exceed any possibility of an occasional sale exemption.

II. Waste Treatment Facility Approvals

Facts & Question: Section 77.54 (26), Wis. Stats., provides that an industrial waste treatment facility must qualify for exemption under s. 70.11 (21) (a), Wis. Stats., for property tax purposes before an exemption applies for sales tax purposes on purchases of building materials used to construct the facility. A waste treatment facility qualifying under s. 70.11 (21) (a), Wis. Stats., was constructed in 1977, but the owner did not file the statement required in s. 70.11 (21) (c), Wis. Stats., until 1980. Does obtaining the property tax exemption in 1980 create a sales and use tax exemption under s. 77.54 (26) for building materials purchased in 1977 under these facts?

Answer: Yes. This waste treatment facility obtained the property tax exemption by complying with s. 70.11 (21) (c) in 1980, but would have been entitled to such an exemption in 1977, 1978 and 1979 if a timely statement had been filed. The sales tax exemption in s. 77.54 (26) applies to building materials purchased in 1977 which became a component part of a qualifying facility under s. 70.11 (21) (a). (Note: The answer would be the same if a municipal waste treatment facility was involved instead of the waste treatment facility mentioned in this Tax Release.)

III. Manufacturing - Alcohol Production on Farms

Facts & Question: A farmer produces a small amount of alcohol on the farm for use in his or her farm tractors. Does the farmer qualify as a "manufacturer" for sales tax purposes under s. 77.51 (27), Wis. Stats.?

Answer: No, the farmer is not considered a "manufacturer" for sales tax purposes. However, the farmer is entitled to claim the exemption for machinery and equipment used in farming under s. 77.54 (3) when acquiring the equipment used to produce the alcohol.

IV. Nontaxable Building Service

Facts & Question: A company provides a service which consists of checking a building's heating, ventilation and air conditioning systems for balance and advising the customer where improvements can be made. Is this service subject to sales tax?

Answer: No, this is not one of the services taxable under s. 77.52 (2), Wis. Stats. Checking a system for balance is

distinguishable from servicing and inspecting such property under s. 77.52 (2) (a) 10.

V. Delivering Trees to Job Site

Facts & Question: After a customer purchases a tree from a nursery for \$300 (including delivery and placing in the hole) the customer and an employee of the nursery decide on the place to locate the tree. The nursery employee then specifies the exact dimensions of the hole needed for the tree, and the customer digs the hole. The nursery employee delivers the tree to the hole with special equipment and places the tree in the hole. After the nursery employee is satisfied the tree is spotted properly, the employee removes his equipment and leaves. The customer then covers the tree roots. Is this the sale of personal property by the nursery, or is the nursery engaged in improving realty?

Answer: This is a sale of personal property and the \$300 gross receipts from the sale are subject to the sales tax under s. 77.52 (1), Wis. Stats. The nursery is not considered to have improved real property in this situation.

VI. Is a Hatchery a "Farmer"?

Facts & Question: A hatchery hatches eggs and sells the chicks to farmers or poultry raisers. Is this hatchery engaged in "farming" and therefore entitled to the farming exemption in s. 77.54 (3) and (3m), Wis. Stats.?

Answer: No, the activities of this hatchery are not considered farming and therefore it is not entitled to the exemption in s. 77.54 (3) and (3m).

VII. Property Taxes Paid By Lessee

Facts & Question: A lessor rents tangible personal property to a lessee in a transaction which is subject to the sales tax. The lease provides that the lessee must pay the local property taxes on such property. Is the payment of the property taxes by the lessee includible in the lessor's taxable gross receipts?

Answer: The answer hinges on whether the personal property tax is assessed and levied against the lessee or lessor. If the tax is levied against the lessor, the lessee's payment of the tax is includible in the lessor's taxable gross receipts, regardless of whether the lessee is billed by the taxing agency and pays the tax directly to the agency or pays the tax to the lessor who in turn pays the taxing agency. If the tax is assessed and levied against the lessee, it is not includible in the lessor's gross receipts.

VIII. Sales of Eggs

Facts & Question: Poultry eggs are usually sold by farmers and they are purchased by wholesalers, retailers, household consumers, farmers, hatcheries and others. Are such egg sales taxable?

Answer: Sales of eggs are subject to the 4% sales/use tax unless a specific exemption applies to the particular transaction. Sales of poultry eggs in examples 1 and 2 below are subject to the sales/use tax because they are not sold for human consumption as required by s. 77.54 (20) (intro.), Wis. Stats., and are not otherwise exempt:

1. Sales of eggs to hatcheries which hatch the eggs and immediately sell the young chicks to farmers.

2. Sales of eggs to laboratories that use the eggs for experiments.

Sales of poultry eggs in examples 3-7 are exempt from the sales/use tax when sold to:

3. An individual purchasing eggs for the home preparation of meals (s. 77.54 (20), Wis. Stats.).

4. A restaurant purchasing eggs for the preparation of meals (s. 77.54 (20), Wis. Stats.).

5. A manufacturer of frozen pizzas purchasing eggs for the production of pizza (s. 77.54 (20), Wis. Stats.).

6. A wholesaler or retailer purchasing eggs for resale to other persons.

7. A farmer purchasing eggs to raise chickens (s. 77.54 (3), Wis. Stats.).

IX. Occasional Sales by Nonprofit Organizations

Facts & Question: A nonprofit organization, not engaged in a trade or business and not otherwise required to have a seller's permit, sells beer and restaurant meals at an annual local 3 day festival. At other times during the same year it also had a 10 day sale of frozen pizza (receipts \$1,200), and a 4 week sale of radio advertising (receipts \$1,000), neither of which are subject to the sales tax.

Question A: Are the sales of frozen pizza and regular advertising considered in determining whether the 3 event 7 day standards of rule Tax 11.10 (3) (a) and (b) are met?

Question B: Are the gross receipts of \$1,200 from pizza sales and/or the \$1,000 from advertising considered in determining whether the organization exceeded \$1,000 of gross receipts of "other sales of tangible personal property and services" as stated in rule Tax 11.10 (3) (c) and (d)?

Question C: Considering the facts as stated above, does this nonprofit organization qualify for the occasional sales exemption under s. 77.54 (7), Wis. Stats., and rule Tax 11.10, and as a result, does not have to charge sales tax on the sale of beer and restaurant meals at the 3 day festival?

Answer A: The sales of frozen pizza and radio advertising are not included in determining whether the organization met the 3 event 7 day standards. Only events involving sales of taxable personal property or services are included in determining whether the 3 event 7 day standards are met.

Answer B: The \$1,200 from pizza sales and \$1,000 from radio advertising are not considered "gross receipts" for purposes of determining whether gross receipts exceeded \$1,000 under rule Tax 11.10 (3) (c) and (d). In determining whether gross receipts are \$1,000 or less as stated in rule Tax 11.10 (3) (c) and (d), only receipts from sales of taxable personal property and services are considered "gross receipts". Since the sales of frozen pizza and radio advertising are not subject to Wisconsin sales or use tax, receipts from such sales are not considered "gross receipts" for computing the \$1,000 limit in rule Tax 11.10 (3) (c) and (d).

Answer C: The nonprofit organization qualifies for the occasional sales exemption under s. 77.54 (7) and rule Tax 11.10 because it meets all the standards set forth in the law and rule. As a result, the sale of beer and meals at the

3 day festival are not subject to Wisconsin sales or use tax.

X. Mover's Sales of Containers

Facts & Question: In the Wisconsin Tax Appeals Commission decision of November 23, 1979 in the case of Leicht Transfer & Storage Co., Inc. v. Wisconsin Department of Revenue the Commission held that the corrugated boxes and other containers used by movers may be purchased without tax "for resale" by movers. Thus, the gross receipts from a mover's sales of containers to its customers located in Wisconsin are taxable. Does the tax apply to containers if the Wisconsin customer moves to an out-of-state location as well as moves within Wisconsin?

Answer: Yes, the gross receipts from a mover's sales of containers to customers located in Wisconsin are taxable, whether the customer is moving within Wisconsin or to an out-of-state location. The sale takes place at the time the container is delivered to the premises of the customer, whether the customer or the mover packs the container. Sales to persons located in Wisconsin who are moving out-of-state are not exempt sales in interstate commerce under s. 77.54 (1), Wis. Stats.

XI. Bakeries - Purchase of Cake Decorations

Facts & Question: A bakery purchases edible and nonedible cake decorations which become a component part of the cake. The decoration is physically transferred to the customer with the cake and the customer retains the decoration.

The bakery also purchases reusable items such as cake stands, cake tier dividers and electric fountains. These items are used a number of times by the bakery in satisfying the requirements of customers having weddings or other celebrations. The customer returns these items to the bakery after the wedding or celebration.

Question A: Can a bakery purchase without tax edible and nonedible decorations which become a component part of the cake and are transferred to and retained by the customer?

Question B: Can a bakery purchase without tax reusable items which are not retained by the customer but are returned to the bakery and used again?

Answer A: Since a bakery is considered a manufacturer for sales tax purposes, it can purchase without tax edible and nonedible cake decorations that become a component part of the cake (s. 77.54 (2)). The bakery should give a manufacturing certificate to the person from whom it purchased the edible and nonedible cake decorations.

Answer B: If a bakery provides reusable items such as an electric fountain for use at a wedding with no charge to the customer, the sale of the electric fountain to the bakery is subject to the sales tax. The bakery in this instance is considered the consumer of the fountain.

However, if the bakery charges the customer an amount for the use of the electric fountain, the bakery may purchase the electric fountain without tax "for resale" under s. 77.52 (13), Wis. Stats. In this situation, the bakery would impose 4% sales tax on the charge to the customer for using the fountain.