WISCONSIN TAX BULLETIN

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NEW TAX LAWS

The 1981-83 budget bill was still pending before the Wisconsin legislature at the time this issue went to press. As soon as that bill becomes law, a special issue of the WTB will be published to provide information about the tax law changes it contains.

IN THIS ISSUE

NEW WITHHOLDING TABLES

New withholding tables were mailed to employers on May 15, 1981. The new tables are contained in the Department of Revenue's publication entitled "Employer's Withholding Tax Guide". The new tables will generally provide for lower withholding of Wisconsin income tax from wages. For example, the new bi-weekly amount withheld for a single person earning $15,000 annually and claiming one exemption is $26.20 compared to $29.00 under the prior withholding tables. A married person earning $25,000 annually and claiming two exemptions will have $57.50 of Wisconsin income tax withheld from each paycheck rather than $61.70.

The new withholding tables are effective for payroll periods beginning after June 30, 1981.

NEW ISI & E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under parts A, B and C, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of June 15, 1981. Part D lists new rules and amendments which have been adopted in 1981.

A. Rules At Legislative Council Rules Clearinghouse

2.39 , Apportionment method
- amendment

2.40 , Nonapportionable income
- repealed and recreated

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

B. Rules At Legislative Standing Committees

11.56 , Printing industry
- new rule

C. Rules Approved By Legislature But Not Yet Effective

1.11 , Requirements for examination of returns
- amendment

9.08 , Cigarette sales to and by Indians
- new rule

11.925, Sales and use tax security deposits
- new rule

D. Rules Adopted In 1981

2.081, Indexed income tax rate schedule (5/1/81)
- new rule

2.31 , Taxation of personal service income of nonresident professional athletes (1/1/81)
- new rule

2.505, Apportionment of net business income of interstate professional sports clubs (1/1/81)
- new rule

2.955, Credit for income taxes paid to other states (2/1/81)
- amendment

4.53 , Certificate of authorization (1/1/81)
- new rule

8.87 , Intoxicating liquor tied-house prohibitions (6/1/81)
- new rule

11.83 , Motor vehicles (7/1/81)
- amendment

11.88 , Mobile homes (1/1/81)
- new rule

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

- Romain A. Howick vs. Wisconsin Department of Revenue
- Kelvinator Commercial Products, Inc. vs. Wisconsin Department of Revenue
- NCR Corporation vs. Wisconsin Department of Revenue
- Marilynn H. Schaefer vs. Wisconsin Department of Revenue
- Wisconsin Department of Revenue vs. Louis G. Shew
- Wausau Homes, Incorporated vs. Wisconsin Department of Revenue
- Louis Webster, Sr., Alex Askenette, Sr., Sue Askenette vs. Wisconsin Department of Revenue

Sales/Use Taxes

- Chicago, Milwaukee, St. Paul and Pacific Railroad Company vs. Wisconsin Department of Revenue
- City of Racine vs. Wisconsin Department of Revenue
- Wisconsin Department of Revenue vs. Family Hospital, Inc.
- Fort Howard Paper Company vs. Wisconsin Department of Revenue
- Wisconsin Department of Revenue vs. Horne Directory, Inc.
- Miss Wisconsin Pageant, Inc. vs. Wisconsin Department of Revenue
- Wisconsin Department of Revenue vs. Gerhard Van Beck
- Steve Varese vs. Wisconsin Department of Revenue

INCOME AND FRANCHISE TAXES

Wisconsin Department of Revenue vs. Romain A. Howick (Wisconsin Supreme Court, 100 Wis. 2d 274, February 2, 1981). This case involves the Department of Revenue's treatment of loss on the sale of corporate stock for income tax purposes when stock is sold by a Wisconsin resident who purchased it while a resident of Iowa.

The taxpayer moved to Wisconsin on June 20, 1970 and immediately thereafter divested himself of certain shares of stock that he acquired while a nonresident. As a result of the stock sold in Wisconsin in 1970, he suffered a $10,043.82 loss, having purchased the same for $56,436.42. Thus, he reported the difference between $56,436.42 and the sale price of $46,392.60 or $10,043.82 on his 1970 federal income tax return as a net long-term capital loss. Howick also reported this loss on his 1970 Wisconsin tax return and deducted $1,000.00 each year thereafter from ordinary income through 1972 (3 years).

In 1973 Howick divested himself of more stock he acquired while a resident of Iowa. He purchased this stock for $13,317.40 and suffered a $4,875.57 loss at the time of sale. The taxpayer combined this 1973 loss ($4,875.57) with the balance of a loss carry over from 1970 and thus offset a long-term gain realized from other 1973 stock transactions. This netting process (offsetting long-term gains by long-term losses) yielded a $516.10 loss that the taxpayer deducted from ordinary income in 1973.

On October 6, 1975, the department made an additional income tax assessment against Howick in the amount of $978.96 plus interest. The department determined that he had erred in calculating his losses for the years 1970 and 1973 for sales of stock acquired while he was a nonresident. The department's determination was based on the following administrative rule set forth in a Revenue Department Memorandum dated April 1, 1966:

> ". . . in determining the gain or loss on capital assets disposed of by a resident individual who had acquired such assets prior to the time such individual became a Wisconsin resident, the basis of the asset to be used would be: (1) if gain is realized, the difference between the selling price and the higher of the fair market value or the adjusted basis of the asset at the time Wisconsin residency was established, or (2) if a loss was sustained, the difference between the selling price and the lower of the fair market value or adjusted cost basis of the asset at the time Wisconsin residency was established. If no gain is determined under (1) and no loss determined under (2), no gain or loss would be reportable on the Wisconsin income tax return in the year of sale."

In essence, the rule provides for an adjustment in some circumstances to the federal cost basis of a capital asset (corporate stock). If applicable, the adjustment is based on the value of the asset on the date the taxpayer established residence in Wisconsin. Its net effect is to minimize both gains and losses recognized on the sale of stock purchased before the taxpayer became a resident of this state. Only subsec. two (2) of the Revenue Department's Memorandum dated April 1, 1966, referred to above, is involved in this case. The department explained its application of this rule to the taxpayer herein as follows:

> "1. If the selling price after moving into Wisconsin was less than the original cost of the stock when purchased out of state and its fair market value on June 20, 1970, when the taxpayer first moved into Wisconsin, the loss recognized was the difference between the selling price and the lesser of either the original cost or its fair market value."

The department applied this rule to each of the taxpayer's stock sales in 1970 and 1973. As a result, the department reduced Howick's reported net long-term loss for the 1970 stock transactions from $10,043.82 to $596.80 and converted the $4,875.57 loss realized on the 1973 sales of stock which were acquired while he was a nonresident to a $123.18 gain.

The department's calculations for 1970 are set forth in the following table:

	Federal Cost Basis	Fair Market Value on June 20, 1970 When Moving Into Wisconsin	Selling Price in 1970 After Moving to Wisconsin	Wisconsin Gain or Loss
1.	$ 5,691.01	$ 2,913.75	$ 2,404.82	$ (508.93)
2.	4,175.63	4,462.50	4,531.50	69.00
3.	1,762.05	2,937.50	3,717.04	779.54
4.	1,660.88	1,649.65	2,044.97	384.09
5.	1,297.23	1,562.50	1,450.77	0
6.	2,499.06	2,650.00	2,896.19	246.19
7.	4,893.25	6,201.50	6,625.70	424.20
8.	27,243.45	21,262.50	19,928.47	(1,334.03)
9.	2,745.66	487.50	381.86	(105.64)
10.	1,152.45	900.00	750.10	(149.90)
11.	2,379.60	1,600.00	1,327.82	(272.18)
12.	991.15	462.50	333.36	(129.14)
			Net Loss	$ (596.80)

The department's calculations regarding the 1973 sales were as follows:

	Federal Cost Basis	Fair Market Value on June 20, 1970	Selling Price in 1973	Wisconsin Gain or Loss
1.	$ 6,222.00	$ 3,037.50	$ 2,707.39	$ (303.11)
2.	4,089.25	2,275.00	1,758.14	(516.86)
3.	3,006.15	3,000.00	3,976.30	970.15
			Net Gain	$ 123.18

The department disallowed the loss deductions from ordinary income in 1971 through 1973 and a portion of the loss offset for 1973 as well as $403.20 of the loss deduction taken in 1970. Therefore, the department assessed the additional income taxes noted above.

The Court of Appeals affirmed the Circuit Court's decision upholding the action of the WTAC in ruling that it could find no authority in the Wisconsin Statutes or case law for the Revenue Department's rule that had the "ultimate effect" of creating an artificial gain where a loss was actually incurred. The department then appealed to the Wisconsin Supreme Court.

The Supreme Court indicated that ss. 71.02 (2) (d) and (e), Wis. Stats., provide the key to the resolution of this case. Section 71.02 (2) (d), Wis. Stats., defines Wisconsin taxable income for individuals as ". . . Wisconsin adjusted gross income less itemized deductions or less the Wisconsin standard deduction." Wisconsin adjusted gross income means ". . . federal adjusted gross income, with the modifications prescribed in s. 71.05 (1) and (4)." (Section 71.02 (2) (e), Wis. Stats.) Thus, it must be determined: (1) how federal adjusted gross income is calculated, and (2) whether any of the ss. 71.05 (1) and (4) modifications are applicable in this case.

The Internal Revenue Code provides that the income tax basis of stock purchased by the taxpayer is its cost at the time of purchase. The gain or loss from the sale of stock is the difference between the amount realized, i.e., selling price, and the taxpayer's cost. Net long-term loss is computed by subtracting the long-term gains for the taxable year from the long-term losses. Given that Howick calculated the long-term losses resulting from his stock transactions for the years 1970 and 1973 according to these rules, and that the department does not contest the taxpayer's federal calculations, the question becomes whether the Wisconsin income tax statutes, specifically ss. 71.05 (1) and (4), permit the department to modify and alter Howick's federal adjusted gross income for taxing purposes by reducing the basis of the stock acquired before he became a resident.

The department contended that its rule is supported by the reasoning in three court decisions, to-wit: Appeal of Seisel, 217 Wis. 661, 259 N.W. 839 (1935); Falk v. Wisconsin Tax Comm., 201 Wis. 292, 230 N.W. 64 (1930) and State ex rel. Bundy v. Nygaard, 163 Wis. 307, 158 N.W. 87 (1916). The Court stated that these cases are not applicable and not in point.

Although the Supreme Court affirmed the decision of the Court of Appeals, which ruled in favor of Howick, it expressed a reservation about that opinion. The Court of Appeals announced a rule that is applicable to the calculation of a gain on the sale of stock acquired while the taxpayer was a nonresident. This case is concerned with the proper treatment of a loss on the sale of such stock, and thus the Appellate Court's analysis of gains on the sale of such stock is obiter dicta (a statement in an opinion having no actual bearing on the issues involved). Therefore, the Supreme Court disavowed this analysis and concluded that the dicta does not have any precedential value.

Kelvinator Commercial Products, Inc. vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 10, 1981). Kelvinator Commercial Products, Inc. (taxpayer), a Delaware corporation, is engaged in the business of manufacturing and selling refrigeration equipment for commercial uses. It has its manufacturing plant in Manitowoc, Wisconsin. The issue to determine was whether taxpayer was within the jurisdiction for income tax purposes of Tennessee during the years 1973 through 1976 and Florida and North Carolina during the years 1974 through 1976 solely because it had certificates of authority to transact business in such states.

During the audit period, taxpayer was authorized as a foreign corporation to do business in Florida, North Carolina and Tennessee. It was also authorized to do business in other states. During the same period, taxpayer sold and shipped its products from Wisconsin to destinations in Florida, North Carolina and Tennessee.

The sales in question involve taxpayer's shipments of products from Wisconsin to destinations in Florida, North Carolina and Tennessee. If, during the applicable years, taxpayer was not "within the jurisdiction, for income tax purposes" of such states pursuant to s. 71.07 (2) (c) 2, Wis. Stats., then such sales are "thrown back" to Wisconsin and included in the numerator of the sales factor.

The Commission concluded that the taxpayer's qualification to do business in such states was not sufficient to bring it within the jurisdiction of such states for income tax purposes. Its business activities must exceed the minimum standards set by P.L. 86-272.

The taxpayer has the burden of proving that it was taxable in the states of Florida, North Carolina and Tennessee during the years in question. It failed to prove its claim. Therefore, during the years 1973 through 1976, taxpayer was not within the jurisdiction for income tax purposes of the state of Tennessee, and during the years 1974 through 1976, taxpayer was not within the jurisdiction for income tax purposes of the states of Florida or North Carolina.

The Commission ruled that the taxpayer's shipments of products to destinations in those states were properly thrown back or attributed to Wisconsin under the provision of s. 71.07 (2) (c) 2, Wis. Stats.

The taxpayer has not appealed this decision.

NCR Corporation vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, January 30, 1981). NCR Corporation (taxpayer) became the successor to the business of Appleton Papers, Inc. by reason of the merger of that corporation into the taxpayer. The taxable year involved is the 1972 calendar year of Appleton Papers.

The sole issue was whether Appleton Papers acted properly in deducting, pursuant to s. 71.04 (15) (c), Wis. Stats., the balance of the net difference between the Wisconsin and federal adjusted basis of its depreciable property on its Wisconsin franchise tax return for the calendar year 1972.

Section 71.04 (15) (c) reads in part: "If a corporation is dissolved, or merged into or consolidated with another corporation before the termination of the 5-year period, any remaining balance of the net difference between the Wisconsin and federal adjusted basis of such depreciable property as of the end of such corporation's 1971 taxable year shall be deducted from gross income or used to reduce otherwise allowable deductions from gross income, as the case may be, in the year of dissolution, merger or consolidation."

As additional findings of fact, the Commission adopted the following:

1. Appleton Papers, Inc. used the calendar year for reporting purposes. On December 31, 1972 the unamortized balance of the amount by which the Wisconsin adjusted basis of Appleton Papers, Inc.'s depreciable assets exceeded the federal adjusted basis of said assets was $1,947,303. Appleton Papers, Inc. deducted this entire balance on its Wisconsin tax return for the calendar year 1972.

2. Appleton Papers, Inc. had no tax year subsequent to 1972 and was not required to nor did it file Wisconsin or federal tax returns for years subsequent to 1972. It conducted no business in years subsequent to 1972.

3. The Articles of Merger merging Appleton Papers, Inc. into NCR Corporation, signed on December 14, 1972, provide that "the merger shall become effective on January 1, 1973". Appleton Papers, Inc. and NCR Corporation remained separate and distinct corporations until midnight of December 31, 1972. The year of merger between Appleton Papers, Inc. and NCR Corporation was 1973.

4. The Department of Revenue disallowed four-fifths of the $1,947,303 basis adjustment claimed by taxpayer in 1972, allowing one-fifth for that year based on its determination that the year of merger was 1973 and not 1972.

The Commission concluded that taxpayer is not entitled to deduct the remaining balance of the net difference between the Wisconsin and federal adjusted basis of depreciable property in the year 1972, but may deduct only one-fifth of such difference in the year 1972. The proper year for the deduction of the remaining balance of the net difference between the Wisconsin and federal adjusted basis of depreciable property was 1973, the year of the merger between Appleton Papers, Inc. and NCR Corporation.

Taxpayer has appealed this decision to Circuit Court.

Marilynn H. Schaefer vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, February 23, 1981). Taxpayer's husband, Ben G. Schaefer, died on October 27, 1969 and his will was filed in Kenosha County Court on November 7, 1969. Since the will made no provision for an allowance to taxpayer during the period of probate, the court directed the Estate of Ben G. Schaefer to make monthly payments and other payments to taxpayer. These payments totaled $24,000 in each of the years 1973, 1974, 1975 and 1976. The payments have been characterized as a "widow's allowance" under s. 313.15 (2), 1967 Wis. Stats.

In filing its Wisconsin fiduciary income tax returns for the years 1973 through 1976, the Estate of Ben G. Schaefer claimed the payments made to taxpayer of $24,000 each year as deductible distributions and deducted the payments from the distributable net income of the estate. In each of these years, the amounts paid to taxpayer were less than the total distributable net income available in the estate, so the full $24,000 paid in each year was claimed as a deductible distribution and not taxed as income to the estate. These amounts were properly deducted by the estate.

Taxpayer did not include the $24,000 annual amounts in her income for individual income tax purposes for the years 1973 through

1976. The issue to determine was whether the amounts received by taxpayer in 1973, 1974, 1975 and 1976, under court order as a widow's allowance from the estate of her deceased husband, constitute taxable income to her.

The Commission concluded that the amounts received by taxpayer in each of the years 1973 through 1976, under court order as a widow's allowance from the estate of her deceased husband, constitute deductible items to the estate under section 661 (a) of the Internal Revenue Code, and taxable income to taxpayer under section 662 of the Internal Revenue Code as adopted for Wisconsin income tax purposes by s. 71.02 (2) (intro.) and (c) to (e), Wis. Stats.

The taxpayer has appealed this decision to Circuit Court.

Wisconsin Department of Revenue vs. Louis G. Shew (Wisconsin Court of Appeals, District IV, February 20, 1981). Taxpayer purchased securities prior to becoming a Wisconsin resident. For Wisconsin income tax purposes, taxpayer contended that the loss should be the difference between the stocks' purchase price and their sale price (i.e., the same as the federal loss). The department contended that the loss should be the difference between the stocks' value at the time the taxpayer became a Wisconsin resident and their sale price.

The Tax Appeals Commission ruled in favor of the taxpayer. The Circuit Court sustained the conclusion of the Commission. (See summary of Circuit Court decision in Wisconsin Tax Bulletin #15.)

The department initially appealed the Circuit Court decision to the Court of Appeals, but on February 20, 1981 the department dismissed its appeal of this case.

Wausau Homes, Incorporated vs. Wisconsin Department of Revenue (Wisconsin Court of Appeals, District III, February 3, 1981). This is an appeal of a Circuit Court of Marathon County judgment which affirmed in part and reversed in part a Wisconsin Tax Appeals Commission decision.

Wausau Homes, Inc. is a Wisconsin corporation and has its principal office and main plant in Wisconsin. It also maintains a plant in Iowa. The corporation markets its homes by entering into dealer franchise agreements with dealers throughout the country.

The Department of Revenue issued an assessment for the years 1968-1973. The issues on appeal were: (1) whether sales transacted by Wausau Homes' dealers located outside of Wisconsin should be considered as sales made by the home office in Wisconsin for purposes of apportioning income under s. 71.07 (2) (c), 1969 Wis. Stats., and (2) whether the costs of engineering services done at Wausau Homes' plant in Wausau for the benefit of its plant in Iowa should be allocated to Wisconsin for purposes of calculating the manufacturing ratio under s. 71.07 (2) (b), 1969 Wis. Stats.

The department contended that all sales made by dealers throughout the United States are sales that should be considered as sales made by the Wisconsin office. The department also contended that the costs of engineering services that were performed in Wisconsin but were needed for the plant in Iowa should be allocated to Wisconsin.

The Court ruled that sales made by dealers located in other states were not allocable to Wisconsin. It found that the majority of the sales activity (e.g., contract negotiations, buyer contact and financing arrangements) took place outside of Wisconsin.

With regard to the costs of the engineering services, the Court ruled that such costs are properly allocable to Wisconsin. It stated that since the Wausau plant expanded its facilities to accommodate the Iowa plant's needs, the engineering services should be considered for tax purposes as a special manufacturing process of the Wausau plant.

Neither party has appealed this decision.

Louis Webster, Sr., Alex Askenette, Sr., Sue Askenette vs. Wisconsin Department of Revenue (Court of Appeals, District IV, April 7, 1981). Taxpayers are Menominee Indians who resided and worked in Menominee County in 1972 and 1973.

Prior to 1961, the Menominee Tribe held its reservation lands and other assets in tribal ownership under the supervision of the federal government. Neither the assets nor the income of tribal members were subject to state taxation. In 1961, the Menominee Termination Act was passed ending tribal status and federal supervision. The Termination Act was repealed by the Menominee Restoration Act, which became effective on December 22, 1973. The question is whether the Termination Act gave the state authority to impose state income tax on the taxpayers for 1972 and 1973.

The Court of Appeals affirmed the Circuit Court decision. (See summary of Circuit Court decision in Wisconsin Tax Bulletin #20.) It concluded that Wisconsin was authorized to collect state income tax from the Menominees during the time the Termination Act was in effect. Therefore, the taxpayers were liable for state taxes on income earned in 1972 and on income earned in 1973 received prior to December 22, 1973.

The taxpayers have appealed this decision to the Wisconsin Supreme Court.

SALES/USE TAXES

Chicago, Milwaukee, St. Paul and Pacific Railroad Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 20, 1981). Taxpayer, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, contended that the use of lubricants in conjunction with its rolling stock was not taxable under Chapter 77. The Wisconsin Department of Revenue contended that lubricants are not included in the statutory words ". . . accessories, attachments, parts or fuel . . ." in s. 77.54 (12), Wis. Stats.

The findings of fact in this case indicated that taxpayer's locomotives and rolling stock simply cannot operate without lubricants. Not only are lubricants required to lubricate and cool other operational portions of the locomotives but they are also integrally linked to the governor in such a manner that their absence automatically brings to a halt the rolling stock of the taxpayer and precludes any operation.

The Commission concluded that taxpayer is entitled to an exemption within the intent and meaning of s. 77.54 (12), Wis. Stats., for lubricants used in conjunction with its rolling stock. The lubricants used in the manner prescribed by the taxpayer for its rolling stock are exempt and are construed to be included in the phrase ". . . accessories, attachments, parts or fuel . . .".

The department has appealed this decision to Circuit Court.

City of Racine vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, April 29, 1981). The City of Racine, through its Park and Recreation Department, conducts and administers various leagues for sports activities including softball, volleyball, basketball and tennis. Fees are charged to individuals and teams engaging in such activities conducted at city recreational areas at previously scheduled times. No other individual or team can use the recreation area at that specified time. The fees charged are based on the direct costs of the facilities involved to the City of Racine and are an attempt on its part to defray or recoup its expenses.

During the period January 1, 1975 through March 31, 1979 the city did not collect sales tax on such fees.

On June 27, 1979, the department issued a notice of sales and use tax deficiency determination against the City of Racine in the total amount of $32,111.04, covering the period of January 1, 1975 to March 31, 1979. It imposed a sales and use tax on the fees on the basis that they were collected for the use or access to athletic or recreational facilities, and thus were taxable under s. 77.52 (2) (a) 2, Wis. Stats.

The City of Racine maintained that the fees it collected were not for the use or access to its athletic or recreational facilities but rather a charge for services rendered in conjunction with the facilities' use, based on its cost, and thus should not be subject to tax.

The Commission determined that the fees charged and collected by the City of Racine were for the privilege of having access to and the use of its athletic and/or recreational facilities and thus were subject to sales tax.

The taxpayer has appealed this decision to Circuit Court.

Wisconsin Department of Revenue vs. Family Hospital, Inc. (Court of Appeals, District IV, April 27, 1981). The sole issue is whether the gross receipts from a parking lot operated by a nonprofit hospital for use by its patients, employes and guests are subject to Wisconsin sales tax. Family Hospital, Inc., taxpayer, is a nonprofit Wisconsin corporation which operates a nonprofit hospital in Milwaukee. The parking lot in question is adjacent to the hospital. It is used predominantly by hospital patrons and personnel.

The Court found that s. 77.52 (2) (a) 9, Wis. Stats., unambiguously lists parking as a service subject to sales taxation. Therefore, it concluded that the provision of parking space is a separate service subject to the sales tax on services unless exempted by s. 77.54. The department contended that s. 77.54 was intended to exempt receipts from "sales to" the state and other enumerated entities, and receipts from the "use or consumption of" property and "services by" those entities. (Emphasis supplied.) Under this construction the statute exempts the listed entities only when they are the recipients of goods or services, and not when they are the providers of either. The trial court read the language of the statute more broadly, as exempting from taxation receipts from "sales to, and . . . services by" the exempted entities. (Emphasis supplied.) The Court found that the statute was susceptible of either construction. Since the statute was ambiguous, it looked beyond its language to determine legislative intent.

The Court concluded that the legislative history of s. 77.54 was of little aid in determining the meaning of the statute. Therefore, it looked to the position taken by the department in two "technical information memoranda" interpreting s. 77.54 (9a), on February 25, 1974 and September 2, 1975. In each the department expressed its opinion that receipts by "governmental units within the state, hospitals and other exempt entities" for "(p)arking, docking and storage of motor vehicles, automobiles, aircraft and boats" were not subject to sales tax. (Emphasis supplied.) The Court found no support for the department's contention that the memoranda were intended to apply only to governmentally operated hospitals. Although the memoranda were entitled "SUBJECT: GOVERNMENTAL UNITS," they expressly encompassed "hospitals and other . . . entities" exempted by s. 77.54 (9a).

The Court affirmed the Circuit Court decision (see summary of Circuit Court decision in Wisconsin Tax Bulletin #15) and ruled that the gross receipts from the parking lot were not subject to Wisconsin sales tax.

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

Fort Howard Paper Company vs. Wisconsin Department of Revenue (Court of Appeals, District IV, March 20, 1981). Fort Howard Paper Company (taxpayer) is a large manufacturer of paper and paper products. The question involved was whether taxpayer was required to pay a use tax on four categories of personal property. (See summary of Circuit Court decision in Wisconsin Tax Bulletin #20.) The issues to determine were as follows:

1. Taxpayer purchased and used coal to generate steam and electricity in large quantities. It used all the steam and electricity in its paper making process and the electricity and steam was produced in a power plant nearly identical to power plants which sell steam and electricity to the public. Taxpayer contended that the coal purchased was exempt from use tax by s. 77.54 (6) (c), Wis. Stats., which exempts "Coal . . . converted to electric energy, gas or steam by utilities and that portion of the amount of coal . . . converted to steam for purposes of resale by persons other than utilities."

The Court ruled that taxpayer had not shown that the exemption created by s. 77.54 (6) (c) clearly applied to it. The Court, therefore, sustained the Circuit Court's decision that the purchases of coal were not exempt since taxpayer was not a utility.

2. Taxpayer owned and maintained railroad-type equipment to switch and transport loads on its premises. It also maintained crews to work the railroad yard switching

peration. Taxpayer contended that s purchases of a switch engine and trackmobile were exempt from tax under s. 77.54 (12), Wis. Stats., which exempts "locomotives or other rolling stock used in railroad operations. . . ."

The Court affirmed the Circuit Court's decision. It concluded that taxpayer's railroad-type equipment clearly falls within the definition of items "used in railroad operations," and therefore falls within the exemption provided in s. 77.54 (12).

3. Taxpayer maintained an art department consisting of 23 artists. The art department assisted in the manufacturing of specialty products such as napkins, placemats, tray covers, coasters, doilies, paper towels, and company reports, manuals and brochures. The art department had its own composing operation which prepared initial drawings or paintings to finished art work which was reduced to photographic plates for imprinting on the particular paper product involved. Taxpayer also maintained a staff of photo technicians and printers involved in manufacturing paper specialty products. The art supplies used by taxpayer which were in issue were poster white, ink, cement, water color sets, colored pencils, erasers, Kleer Kote, pencils, tracing paper, masking tape, razor blades, artist's triangles, artist's brushes, pen points, Bourges stylus, pens, lead holders, push pins, pen holders, handispencer and lettering points.

The Court upheld the Circuit Court's ruling that under s. 77.54 (2), Wis. Stats., which exempts from sales and use tax property which is "consumed or destroyed or loses its identity in the manufacture of tangible personal property in any form destined for sale . . .", the following types of art supplies were exempt: pencils, poster white, ink, cement, water color sets, colored pencils, erasers, Kleer Kote, tracing paper, and masking tape.

4. Taxpayer installed various items of effluent treatment equipment which added an additional recycling operation to the papermaking operation. The equipment reduced the amount of waste discharge and changed what was once sewage into raw material.

The Court agreed with the Circuit Court that the effluent treatment equipment was exempt under s. 77.54 (6) (a), Wis. Stats., which exempts from tax "Machines and specific processing equipment and repair parts or replacements thereof, exclusively and directly used by a manufacturer in manufacturing tangible personal property."

Neither the taxpayer nor the department has appealed this decision.

Wisconsin Department of Revenue vs. Horne Directory, Inc. (Court of Appeals, District IV, February 13, 1981). The issue in this case is whether the taxpayer, Horne Directory, Inc., is subject to a use tax under s. 77.53 (1) and (2), Wis. Stats., for the cost of printing and delivering telephone directories from an out-of-state printing establishment to Wisconsin residents. Summaries of the Circuit Court and Tax Appeals Commission decisions are found in Wisconsin Tax Bulletin #14 and #12, respectively.

The Wisconsin Department of Revenue appealed from a judgment of the Circuit Court based upon the trial court's conclusion that the taxpayer was exempt from the tax. The Court of Appeals affirmed the judgment, but not the reasoning, of the Circuit Court.

The Court of Appeals indicated that the Circuit Court erred in determining that the taxpayer, and not the printer, was the "seller" of the directories under s. 77.51 (4r), Wis. Stats. The Court of Appeals further stated that no event occurred within Wisconsin constituting a taxable use of the directories by the taxpayer, since the directories never transferred to the taxpayer.

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

Miss Wisconsin Pageant, Inc. vs. Wisconsin Department of Revenue (Dane County Circuit Court, February 9, 1981). In Wisconsin Tax Bulletin #20 it was indicated that the taxpayer had appealed a Wisconsin Tax Appeals Commission decision to Circuit Court. That appeal was dismissed by the Circuit Court on procedural grounds.

Wisconsin Department of Revenue vs. Gerhard Van Beck (Circuit Court of Wood County, December 16, 1980). The question in this case was whether taxpayer, Gerhard Van Beck, had properly surrendered his seller's permit before the sale of his business to qualify the sale as an occasional sale and, therefore, not subject to the sales and use tax. A summary of the Wisconsin Tax Appeals Commission decision on this case is contained in Wisconsin Tax Bulletin #16.

The Circuit Court affirmed the decision of the Tax Appeals Commission and ruled that the sale was an "occasional sale", as defined in s. 77.51 (10) (a), Wis. Stats., and was, therefore, exempt under s. 77.54 (7) from sales and use tax.

The department has not appealed this decision.

Steve Varese vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, March 18, 1981). Taxpayer Steve Varese on January 20, 1962, applied for a seller's permit to be issued in the trade name of "Steves Liquor Store" and said permit was issued by the Department of Revenue on February 1, 1962 assigning permit number 9726. Taxpayer operated a retail liquor store at 3618 University Avenue, Madison, Wisconsin, from the date of issuance of said permit until he ceased his operation of that store on December 31, 1979.

On September 19, 1969, he applied for a seller's permit to be issued in the same trade name, "Steves Liquor Store", and was issued such permit as number 9726B on October 13, 1969. Taxpayer's original permit number was, apparently, amended thereafter to be known as 9726A. Taxpayer operated a 2nd retail liquor store at Route 2, Mineral Point Road, Madison, from the date of issuance of the permit number 9726B and is still operating it.

On December 28, 1979, at 2:15 p.m., taxpayer surrendered his original seller's permit relating to the University Avenue liquor store by personally delivering it to a Department of Revenue office and obtaining a receipt for the surrender thereof. On December 31, 1979, he ceased his business operations at the University Avenue retail liquor store; however, he continued to conduct business at the Mineral Point Road location under permit number 9726B. On January 1, 1980, he sold the University Avenue retail liquor store business including tangible personal property, the value of which was assessed by the department for sales taxes on the grounds that the taxpayer held or was required to hold a seller's permit at the time of said sale.

The sole issue was whether taxpayer's surrender of permit number 9726A was effective to qualify the sale of the University Avenue property as exempt from sales tax as an occasional sale under s. 77.51 (10) (a), Wis. Stats.

The Commission concluded that even though taxpayer properly surrendered his Wisconsin seller's permit on December 28, 1979, for the business operation on University Avenue, at the time the sale of the University Avenue property became effective, on January 1, 1980, the fact that taxpayer held a seller's permit on the Mineral Point Road retail liquor store business on the date o the sale constituted a holding of a seller's permit as that terminology is meant in s. 77.51(10) (a), Wis. Stats. Therefore, the sale of the taxpayer's business on January 1, 1980, was taxable as assessed and did not qualify as an exempt occasional sale under s. 77.51 (10) (a).

The taxpayer has not appealed this decision.

TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answer 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. Federal Farm Credit Bank Securities

Facts & Question: A Wisconsin resident receives interest income from a "Federal Farm Credit Banks Consolidated Systemwide Security". Is the interest income received from this security income from a federal security which is exempt from Wisconsin income tax under s. 71.05 (1) (b) 1, Wis. Stats.?

Answer: Yes. Interest income which an individual receives from system-wide securities issued by the Federal Farm Credit System is considered to be interest from a U.S. Government security which is exempt under s. 71.05 (1) (b) 1, Wis. Stats.

II. Money Market Trust Distributions

Facts & Question: A Wisconsin resident invests in a money market trust (the trust qualifies as a mutual fund under the Internal Revenue Code) which invests exclusively in U.S. Government securities. Are the distributions which are received from the money market trust considered income from a federal security which will be exempt from Wisconsin income tax under s. 71.05 (a) (b) 1, Wis. Stats.?

Answer: No. An individual who has invested in and receives distributions from a money market trust (mutual fund) has not received interest directly from a federal obligation which would be considered exempt from taxation by Wisconsin. The trust cannot pass through to the investor the tax-exempt character of income it receives from federal securities.

III. Addition to Tax Exception Based on Prior Year's Income — Person Was a Nonresident or Part-Year Resident in Prior Year

Facts & Question: Individuals subject to Wisconsin income tax must make installment payments of estimated tax if they expect to have a balance of $100 or more of tax due on their return for a year. If required installment payments of estimated tax are not made by prescribed due dates or if insufficient amounts are paid, a 9% "addition to the tax" penalty may be imposed. The penalty is computed on the basis of the number of days that an installment (or a portion of an installment) was not paid.

Section 71.21 (14) (b), Wis. Stats., provides that the 9% penalty will not be imposed if timely estimated tax payments for the taxable year equal or exceed an amount determined by recomputing the tax shown on the return for the immediate preceding year. To figure this exceptior to the penalty, the tax on the prior year's return is recomputed by using the current year's tax table and then the current year's personal exemption credit is subtracted. If the estimated tax payments for the current year are at least as much as the resulting amount (recomputed tax minus personal exemption credits), no penalty may be applied.

Is an individual who was a part-year resident or a nonresident during the prior year allowed to use the s. 71.21 (14) (b) exception? If so, must the prior year's income be annualized when the tax for that year is recomputed?

> Example: A self-employed single individual with no dependents reports on the calendar year basis. During 1979 this person was a part-year resident (moved into Wisconsin August 1, 1979) and reported Wisconsin taxable income of $12,000 on a 1979 return. For 1980 this individual was a full-year Wisconsin resident.

Answer: Yes, part-year Wisconsin residents and nonresidents of Wisconsin are allowed to use this exception. The prior year's income to be used in recomputing the tax of that year is the amount of Wisconsin taxable income on the prior year's return. The income does not have to be annualized.

The individual in the above example would be required tc make estimated tax payments of at least $669 for 1980 to meet the exception to the 9% penalty provided by s. 71.21 (14) (b). The minimum payment amount is computed as follows:

$12,000	1979 Wisconsin taxable income
689	Tax computed on 1979 Wisconsin taxable income using 1980 tax table
(20)	Less 1980 personal exemption credit
$ 669	Recomputed 1979 tax

IV. Determining Gain Or Loss On Assets Acquired Prior To Becoming A Wisconsin Resident

HOWICK DECISION

On February 2, 1981 the Wisconsin Supreme Court issued a decision in Romain A. Howick vs. Wisconsin Department of Revenue, 100 Wis. 2d 274. The issue was how a loss was to be determined for Wisconsin income tax purposes when a Wisconsin resident sells an asset which was acquired prior to the time he or she became a Wisconsin resident. The department contended that only the decrease in the value of an asset which occurs after the time Wisconsin residency is established can be deducted in determining Wisconsin taxable income. Conversely, the department maintained that only increases in value occurring after residency are to be considered income taxable by Wisconsin. The proper amount of gain or loss for Wisconsin was to be determined by using the fair market value of the asset as of the date the owner became a Wisconsin resident, in the manner prescribed by Wis. Adm. Code section Tax 2.30 and 2.97. However, the Supreme Court found that the rules were incorrect, and that a loss was to be measured by the value at the time of acquisition as a nonresident. (A summary of the Howick case can be found on page 2 of this bulletin.)

In a concurring opinion, three of the Supreme Court justices discussed how gains are to be determined with respect to dispositions of assets acquired before Wisconsin residency is established. In their opinion, they state that income is realized only when an individual disposes of an asset. Fluctuations in the value of the asset which occur prior to disposition may not be considered in determining either gain or loss at the time of disposition. As a result of the Howick decision, the principles set forth in Wis. Adm. Code section Tax 2.30 and 2.97 no longer apply. Instead, the amount of gain or loss on assets acquired prior to becoming a Wisconsin resident and disposed of while a Wisconsin resident will usually be the same for Wisconsin and federal purposes; however, there are exceptions as noted in a later section of this article.

The purpose of this article is to identify those taxpayers who will be affected by this decision and to provide examples of how their gains and losses are to be determined.

WHO IS AFFECTED BY THE HOWICK DECISION?

Individuals affected by the Howick decision are those persons who were nonresidents, and at the time of becoming Wisconsin residents owned assets having market values either higher or lower than their adjusted cost basis as determined under the Internal Revenue Code. It doesn't matter whether the assets are brought into Wisconsin or continue to be located outside Wisconsin. Once an individual establishes residency in Wisconsin all gains or losses realized from the disposition of property (whether the property is located inside or outside of Wisconsin) are reportable to Wisconsin pursuant to s. 71.07 (1), Wis. Stats. Section 71.07 (1) provides that all income or loss of resident individuals follows their residence.

EFFECT OF HOWICK DECISION

Interpretation Prior to the Howick Decision (Wis. Adm. Code section Tax 2.30 and 2.97): It was the department's position that when a Wisconsin resident disposed of property which had been acquired while a nonresident of Wisconsin, gain or loss includable in Wisconsin taxable income was limited to the lesser of:

(a) Gain or loss reportable for federal income tax purposes; or

(b) Gain or loss determined by comparing the selling price with the fair market value of the property on the date Wisconsin residency was established. (Any depreciation allowed or allowable during the period of Wisconsin residency would first be subtracted from the fair market value.)

If a gain was calculated by one of the above methods and a loss by the other, then no gain or loss was reportable for Wisconsin purposes.

When method (b) above was used to determine the gain or loss reportable to Wisconsin, appropriate addition or subtraction modifications were required to be made to federal income.

In addition to rule Tax 2.30 and 2.97, this interpretation has also been explained in various instructional materials.

New Interpretation After the Howick Decision: The gain or loss on the disposition of property acquired prior to becoming a Wisconsin resident must be determined in the same manner for Wisconsin as for federal purposes, except for those situations explained in the next section of this article. In other words, the amount of gain or loss reportable for federal is also includable in Wisconsin taxable income. No addition or subtraction modification may be made to adjust such amount for fluctuations in value which occurred prior to the time Wisconsin residency was established.

The following examples illustrate how gains and losses were determined before the Howick decision and how they must now be determined:

	Federal Cost Basis of Stock Purchased While A Nonresident of Wisconsin	Fair Market Value on Date of Wisconsin Residency	Selling Price (After Becoming a Wisconsin Resident)	Wisconsin Gain or (Loss) Before Howick Decision	Wisconsin Gain or (Loss) Per Howick Decision
(a)	$11,000	$5,000	$4,000	($1,000)	($7,000)
(b)	5,000	7,000	9,000	2,000	4,000
(c)	3,000	6,000	5,000	-0-[1]	2,000

[1] Under the prior rules whenever a loss was determined by comparing the selling price ($5,000) with the fair market value ($6,000) and a gain was determined by comparing the selling price ($5,000) with cost ($3,000), neither a gain nor loss was reportable to Wisconsin.

EXCEPTIONS IN WHICH GAIN OR LOSS FOR WISCONSIN WILL DIFFER FROM THE AMOUNT FOR FEDERAL WITH RESPECT TO ASSETS ACQUIRED WHILE A NONRESIDENT

For the following assets which were acquired before the individual became a resident of Wisconsin, the gain or loss includable in Wisconsin income may be different than the federal gain or loss:

(a) Property which was sold in an installment sale while a nonresident of Wisconsin.

Wis. Adm. Code section Tax 2.30 (in paragraph (3) (c) 2) indicates that gain realized from an installment sale of property located outside of Wisconsin while an individual was a nonresident of Wisconsin is not taxable for Wisconsin purposes. This policy continues to apply. It is assumed that for Wisconsin purposes an individual elects to report the entire gain in the year of sale, when none of such amount would have been taxable to Wisconsin. Any such gain included in federal adjusted gross income is to be excluded from Wisconsin taxable income via a subtraction modification.

Example: Mr. X sells real estate in Iowa on the installment basis while an Iowa resident. Installment reporting of the gain is elected for federal income tax purposes. Subsequently, Mr. X becomes a Wisconsin resident. Any gain which Mr. X is required to include in his federal income from the installment sale of the Iowa property may be excluded from his Wisconsin income each year. (Note: Interest received from the land contract may not be excluded from Wisconsin income.)

(b) Property acquired in an involuntary conversion while a nonresident of Wisconsin.

The gain from an involuntary conversion of property located outside of Wisconsin while an individual was a nonresident, which gain was postponed for federal income tax purposes, is not taxable for Wisconsin purposes. It is assumed that for Wisconsin an individual elects to report such gain in the year the transaction occurred. Any such gain included in federal adjusted gross income is to be excluded from Wisconsin taxable income via a subtraction modification.

Example: Mr. Y, a resident of Ohio, owned rental property in Ohio which was condemned for public use. His adjusted basis in the property was $25,000 and he received a condemnation award of $45,000. He realized a gain of $20,000 from the condemnation.

Mr. Y elected to postpone paying tax on the gain and timely purchased a replacement property (also in Ohio) for $47,000. His basis in the new property for federal income tax purposes is $27,000 ($47,000 cost, minus $20,000 gain postponed).

Subsequent to the involuntary conversion, Mr. Y becomes a Wisconsin resident. Several years later (while still a Wisconsin resident) Mr. Y sells the Ohio rental property for $65,000. For federal income tax purposes, a gain of $43,000 ($65,000 selling price, minus $22,000 adjusted basis) is determined. The portion of gain ($20,000) attributable to the involuntary conversion which occurred before Mr. Y became a Wisconsin resident may be excluded from his Wisconsin taxable income.

In addition to the above two types of transactions, there may be other situations in which federal income tax law allows individuals to defer paying tax on gains until a later date. Questions concerning these types of transactions should be referred to Wisconsin Department of Revenue, Director of Technical Services, P.O. Box 8910, Madison, Wisconsin 53708

CAUTION: In cases where an individual sells a Wisconsin home and replaces it with a home located outside of Wisconsin, the entire gain realized on the sale (including any amounts attributable to deferred gains from prior sales of homes made when the individual was a nonresident) must be included in Wisconsin taxable income. No adjustment may be made to remove deferred gains relating to such sales which take place before an individual becomes a resident of Wisconsin. Federal income tax law does not permit individuals to elect to report gain from selling a home in the year of sale if a qualifying replacement residence is being acquired. When an individual qualifies, postponement of the gain is mandatory. Therefore, deferred gains from selling a home may not be treated in the same manner described above for deferred gains resulting from an involuntary conversion.

Because of the Howick decision, information included in the department's Publication 101 (in paragraph D of Par VIII) regarding the sale of a home located in Wisconsin by a part-year resident is no longer correct and should be disregarded. Such transactions should now be reported in the manner described in this article.

DOES THE HOWICK DECISION APPLY RETROACTIVELY?

The Supreme Court's decision in the Howick case, including the new interpretation explained in a previous portion of this article, applies prospectively as well as retroactively to all prior taxable years. However, under the provisions of ss. 71.10 (10) (bn) and 71.11 (21), Wis. Stats., adjustments to returns filed for prior years are generally prohibited unless made within 4 years of the date the return was filed (4 years of the due date of the return in the case of refunds). For example, claims for refunds for the calendar year 1976 may not be filed after April 15, 1981.

In certain instances, transactions which occurred during years which are now closed to adjustment by the statute of limitations in s. 71.10 (10) (bn) and s. 71.11 (21) still have an effect on income computed for years which may be adjusted. An example would be a loss from a prior year available as a capital loss carryforward. Although the closed years may not be adjusted, adjustments to amounts carried forward to open years may be made to report such amounts in accordance with the Howick decision.

Example: In 1973 Mrs. A, a Wisconsin resident, sold stock which had been acquired before she became a resident of Wisconsin. For federal income tax purposes she computed a loss of $30,000 on this sale. For Wisconsin purposes a loss of only $2,000 was allowable (the stock ad decreased $28,000 in market value at the time Mrs. . moved into Wisconsin).

The loss deductible for Wisconsin was used up on Mrs. A's 1973 and 1974 Wisconsin returns. On her 1975 through 1980 Wisconsin returns Mrs. A made addition modifications to remove amounts of carryforward loss from the 1973 sale which were included in her federal adjusted gross income.

As a result of the Howick decision, Mrs. A's loss on the 1973 sale for Wisconsin purposes is now determined to be the same as her federal loss. Therefore, no addition modifications to federal income are required by her in 1975 and subsequent years. However, adjustments to Mrs. A's 1975 and subsequent year's Wisconsin returns to remove addition modifications reported in such years may only be made if the year is open to adjustment under s. 71.10 (10) (bn) or s. 71.11 (21).

CORPORATION INCOME/FRANCHISE TAX

I. Deductible Dividends

Facts & Question: Corporation B holds 50% of the capital stock of Corporation A. Corporation A files income/franchise tax returns with Wisconsin on a January 31 fiscal year. Corporation B files on a calendar year basis. On January 15, 1980 Corporation A pays a $100,000 cash dividend to its parent, Corporation B. Corporation A does business in several states and files Wisconsin income tax returns using apportionment. For its fiscal year ended January 31, 1979 Corporation A reported 60% of its net income as being attributable to Wisconsin, whereas, in its year ended January 31, 1980 its net income attributed to Wisconsin equaled 40% of its total income. May Corporation B deduct on its 1980 income tax return the $100,000 of dividends received from A on January 15, 1980 under s. 71.04 (4) (a), Wis. Stats.?

Answer: For the dividends from Corporation A to be deductible by Corporation B under s. 71.04 (4) (a), Wis. Stats., the following conditions must be met: (1) Corporation A must have filed Wisconsin income or franchise tax returns as required and Corporation A's income must have been subject to the Wisconsin income tax or have been included in income used to measure the franchise tax, (2) the dividends must not have been deducted from gross income by Corporation A in determining its net income (for example, dividends (interest) paid by savings and loan associations), and (3) the principal business (e.g., 50% or more of total net income on Wisconsin basis) of Corporation A must have been attributable to Wisconsin and used in computing "A's" net income for the taxable year preceding the taxable year in which the dividends are paid. Since the $100,000 of dividends were paid in "A's" January 31, 1980 fiscal year and "A" reported 60% of its net income to Wisconsin in its January 31, 1979 fiscal year and assuming that "A" met conditions (1) and (2), the dividends are deductible by Corporation B in its 1980 taxable year.

II. Estimated Tax Payments of Corporations

a. Who Must File (s. 71.22 (1), Wis. Stats.)

Every corporation whose Wisconsin estimated tax is expected to be $2,000 or more is required to file Form 4-ES and make estimated tax payments. A corporation's estimated tax is the amount of its expected tax liability less its allowable tax credits. The allowable credits include the manufacturer's sales tax credit and the farmland preservation credit.

b. Time and Amount of Payments (s. 71.22 (2), (3) and (4), Wis. Stats.)

The due dates of payments and the amount of installments to be paid are determined as follows:

If the $2,000 requirement is first met:

(1) On or before the 15th day of the third month of the tax year, four installments are due; or

(2) After the 15th day of the third month but before the 16th day of the sixth month, three installments are due; or

(3) After the 15th day of the sixth month but before the 16th day of the ninth month, two installments are due; or

(4) After the 15th day of the ninth month through the end of the taxable year, one installment is due.

The following chart indicates the portion of a corporation's estimated tax that should be paid on or before the 15th day of each of the third, sixth and ninth months of the tax year and the first month following the close of the tax year:

Installments	3rd Mo.	6th Mo.	9th Mo.	1st Mo.
4	25%	25%	25%	25%
3	—	33-1/3%	33-1/3%	33-1/3%
2	—	—	50%	50%
1	—	—	—	100%

Example 1 - The corporation is a calendar year taxpayer that first met the requirement for making estimated tax payments on March 10, 1981, with $12,000 estimated tax. The corporation must pay the estimated tax in four $3,000 installments: On March 15, June 15, September 15, 1981 and January 15, 1982.

Example 2 - Assume the corporation in Example 1 first met the requirement on July 1, 1981. In that case, the corporation would make estimated tax payments in two $6,000 installments: On September 15, 1981 and January 15, 1982.

Example 3 - The corporation has a fiscal year beginning April 1, 1981 and ending March 31, 1982. It first meets the requirement for making estimated tax payments on August 15, 1981, with $6,000 in estimated tax. The estimated tax must be paid in three $2,000 installments: On September 15, 1981, December 15, 1981, and on April 15, 1982.

c. Amended Estimated Tax (s. 71.22 (5), Wis. Stats.)

If, after computing and making estimated tax payments, a corporation determines that its estimated tax is substantially larger or smaller than originally estimated, it should recompute the tax before the next installment to determine the amount of its remaining payments.

Example - A calendar year corporation determined that its estimated tax for 1981 is $20,000. The corporation pays the first two installments on March 15 and June 15 in the amount of $5,000 each (25% of $20,000). On August 5, 1981 the corporation discovers that its estimated tax can reasonably be expected to be $40,000. The installments payable on September 15, 1981 and January 15, 1982 will be $15,000 each, computed as follows:

Recomputed estimated tax	$40,000
Less: Prior estimated tax payments made	10,000
Unpaid Balance	$30,000
Amount of remaining installment payments (unpaid balance $30,000) divided by number of remaining installments (2)	$15,000

d. Failure to Make Required Payments — Addition to the Tax (s. 71.22(8), (9), (10) and (11), Wis. Stats.)

A corporation may be assessed an amount as "addition to the tax" for failure to pay an installment of estimated tax on or before its due date. The rate is 9% per year on the amount of underpayment for the period of underpayment.

The underpayment is the difference between the installment payment (if any) and the amount of the installment that would be required if the estimated tax were equal to 80% of the tax that would be due on the corporation's tax return for the year.

Exceptions to Addition to the Tax: A corporation will not be subject to the "addition to the tax" for any installment if the total amount paid by each due date equals or exceeds the amount that would have been required to be paid on or before that due date if the estimated tax were the lowest of the following amounts:

Exception 1. An amount equal to the tax shown on the corporation's return for the preceding year, provided a return covering a period of 12 months and showing a tax liability was filed for that year (s. 71.22(10) (a), Wis. Stats.); or

Exception 2. An amount equal to the tax computed at the current year's rates, but otherwise on the basis of the return of the corporation for and the law applicable to the preceding year (s. 71.22(10) (b), Wis. Stats.); or

Exception 3. An amount equal to 80% of the tax for the year, computed by annualizing taxable income for the months preceding an installment date. (To annualize income, the corporation should multiply its taxable income for the period by 12 and divide the resulting amount by the number of months in the period.) (s. 71.22(10) (c), Wis. Stats.); or

Exception 4. An amount computed by multiplying 90% times the net tax determined on the basis of actual taxable income for periods starting from the first of the year to the end of the mont' preceding each month in which an installment is payable (s. 71.22(11), Wis. Stats.).

CAUTION: Corporations wishing to avoid the addition to the tax by the application of any of the four exceptions must timely pay current year installments at least equal to the amounts computed under the exceptions being claimed. This is true whether or not a declaration was required to be filed for the prior year.

Also exceptions 1 and 2 are not available to corporations that failed to file a return for the preceding taxable year.

The following are examples of the above four exceptions:

Example of Exception 1 - The corporation filed a 1979 return which was for the entire 12 months and reported income resulting in a 1979 tax liability of $1,200. The 1980 tax liability was $10,000 and no tax credits were claimed. Although the tax liability for 1980 was $10,000, the corporation made declaration of estimated tax payments for 1980 of only $300 for each of the four installment periods. Since a 1979 return covering a period of 12 months was filed and timely made 1980 payments equaled the tax shown on the 1979 return of $1,200, no addition to the tax is due, even though the corporation had a balance due of $8,800 with the 1980 return.

Example of Exception 2 - The corporation ı ported a taxable income for 1979 of $10,000. The gross tax on this income was $570 and a $200 sales tax credit was claimed resulting in a net tax of $370.

The 1980 return shows a $12,000 tax liability and no 1980 credits are claimed.

Since the corporate tax rates did not change from 1979 to 1980,the corporation could have paid as little as $370 in timely 1980 installments and no addition to the tax would be due.

Example of Exception 3 - The corporation earned $4,000 for the first two months of its 1980 taxable year, $8,000 for the first five months, $12,000 for the first eight months, and $30,000 for the entire 1980 taxable year. There are no credits allowable for either farmland credit or for the manufacturer's sales tax credit and the 1980 tax liability is $2,150.

If the corporation wishes to rely on exception 3 to ensure that no addition to the tax will be due for the 1980 taxable year, the following procedure should be followed:

EARNING PERIOD — FIRST	2 Mos.	5 Mos.	8 Mos.
Actual Income	$ 4,000	$ 8,000	$12,000
Annualization Factor	12/2	12/5	12/8
Annualized Income	$24,000	$19,200	$18,000
Tax on Annualized Income	$1,676.00	$1,296.80	$1,202.00

80% of Annualized Tax	1,340.80	1,037.44	961.60
Required Percentage	25%	50%	75%
Required Cumulative Payments	$ 335.20	$ 518.72	$ 721.20

No addition to the tax will be due for the 1980 taxable year, provided the total of all payments made are at least equal to $335.20 as of the due date of the first installment, $518.72 as of the second installment, $721.20 as of the third installment and $1,720 (80% of the 1980 tax liability of $2,150) as of the due date of the fourth installment.

Example of Exception 4 - The corporation files returns on a calendar year basis. For the 1980 taxable year, net income was $10,000 at the end of the first two months, $12,000 at the end of the first five months, $20,000 at the end of the first eight months and $28,000 for the entire year. The corporation had no farmland credit or manufacturer's sales tax credit for 1980 and the 1980 net tax liability was $1,992.

The corporation can compute the minimum amount of installment payments required in order to qualify for exception number 4 as follows:

EARNING PERIOD — FIRST	2 Mos.	5 Mos.	8 Mos.
Actual Income for Period	$10,000	$12,000	$20,000
Tax on Actual Income	570	728	1,360
90% of Tax	513	655.20	1,224

The least amount that the corporation may have paid in and qualify for exception 4 is $513 as of the due date of the installment due March 15, 1980, $655.20 as of June 15, 1980, $1,224 as of September 15, 1980 and $1,593.60 (80% of the 1980 tax liability of $1,992) as of January 15, 1981.

e. Use of Form 4U

Form 4U is available to enable corporations to determine if they paid the correct amount of estimated tax by the due date. This form is included in the corporation tax booklets and is also available at any Department of Revenue office.

Form 4U should be completed and attached to Form 4 or Form 5 by corporations having an addition to the tax or when claiming exceptions to the addition to the tax.

SALES/USE TAX

I. Boarding Animals

Facts & Question: A kennel trains dogs which the kennel also boards for 6 to 8 weeks until such time as the dogs are properly trained. The customer is billed a monthly training fee of $150 to $200, depending on the type of dog, which fee includes the cost of boarding the dog. The normal boarding fee is $3.75 per day. Is any part of the $150-$200 training fee taxable as a charge for boarding the dog under s. 77.52 (2) (a) 10, Wis. Stats.?

Answer: Yes, the portion of the monthly training fee equal to the normal boarding fee for the dogs ($3.75 per day) is a taxable service even though it is not separately itemized on the customer's bill.

II. Fuel Used in a Cottage, Mobile Home or Travel Trailer

Facts & Question: Is propane or other fuel used in a cottage, mobile home or travel trailer, which is used by a family on weekends, exempt from the sales tax?

Answer: No, it is not exempt. Gross receipts from sales of fuel oil, propane, coal, steam and wood used for fuel in a person's "permanent residence" are exempt from the sales tax all twelve months of the year. This exemption became effective July 1, 1979. However, in the situation described above, the propane or other fuel is not used in the person's permanent residence as required under s. 77.54 (30) (b), Wis. Stats., therefore the sales tax exemption does not apply.