

WISCONSIN TAX BULLETIN

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ADDRESS CORRECTION

In November 1986, a few practitioners received copies of the 1987 Form 1-ES, Declaration of Estimated Income Tax for Individuals, which contained an incorrect address. The incorrect address given on these forms was P.O. Box 2943 and zip code 53201-2943.

The correct address is:

Wisconsin Department of
Revenue
P.O. Box 2942
Madison, WI 53201-2942

Please note the change in the post office box number and zip code to 2942.

If you received a 1987 Form 1-ES with an incorrect address, please correct it. Estimated tax payments must be mailed to the correct address for a taxpayer to receive proper credit for such payments.

All 1987 Forms 1-ES the Department of Revenue mails to individuals as well as the Forms 1-ES available in department offices, reflect the correct address.

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vent the supply of forms at any office from being quickly depleted and unavailable to other persons. In addition, Wisconsin libraries have a copy of Wisconsin Package WI-X which contains copies of most Wisconsin tax forms. Reproductions may be made from Package WI-X. You may also purchase your own copy of Package WI-X (see page 2 of this Bulletin).

Practitioners or other persons requiring larger supplies should write the Wisconsin Department of Revenue, Central Services Section, Post Office Box 8903, Madison, Wisconsin 53708.

ADDITIONAL COUNTIES ADOPT COUNTY SALES AND USE TAX PROVISIONS

Since April 1, 1986, Barron and Dunn Counties have had a county sales and use tax.

Effective April 1, 1987, the following new counties have also adopted the county sales and use tax: Buffalo, Iowa, Jackson, Lincoln, Marathon, Onieda, Rusk, Sawyer, St. Croix and Walworth.

This county tax results from the county boards in these counties approving an ordinance to adopt the tax.

On page 40 of this Bulletin is the December 1986 Tax Report which explains how the county tax affects retailers.

HOW TO OBTAIN WISCONSIN TAX FORMS

During the filing season, small supplies of forms can be obtained from any Department of Revenue office. However, requests will be limited to six copies of any single form. This is necessary to pre-

NEW FOR 1986 — WISCONSIN PACKAGE WI-X

A new package of 1986 Wisconsin tax forms is available. It is titled "Package WI-X" and contains actual size copies of most of the 1986 Wisconsin individual and corporation income tax, inheritance tax, sales tax and withholding tax forms.

The cost is \$5.00 per copy. To purchase copies of Package WI-X, requests indicating the number of copies wanted along with the amount due should be mailed to: Wisconsin Department of Revenue, Shipping and Mailing Section, Post Office Box 8903, Madison, WI 53708.

REMINDER: TWO NEW FORMS FOR 1986

1. Form WI-Z

Form WI-Z is a simplified tax form similar to federal Form 1040EZ. Form WI-Z may be filed by persons who

- file federal Form 1040EZ,
- were Wisconsin residents for all of 1986,
- did not have interest income from U.S. bonds or from state and municipal bonds in 1986,
- do not claim any Wisconsin tax credits other than the Wisconsin renter's and home owner's credits (such as Wisconsin homestead credit),
- will be claimed as a dependent on another person's income tax return, and have less than \$5,200 of total income.

2. Form 1NPR

Nonresidents and part-year residents of Wisconsin must file Form 1NPR. As a result of changes in Wisconsin income tax law, Form 1NPR has been designed to make it easier for those persons to report their Wisconsin income.

CHECKLIST OF MAJOR WISCONSIN LAW CHANGES AFFECTING INDIVIDUAL INCOME AND DEDUCTIONS FOR 1986

- ☒ Married persons may file a Wisconsin joint income tax return.
- ☒ The depreciation deduction and gain or loss on the sale or other disposition of residential real property and certain farm property, placed in service during the 1986 taxable year and thereafter, must be computed under the Internal Revenue Code in effect on December 31, 1980.
- ☒ Certain travel and entertainment expenses allowable under Section 162, 212 or 274 of the Internal Revenue Code are limited or nondeductible for Wisconsin.
- ☒ Certain farm losses allowable for federal tax purposes may not be deductible for Wisconsin tax purposes.
- ☒ The exclusion for federal civil service annuities of \$1,680 may no longer be used for Wisconsin.
- ☒ The first \$1,000 of military pay may no longer be excluded from Wisconsin income.
- ☒ Wisconsin net operating losses incurred in 1980 and thereafter may be carried forward 15 years.
- ☒ Itemized deductions may no longer be used in computing Wisconsin taxable income. Wisconsin now allows an itemized deduction credit.
- ☒ Personal exemption credits may only be claimed for dependents or by those persons who have reached age 65 before the close of the calendar or fiscal year.
- ☒ Married taxpayers may claim the married person's credit if both spouses work.

FEDERAL TAX LAWS ENACTED IN 1986 DO NOT APPLY FOR WISCONSIN FOR 1986

As a result of the Tax Reform Act of 1986 and federal Public Law 99-272, many changes have been made to the Internal Revenue Code for 1986 which may result in a difference between Wisconsin and federal income.

Federal tax laws enacted during 1986 generally may not be used in determining Wisconsin taxable income for 1986. There are two exceptions: (1) any federal law which changes the taxable unemployment compensation required to be included in federal adjusted gross income will apply for Wisconsin, and (2) at the taxpayer's option, any revisions to the federal Internal Revenue Code that relate to the taxation of income derived from participation in the milk production termination program will apply for Wisconsin.

The above two exceptions will only affect 1986 fiscal year taxpayers. No changes have been made to the IRC for unemployment compensation and participation in the milk production termination program that will affect 1986 calendar year taxpayers.

As in prior years, Wisconsin Schedule I should be used to adjust for differences between Wisconsin and federal income. A copy of Schedule I and the instructions begins on page 17 of this Bulletin.

STANDARD DEDUCTION BUILT INTO TAX TABLES FOR 1986

The standard deduction is changed for 1986. For single persons the standard deduction will range from zero to \$5,200 depending on the amount of total Wisconsin adjusted gross income. For married persons filing jointly the standard deduction will range from zero to \$7,200 and for married persons filing separately will range from zero to \$3,420.

Persons filing Wisconsin Form 1, Form 1A, or Form WI-Z will not have to compute their standard deduction, subtract the amount from Wisconsin income

and then determine their tax. Rather, the standard deduction amounts are incorporated into the tax tables of Form 1, Form 1A and Form WI-Z.

Nonresidents and part-year residents, required to file a Wisconsin Form 1NPR, will subtract their standard deduction (found in the standard deduction table of Form 1NPR) from Wisconsin income in computing Wisconsin net income.

DON'T OVERLOOK NEW WISCONSIN CREDIT FOR MARRIED COUPLES WHEN BOTH SPOUSES WORK

Married persons filing a joint Wisconsin income tax return may claim as a credit against Wisconsin net income taxes due, an amount equal to 2.5% of the earned income of the spouse with the lower income. "Earned income" means wages, salaries, tips, other employee compensation and net earnings from self employment allocable to Wisconsin.

The maximum amount of credit is \$450. A marital property agreement transferring income between spouses has no effect in computing earned income. Earned income for Wisconsin tax purposes will not be reduced by IRA contributions, employee business expenses and so on.

Remember, to claim the married persons' credit for Wisconsin, both spouses must work.

FORMS 1099-G REMINDER

Wisconsin individual taxpayers who received Wisconsin income tax refunds during 1986 will be mailed information returns (Forms 1099-G) in January 1987. Federal law requires the Department of Revenue to provide Forms 1099-G to taxpayers who claimed itemized deductions on their 1985 federal income tax returns and received state income tax refunds during 1986.

INDIVIDUAL'S 1987 ESTIMATED TAX PAYMENT REQUIREMENTS

Estimated income tax payments are tax deposits made during the year to prepay the tax that will be due when the individual's income tax return is filed. If the individual does not make estimated tax payments when required, a penalty may be assessed.

Every individual, or married couple who files a joint income tax return, is required to file a 1987 declaration of Wisconsin estimated tax (Form 1-ES) if the individual or couple expects to owe \$100 or more of income tax with their 1987 income tax return. Residents, nonresidents, trusts, and estates are required to file declarations of estimated tax. However, an estate in its first taxable year is not required to make estimated tax payments.

Every individual or married couple who filed a 1986 Form 1-ES, will be mailed a 1987 Form 1-ES during the last week of January 1987. Each form will be preprinted with the persons name, address, and social security number. Taxpayers are encouraged to use the preprinted forms to reduce the chance for error in posting estimated tax payments and to reduce the State's costs in processing the forms. Corrections can be made to the preprinted forms by lining out the incorrect information and printing in the correct information.

Taxpayers who did not receive preprinted forms may obtain Form 1-ES and instructions by calling any Department of Revenue office or by writing: Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708.

DON'T FORGET WISCONSIN MINIMUM TAX

Wisconsin has had a minimum tax since 1981. For the years 1981 through 1985, it was a tax imposed on persons, trusts, and estates who had tax preference items in excess of \$10,000. The most common tax preference items are the long-term capital gain deduction and accelerated depreciation on real property and leased personal property.

Beginning in 1986, the Wisconsin minimum tax is based on the federal alternative minimum tax. The tax applies to persons, trusts, and estates, and is equal to 55% of the federal alternative minimum tax owed. The Wisconsin minimum tax must be added to the Wisconsin income tax otherwise due.

CLAIMING CREDIT FOR TAXES PAID TO OTHER STATES

The documentation required to be attached to an income tax return to claim credit for taxes paid to other states has been changed. Taxpayers are required to submit with their Wisconsin return a copy of the other state tax return and wage statement(s). It is no longer necessary to submit copies of cancelled checks to substantiate taxes paid to other states or a *certified* copy of the other state tax return with the Wisconsin tax return.

Changes will be made to section Tax 2.955, Wis. Adm. Code, to reflect this new policy.

RESIDENCE QUESTIONNAIRE REVISED

The residence questionnaire (Form I-827) has been revised as of July 1986. The introductory paragraph has been expanded to include a more specific definition of domicile and certain questions have been rearranged.

Individuals claiming a change of domicile from Wisconsin to another state should file a residence questionnaire. The residence questionnaire should be attached to the Wisconsin income tax return filed for that year. For example, if a Wisconsin domicile is abandoned in the 1986 calendar year, the residence questionnaire should be attached to the 1986 Wisconsin income tax return filed on or before April 15, 1987.

A ruling may be obtained from the Wisconsin Department of Revenue regarding whether an individual is considered to be domiciled in Wisconsin prior to an

individual taking specific steps to abandon his/her domicile. In letter form, an individual should indicate what steps he/she intends to take to abandon his/her domicile. The residence questionnaire (Form I-827) may serve as a guide in drafting the request for a ruling. Such requests should be sent to: Wisconsin Department of Revenue, Audit Bureau, ATTN: Domicile Unit, P.O. Box 8906, Madison, Wisconsin 53708.

NEW PUBLICATION FOR MARRIED PERSONS FILING SEPARATE RETURNS AND DIVORCED PERSONS

The Department of Revenue publishes a variety of informational materials called "publications." These are pamphlets which provide detailed information about specific areas of Wisconsin tax laws.

New this year is Publication 109, Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1986. This publication will help such taxpayers in preparing their 1986 Wisconsin income tax returns. A copy of Publication 109 begins on page 22 of this Bulletin.

For 1986, the following publications may also be obtained at any of the Department's offices.

Number	Name
102	1986 Wisconsin Tax Treatment of Tax-Option Corporations and Their Shareholders
103	Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates and Trusts
104	Wisconsin Taxation of Military Personnel
109	Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1986
200	How Electrical Contractors Determine Their Wisconsin Sales and Use Tax
201	Wisconsin Sales and Use Tax Information
202	How Wisconsin Sales and Use Tax Applies to Motor

	Vehicle Sales, Leases and Repairs
203	Sales and Use Tax Information for Manufacturer's
300	Alcohol Beverage Laws Relating to Underaged Persons
500	Tax Guide for Wisconsin Political Organizations and Candidates
501	Field Audit of Wisconsin Tax Returns
503	Wisconsin Farmland Preservation Tax Credit for 1986
504	Directory of Wisconsin Department of Revenue
508	Wisconsin Tax Requirements Relating to Nonresident Entertainers

YEAR-TO-DATE FIGURES FOR PROPERTY TAX DEFERRAL LOAN PROGRAM

As of August 31, 1986, the Department of Revenue has received 368 applications for these loans available to individuals who are age 65 or older to help them pay the property taxes on their homes. The dollar amount of loans outstanding is \$324,537.56 with an average loan amount of \$1,134.75.

CRIMINAL VIOLATIONS OF STATE INCOME TAX LAW

A Manitowoc County man has been ordered to serve probation and serve sixty days in jail for criminal violation of the Wisconsin state income tax law. Donald E. Stenz, Newton, Wisconsin was placed on two years probation by Circuit Judge Allan J. Deehr, Manitowoc County Circuit Court, Branch 1. Stenz pled no contest to one count of failing to file a state income tax return. Stenz was charged with failing to file a state income tax return on gross income of more than \$20,000 for 1983. Under the conditions of probation, Stenz must file state income tax returns for 1979 through 1985 by February 1, 1987, file 1986 and 1987 returns when due and pay all taxes due. Stenz must also pay \$1,743 cost of prosecution.

Leonard S. Svec, 704 Walnut Street, Eau Claire, was sentenced in Eau Claire County Circuit Court, Branch I, by Circuit Court Judge Thomas H. Barland on three counts of failing to file state income tax returns. Judge Barland sentenced Svec to six months in jail on each count to be served consecutively and fined him \$500 on each count in addition to \$6,104 for cost of prosecution. Svec was charged with failing to file state income tax returns on gross income of more than \$12,000 for 1982, \$11,000 for 1983 and \$14,000 for 1984.

Svec is affiliated with such well known tax protest groups as the Wild River Patriots and the Posse Comitatus. Svec tried to hide his income by depositing funds from his business into the account of the Life Science Church of the Truth, of which he was local leader, and then withdrawing money from that account for personal use.

Failure to file a Wisconsin state income tax return is a crime punishable by a fine of not more than \$500 or imprisonment not to exceed six months or both for income tax returns due prior to July 20, 1985. Beginning July 20, 1985, the criminal penalty is a \$10,000 fine or imprisonment not to exceed nine months or both. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the additional taxes, penalties and interest due follows conviction for criminal violations.

ACCOUNTANT CHARGED WITH HOMESTEAD FRAUD

A West Allis accountant has been ordered, under conditions of a two year probationary period, to pay a \$5,000 fine and serve thirty days in jail for a criminal violation of the Wisconsin homestead credit law.

Phillip Wrobbe, 2954 South 92nd Street, West Allis, who operates the Phil Wrobbe Service Corporation, was ordered to serve two years probation by Circuit Judge Daniel R. Moeser on one count of filing a false homestead credit claim with the Wisconsin Department of

Revenue. Wrobbel must also make restitution of \$3,309.47, in addition to the \$5,000 fine. He pled guilty to the criminal charge on May 29, 1986.

Filing a false Wisconsin homestead credit claim or assisting in the preparation or filing of a false claim is a felony punishable by a maximum fine of \$10,000 or imprisonment for 5 years or both together with the cost of prosecution.

JAIL TERM FOR CRIMINAL VIOLATION OF WISCONSIN HOMESTEAD CREDIT LAWS

A Milwaukee woman was ordered to serve two years in jail and ten years probation for violation of the Wisconsin homestead credit tax law. Mary Thomas was sentenced in Milwaukee County Circuit Court, Branch 25, by Circuit Judge Ralph G. Gorenstein on three counts of filing false Wisconsin homestead credit claims. She will have work release privileges. Under the conditions of probation, Thomas must make restitution of \$23,180 which had been paid by the State of Wisconsin on false homestead credit claims. Thomas pled guilty to the charges.

NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under Parts A and B, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their state in the process as of December 15, 1986. Part C lists new rules and amendments which were adopted in 1986. Part D lists emergency rules now in effect. ("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

A. Rules at Legislative Council Rules Clearinghouse

- 2.395 Sales factor option-NR
- 2.99 Minimum tax—individuals, estates and trusts-NR
- 3.03 Dividends received, deductibility of-A
- 3.08 Retirement and profit-sharing payments by corporations-A
- 3.10 Salesmen's and officers' commissions, travel and entertainment expense of corporations-R
- 3.12 Losses on account of wash sales by corporations-A
- 3.37 Depletion of mineral deposits by corporations-A
- 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron-A
- 3.47 Legal expenses and fines—corporations-R
- 3.54 Miscellaneous expenses not deductible—corporations-A
- 3.81 Offset of occupational taxes paid against normal franchise or income taxes-A
- 3.91 Petition for redetermination-A
- 3.92 Informal conference-A
- 3.93 Closing stipulations-A
- 3.94 Claims for refund-A

B. Rules at Legislative Standing Committees

- 1.06 Application of federal income tax regulations for persons other than corporations-A
- 1.10 Depository bank requirements for withholding, motor fuel, general aviation fuel and special fuel tax deposit reports-A
- 1.13 Power of attorney-A
- 2.01 Residence-A
- 2.03 Corporation returns-A
- 2.05 Information returns, forms 8 for corporations-A
- 2.08 Returns of persons other than corporations-A
- 3.07 Bonuses and retroactive wage adjustments paid by corporations-A

C. Rules Adopted in 1986 (in parentheses is the date the rule became effective)

- 2.045 Information returns; form 9c for employers of nonresident entertainers, entertainment corporations or athletes-R (1/1/86)
- 3.22 Real estate and personal property taxes of corporations-R (1/1/86)
- 3.30 Depreciation and amortization, leasehold improvements: corporations-R (1/1/86)
- 3.31 Depreciation of personal property of corporations-R (1/1/86)
- 3.61 Mobile home monthly parking permit fees-R (1/1/86)
- 11.001 Definitions and use of terms-A (11/1/86)
- 11.32 "Gross receipts" and "sales price"-A (11/1/86)
- 11.68 Construction contractors-A (11/1/86)
- 11.71 Computer industry-NR (3/1/86)
- 11.83 Motor vehicles-A (3/1/86)
- 11.83 Motor vehicles-A (11/1/86)
- 11.92 Records and record keeping-A (11/1/86)
- 11.95 Retailer's discount-A (11/1/86)
- 11.97 "Engaged in business" in Wisconsin-A (11/1/86)
- 17.01 Administrative provisions-NR (9/1/86)
- 17.02 Eligibility-NR (9/1/86)
- 17.03 Application and review-NR (9/1/86)
- 17.04 Repayment of loan-NR (9/1/86)

D. Emergency Rules

- 2.395 Sales factor option-NR

ISI&E DIVISION OFFERS TAXPAYER ASSISTANCE

During the 1987 filing season (January through April 15th), the division's auditors and tax representatives will be available to answer questions.

In the department's larger offices, assistance is provided on a daily basis (Monday through Friday). Assistance in other offices generally is available on Mondays only, although there are exceptions for Ashland and Janesville as noted below.

Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
* Appleton	265 W. Northland	(414) 735-5001	7:45-4:30
* Eau Claire 718	W. Clairemont	(715) 836-2811	7:45-4:30
* Green Bay	200 N. Jefferson St.	(414) 436-4230	7:45-4:30
* Kenosha	5500 8th Ave.	(414) 656-7100	7:45-4:30
* LaCrosse	620 Main	(608) 785-9720	7:45-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
Madison	212 E. Washington Ave.	NONE	8:00-4:15
* Milwaukee	819 N. Sixth St.	(414) 224-4000	7:45-4:30
* Racine	616 Lake Ave.	(414) 636-3711	7:45-4:30
* Waukesha	141 N.W. Barstow St.	(414) 521-5310	7:45-4:30

Offices Providing Assistance on Mondays Only (unless otherwise noted)

Ashland	Courthouse	NONE	10:00-2:00 (a)
Baraboo	1007 Washington	(608) 356-8973	7:45-4:30
Beaver Dam	211 S. Spring St.	(414) 887-8108	7:45-4:30
Cedarburg/Grafton	220 Oak Street	(414) 377-6700	7:45-4:30
Elkhorn	300 S. Lincoln St.	(414) 723-4098	7:45-4:30
Fond du Lac	160 S. Macy St.	(414) 929-3985	7:45-4:30
Hayward	221 Kansas Ave.	(715) 634-8478	7:45-11:45
Hudson	759 Sommer St., North	(715) 386-8224	7:45-4:30
Janesville	101 E. Milwaukee	(608) 755-2750	7:45-4:30 (b)
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-4:30
Manitowoc	1314 Memorial Dr.	(414) 683-4152	7:45-4:30
Marinette	Courthouse	(715) 735-5498	9:00-12:00
Marshfield	630 S. Central Ave.	(715) 387-6346	7:45-4:30
Monroe	1220 16th Ave.	(608) 325-3013	7:45-4:30
Oshkosh	404 N. Main St.	(414) 424-2100	7:45-4:30
Park Falls	1114 S. 4th Ave.	(715) 762-2160	7:45-11:45
Rhinelanders	Sunrise Plaza	(715) 362-6749	7:45-4:30
Rice Lake	9 W. John St.	(715) 234-7889	7:45-4:30
Shawano	420 E. Green Bay St.	(715) 526-5647	7:45-4:30
Sheboygan	504 S. 14th St.	(414) 459-3101	7:45-4:30
Superior	Courthouse	(715) 394-0204	8:00-4:30
Tomah	City Hall	(608) 372-3256	8:00-12:00
Watertown	415 E. Main St.	(414) 261-7700	7:45-4:30
Waupaca	201 1/2 S. Main St.	(715) 258-9564	7:45-11:45
Wausau	210 McClellan St.	(715) 847-5380	7:45-4:30
West Bend	120 N. Main St.	(414) 338-4730	7:45-4:30
Wisconsin Rapids	1681 Second Ave. S.	(715) 421-0500	7:45-4:30

(a) Tuesday only

(b) Monday through Wednesday

*Open during noon hour

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 last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: (1) "the department appealed," (2) "the department has not appealed but has filed a notice of non-acquiescence" or (3) "the department has not appealed" (in this case the department has acquiesced to Commission's decision).

The following decisions are included:

Individual Income Taxes

Edward J. Beuth (p. 7)
Constitutionality of taxes

Wendy L. LaBadie (p. 7)
Basis of assets

Harold G. Wines (p. 7)
Pensions

Corporation Franchise/Income Taxes

Castle Corporation (p. 8)
Installment sales

McHenry Sand & Gravel Co., Inc. (p. 8)
Business loss carryforward

Spacesaver Corporation (p. 8)
Wives' travel expense

Sales/Use Taxes

Foley & Lardner (p. 9)
Appeals - petition for review

Hayward Community School District and Vonasek & Schieffer, Inc. (p. 9)
Construction contractors - exempt entity construction

Gregory Vallee (p. 9)
Successor liability

INDIVIDUAL INCOME TAXES

Constitutionality of taxes. *Edward J. Beuth vs. Wisconsin Department of Revenue* (Court of Appeals, District I,

May 23, 1986). Edward Beuth appealed from the trial court's judgment affirming a Wisconsin Tax Appeals Commission decision.

The taxpayer filed an unsigned 1982 state tax return that reported no income. The Wisconsin Department of Revenue assessed \$1,773 in income tax against him. Beuth contends that because the department had no jurisdiction to tax him, the Circuit Court erred in affirming the assessment. He claims that the department does not have the authority to tax "natural persons" and that once he challenged the assessment, the department was required to prove its jurisdiction over him. Beuth further argues that he was denied due process because the department deprived him of property without notice and opportunity to be heard and because he did not have a jury trial. Finally, in support of his claim that the department may not tax him, Beuth makes an unintelligible fifth amendment argument.

The Court of Appeals affirmed the judgment of the Circuit Court.

The taxpayer has not appealed this decision.



Basis of assets. *Wendy L. LaBadie vs. Wisconsin Department of Revenue* (Court of Appeals, District I, August 22, 1986). Wendy L. LaBadie appealed an order affirming a decision and order of the Wisconsin Tax Appeals Commission. (See WTB 42 and 46 for a summary of the Wisconsin Tax Appeals Commission and Circuit Court decisions.)

The sole issue is whether the trial court and the Commission erred in affirming the department's refusal to refund LaBadie's claimed overpayment of income taxes on capital gains from the sale of commercial stock shares that appreciated during a period she was not a resident of Wisconsin.

The Court of Appeals reasoned that LaBadie's alleged "gain" on her stock during the period of her nonresidency was fictitious. It is true that her stock did accrue some gain while LaBadie was a nonresident. However, this gain was not

realized, and hence was not subject to taxation, until the stock was sold. LaBadie sold the stock upon regaining her Wisconsin residency. Because she realized gain on the stock sale while she was a resident, the department could properly tax that gain.

The Court of Appeals affirmed the order of the Circuit Court affirming the department and the Commission.

The taxpayer appealed this decision to the Supreme Court. The Supreme Court denied the taxpayer's petition for review.



Pensions. *Harold G. Wines vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 27, 1986). The issues to be decided by the Wisconsin Tax Appeals Commission were as follows:

A. Whether the pension payments that the taxpayer received from the First Wisconsin Trust Company's pension fund in 1982 are to be included in his gross income as provided for in s. 71.03(2)(d), Wis. Stats.

B. Whether the Wisconsin Tax Appeals Commission has authority to determine s. 71.03(2)(d), Wis. Stats., is constitutional.

The taxpayer retired from the First Wisconsin Trust Company on August 31, 1969. Upon his retirement, the taxpayer began receiving monthly pension checks from the First Wisconsin Trust Company's pension fund, and the taxpayer had received the checks each month since his retirement. The taxpayer was a member of the Wisconsin Trust Company's pension plan before December 31, 1963, and had a vested interest in it before that date.

The taxpayer timely filed a Wisconsin resident individual income tax return for himself and his wife for the 1982 income year with the department. Included in the gross income shown on the taxpayer's 1982 income tax return was his pension from the First Wisconsin Trust Company in the amount of \$6,443. On March 8, 1985, the taxpayer prepared an amended income tax return for 1982 and filed it with the Wisconsin Department

of Revenue. The taxpayer's amended 1982 return showed a refund of \$365 due to him. The amount of refund claimed resulted from the taxpayer's exclusion from his taxable income of his First Wisconsin Trust Company pension of \$6,443.

The Commission concluded that all income received by a Wisconsin resident is subject to taxation unless specifically exempted by statute. There is no exemption provided in the Wisconsin Statutes which exempts from income taxation the pension the taxpayer received in 1982 from the First Wisconsin Trust Company. Statutes enacted by the legislature are deemed to be constitutional until declared otherwise by a court of competent jurisdiction. The Commission is a quasi-judicial state agency, not a court of competent jurisdiction and does not have the jurisdiction to rule on constitutional issues.

The taxpayer has not appealed this decision.

□

CORPORATION FRANCHISE/INCOME TAXES

Installment sales. *Castle Corporation vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 27, 1986). The issue for determination by the Commission is whether the installment method of reporting is allowed for Wisconsin tax purposes on the taxpayer's 1982 sale of farmland.

The taxpayer acquired certain farmland, 126 acres more or less, on September 19, 1980, for which its cost or other basis was \$250,433.34. The taxpayer sold that parcel of real estate on February 4, 1982 for a selling price of \$744,072 (corrected from the reported \$750,000 by stipulation of the parties). The taxpayer computed its gain on the installment method in the amount of \$184,117.35. The taxpayer received payments during the year 1982 of \$274,802.40. The payments received were payments on principal, exclusive of interest payments.

The department disallowed the taxpayer's deferral of \$319,349.31 stating that the

installment method of reporting the gain on the sale of assets is allowed only if the payments received in the year of sale do not exceed 30% of the selling price, citing Wis. Adm. Code Tax 2.19.

The Commission concluded that long-standing, formally promulgated administrative rules have the effect of law and must be enforced by the Commission. Tax 2.19 is such a rule. The taxpayer was not entitled to the installment method in reporting the gain it received in 1982 from the sale of its real estate because it received more than 30% of the selling price in the year of sale. The department acted properly in disallowing the taxpayer's deferral of \$319,349.31.

The taxpayer has appealed this decision to the Circuit Court.

□

Business loss carryforward. *Wisconsin Department of Revenue vs. McHenry Sand & Gravel Co., Inc.* (Circuit Court of Dane County, July 29, 1986). The issue in this case arose from an appeal from a hearing at which the Wisconsin Tax Appeals Commission determined that the department erroneously disallowed a loss carryforward on a franchise tax assessment against the taxpayer. At issue is whether Wisconsin law admits of any distinction between loss carryforwards involving mergers of multiple corporations and loss carryforwards involving mergers of single corporations.

In March 1976, the stockholders of the Illinois corporation, McHenry Sand & Gravel, voted to form a subsidiary corporation, Charles S & G Merging Corporation, for purposes of forming a Delaware corporation. At the first meeting of the Charles S & G Merging Corporation, it was voted to merge the Illinois corporation, McHenry Sand & Gravel, into the Delaware corporation. Charles S & G Merging Corporation was renamed McHenry Sand & Gravel, a Delaware corporation. McHenry Sand & Gravel, an Illinois corporation, ceased to do business as of March 29, 1976. In May 1976, all stockholders of McHenry Sand & Gravel, an Illinois corporation, exchanged all stock held in the Illinois corporation for stock in McHenry Sand & Gravel, a Delaware corporation. All

stockholders in the Illinois corporation continued to be stockholders in the Delaware corporation. The board of directors and officers of the Illinois corporation immediately prior to merger were the same as those of the Delaware corporation immediately following the merger. The merging of the Illinois corporation with the Delaware corporation was the legally necessary means to obtain a more favorable tax climate than existed in Illinois.

In November 1981, the department issued an assessment denying the taxpayer a net business loss carryforward for its fiscal years 1978 and 1979, based on a loss sustained by its predecessor Illinois corporation in fiscal 1974. The Commission reversed the department's assessment against the taxpayer, thus allowing the loss carryforward.

The Circuit Court found that the Commission's decision constitutes an error of law. Therefore, the Circuit Court ordered that the decision of the Wisconsin Tax Appeals Commission is reversed. The taxpayer is denied a net business loss carryforward for its fiscal years 1978 and 1979.

The taxpayer has not appealed this decision.

□

Wives' travel expense. *Spacesaver Corporation vs. Wisconsin Department of Revenue* (Circuit Court of Jefferson County, May 8, 1986). Spacesaver Corporation appealed from an order of the Wisconsin Tax Appeals Commission dated February 12, 1985 affirming the department's action disallowing deductions for the expenses of wives attending Spacesaver sponsored sales conventions in calendar years 1977 through 1981. (See WTB 42 for a summary of the Tax Appeals Commission's decision.)

The only issue before the Circuit Court was whether the taxpayer may deduct as ordinary and necessary business expenses the expenses for wives of employees of the taxpayer who attended the taxpayer's national sales conferences in light of s. 71.04(2)(a), Wis. Stats.

The taxpayer is a Wisconsin corporation with principal offices in Fort Atkinson,

Wisconsin. The company manufactures and sells high density storage, a system of movable shelves that maximizes utilization of file storage space. Most of Spacesaver's sales are made through franchised area contractors in the United States and Canada. Most of the franchisees are small businesses with family members involved in the business. The taxpayer holds sales conferences annually, with Spacesaver personnel and certain wives acting as hosts. As many franchisees and wives as possible are invited to attend the meetings, and franchisees have an obligation to attend. The company cultivates an atmosphere that treats the contractor and his wife as a unit because the company believes with good reason that rapport between spouses is essential to a productive business.

The meetings are two and a half day affairs. Wives participate mostly in social and vacation type activities, although wives of Spacesaver personnel assist with other facets of the convention. The latter assistance appears incidental to the primary role of entertaining contractors' wives at fashion shows and sightseeing tours. Although the taxpayer insists wives are not there to vacation, their roles appear to be more vacation oriented, or so the Commission found, and so it could have found from the evidence presented.

The Circuit Court affirmed the decision of the Commission.

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

□

SALES/USE TAXES

Appeals — Petition for review. *Foley & Lardner vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, July 24, 1986). Foley & Lardner appealed a judgment affirming a Wisconsin Tax Appeals Commission order dismissing its petition for review. The issue is whether the Commission erred in concluding that Foley & Lardner did not file a petition for redetermination of the Wisconsin Department of Revenue's denial of its claim for refund.

The taxpayer filed a claim for refund with the department for sales taxes paid.

It contends that on September 18, 1984, the department stated that the claim was denied. The department sent forms to the taxpayer so that it could file corrected reports for the period in question. The taxpayer mailed the corrected reports to the department on October 8, 1984. On October 30, 1984, the department wrote the taxpayer that its refund claim was denied and stated that the taxpayer could file a written objection within sixty days of receipt of the letter. The taxpayer filed a petition for review with the Tax Appeals Commission on December 20, 1984.

The taxpayer argues that either its October 8, 1984, letter accompanying the completed forms, or its petition for review filed with the Tax Appeals Commission, is a petition for redetermination.

The Court of Appeals concluded that the Commission's decision had a rational basis, and therefore affirmed that decision.

The taxpayer has not appealed this decision.

□

Construction contractors — exempt entity construction. *Hayward Community School District and Vonasek & Schieffer, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 27, 1986). This matter was before the Commission on a remand order dated July 1, 1986 from Dane County Circuit Court.

On or about July 10, 1980, the Hayward Community School District (HCSD) entered into a contract with Vonasek & Schieffer, Inc. (V&S) as general contractors to build a new Hayward High School. V&S agreed that all material to be used in construction of the Hayward High School would be purchased in compliance with the purchase procedure mandated by HCSD. HCSD did not utilize a purchase process under which purchase orders and payments would be directly issued by the school district because it lacked the specific expertise necessary to make the purchases. The purchase orders for materials to build the school were issued by V&S and not HCSD.

On October 5, 1982, the department issued a determination of sales and use tax due to V&S with respect to materials purchased for the Hayward High School. The taxpayers maintain that an agency relationship existed between HCSD and V&S, thus entitling V&S to the exemption from tax contained in s. 77.54(9a), Wis. Stats.

The Commission concluded Vonasek & Schieffer, Inc., not Hayward Community School District, was the builder or construction contractor for the Hayward High School and is not entitled to the exemption from tax afforded school districts contained in s. 77.54(9a), Wis. Stats. The construction contract entered into between Vonasek & Schieffer and Hayward Community School District and its implementation did not create an agency relationship which would allow application of the exemption contained in s. 77.54(9a), Wis. Stats. Vonasek & Schieffer, Inc., was the consumer of the materials it purchased to build the Hayward High School. Sales of building materials to contractors or subcontractors used in the construction of buildings or structures or the alteration, repair or improvement of real property for exempt entities are subject to tax.

The taxpayer has appealed this decision to the Circuit Court.

□

Successor liability. *Gregory L. Vallee vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 27, 1986). The issue for determination by the Commission is whether the taxpayer had successor liability as a purchaser of certain business equipment of Egg Plant, Inc. for unpaid sales tax under provisions of s. 77.52 (18), Wis. Stats.

The business known as Egg Plant, Inc. (a/k/a Dragonwood Pub & Cafe) was given an offer to purchase under date of February 16, 1983, by Gregory L. Vallee for the purchase of the tavern and restaurant business at 305 West Johnson Street, Madison, Wisconsin. The seller, Egg Plant, Inc., under date of February 16, 1983, submitted a counter-offer to the taxpayer for the purchase of business assets and the business opportunity known as the Egg Plant, Inc., a/k/a

Dragonwood Pub & Cafe, which was accepted by the taxpayer. On April 13, 1983, the seller, Egg Plant, Inc., and the buyer, Gregory L. Vallee, closed the transaction and the taxpayer purchased the business assets of the seller, Egg Plant, Inc., pursuant to the closing statement and inventory taken by the buyer as of April 12, 1983.

On April 5, 1983, Gregory L. Vallee, as owner of the Dragonwood Pub & Cafe, applied for a Wisconsin Department of Revenue seller's permit. The department issued seller's permit number 354010 to the taxpayer on April 6, 1983 for said business.

On September 9, 1983, the former owner, Egg Plant, Inc., was issued an assess-

ment of additional sales and use tax for the period May 1982 through February 1983 by the department based upon information furnished to the department by the former owner. On April 13, 1984, the former owner of the business Egg Plant, Inc. was issued a notice of assessment of additional sales and use tax for April 1983 regarding the sale of the business assets to the taxpayer. Gregory L. Vallee, purchaser, and the seller, Egg Plant, Inc., did not request a clearance certificate pursuant to s. 77.52(18), Wis. Stats.

The Commission concluded Gregory L. Vallee was successor to the seller's business under s. 77.52(18), Wis. Stats., and s. Tax 11.91(1)(a), Wis. Adm. Code. At the time of sale of the business to the

taxpayer, the seller was liable for unpaid sales tax for the period under review. Not having received from the seller a receipt from the department that all amounts of sales tax had been paid, or a certificate stating that no amount was due pursuant to s. 77.52(18), Wis. Stats., the taxpayer's failure to withhold from the purchase price an amount sufficient to cover this liability renders him liable for that amount. The department is not estopped from assessing such tax.

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.)

The following Tax Releases are included:

Individual Income Taxes

1. Interest Income from Bonds Issued by Wisconsin Housing Finance Authority (p. 10)
2. Reinvestment of Condemnation Awards (p. 10)
3. Wisconsin Net Operating Loss Carryover (p. 11)

Corporation Franchise/Income Taxes

1. Payroll Factor - Section 401(k) Earnings (p. 12)

Sales/Use Taxes

1. Animal Bedding Purchased by Farmers (p. 13)
2. Claim for Refund of Sales and Use Tax (p. 13)
3. Federal Food Stamp Receipts of Grocers (p. 14)

Farmland Preservation Credit

1. Farmland Credit - Dairy Termination and Conservation Reserve (p. 15)
2. Gross Farm Profits Requirement (p. 15)

INDIVIDUAL INCOME TAXES

1. Interest Income Received from Bonds Issued by the Wisconsin Housing Finance Authority

Statutes: Section 71.05(1)(a)1, 1985 Wis. Stats.

Note: This Tax Release supercedes the Tax Release published in Wisconsin Tax Bulletin 32 titled "Is Interest Income Received from Bonds Issued by the Wisconsin Housing Finance Authority Taxable?"

Facts and Question: Is interest income which an individual receives from bonds issued by the Wisconsin Housing Finance Authority excludable from his or her Wisconsin taxable income.

Answer: Yes. Federal law (42 U.S.C.) provides that interest income received from an obligation of a Housing Authority is exempt from federal income tax. Because this interest is not included in the federal adjusted gross income starting point used for Wisconsin tax purposes, it is not included in Wisconsin taxable income unless an add modification is provided for in the Wisconsin Statutes. The only add modification Wisconsin law provides in regard to interest is one that pertains to interest income excluded from federal income under section 103 of the Internal Revenue Code (IRC). Interest income received from a Housing Authority is not excluded from federal income under IRC section 103.

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2. Reinvestment of Condemnation Award

Statutes: Section 71.02(2), 1983 Wis. Stats.

Facts and Question: Section 1033 of the federal Internal Revenue Code allows for postponement of recognition of gain

on an involuntary conversion of property when replacement property is purchased within a specified period of time. If the replacement property costs less than the net proceeds received from the involuntary conversion, the gain must be included in income to the extent of the unexpended portion.

Wisconsin follows this provision of the Internal Revenue Code. However, for taxable years 1985 and prior, Wisconsin law requires that husband and wife report their income separately, using the separate federal return rules.

Example: On August 15, 1983 an Illinois resident received a \$240,000 net condemnation award for his sole interest in involuntarily converted property located in Wisconsin. The property had a basis of \$100,000 and he realized a gain of \$140,000. On April 5, 1985 the taxpayer and his spouse jointly acquired qualified replacement property located in Wisconsin for \$260,000, which exceeded the net condemnation award by \$20,000. No partnership exists between the taxpayer and his spouse; nor did the taxpayer gift one-half of the property to his spouse. (Note: Illinois is not a marital property state.)

May recognition of the \$140,000 gain from the involuntary conversion be postponed for Wisconsin income tax purposes as it is for federal purposes?

Answer: No, since the original property was solely owned by the taxpayer but the replacement property was jointly purchased, only \$30,000 of the \$140,000 gain may be postponed for Wisconsin income tax purposes as computed below:

Gain	\$140,000
Net condemnation award to taxpayer (100%)	\$240,000
Purchase price of replacement property (50%)	<u>130,000</u>
Taxable gain	<u>110,000</u>
Gain postponed	<u>\$ 30,000</u>

As the taxpayer reported on his original 1983 return that he had elected to postpone recognizing the entire gain, he will now be required to file an amended 1983 Wisconsin income tax return and report a \$110,000 taxable gain.

The basis of the replacement property is the cost of the replacement property decreased by the amount of gain postponed. The taxpayer's basis will be \$100,000 as shown below:

Purchase price of replacement property (50%)	\$130,000
Gain postponed	<u>30,000</u>
Basis of replacement property	<u>\$100,000</u>

The spouse's basis will be \$130,000.



Note: This Tax Release applies only with respect to taxable years 1986 and thereafter.

Background: Section 71.05(1)(d)2, 1985 Wis. Stats., provides that "a Wisconsin net operating loss may be carried forward against Wisconsin taxable incomes of the next 15 taxable years to the extent not offset against other income of the year of loss and to the extent not offset against Wisconsin modified taxable income of any year between the loss year and the taxable year for which the loss carry-forward is claimed".

"Wisconsin modified taxable income" is defined in s. 71.05(1)(d)2, 1985 Wis. Stats., as Wisconsin adjusted gross income less the Wisconsin standard deduction with the following exceptions:

- A net operating loss deduction or offset for the loss year or any taxable year thereafter is not allowed.
- The deduction for long-term capital gains under Section 1202 of the Internal Revenue Code is not allowed.
- The amount deductible for losses from sales or exchanges of capital assets may not exceed the amount includable as income for gains from sales or exchanges of capital assets.
- "Wisconsin modified taxable income" may not be less than zero.

The 15-year loss carryforward provision in s. 71.05(1)(d)2, 1985 Wis. Stats., applies to losses incurred in taxable years ending after June 30, 1980 and the provision to offset a net operating loss against "Wisconsin modified taxable income" applies to taxable year 1986 and thereafter.

Question 1: Is the amount of a net operating loss carryover to 1986 affected by "Wisconsin modified taxable income" for the years between the loss year and 1986?

Answer 1: No. A net operating loss carryover to 1986 is not affected by "Wisconsin modified taxable income" for years prior to 1986. The amount of net operating loss carryover absorbed (used up) for tax years 1981 thru 1985 is equal to the amount allowed as a deduction to offset Wisconsin taxable income in those years.

Example: A single taxpayer sustained a Wisconsin net operating loss of \$50,000 for the 1980 tax year. For tax years 1981-1985 he was allowed the following amounts on his Wisconsin income tax returns as net operating loss deductions.

1981	\$ 3,000
1982	2,000
1983	5,000
1984	6,000
1985	<u>4,000</u>
Total	<u>\$20,000</u>

Therefore, \$30,000 (\$50,000 - \$20,000) is available as a net operating loss deduction for 1986.

Question 2: Is a net operating loss which is carried forward from years prior to 1986 affected by 1986 "Wisconsin modified taxable income" when such loss is carried forward to 1987?

3. Wisconsin Net Operating Loss Carryover

Statutes: Section 71.05(1)(d)2, 1985 Wis. Stats.

Answer 2: Yes. Effective for 1986 tax year and thereafter, the amount of net operating loss absorbed (used up) in the year to which the loss is carried is equal to the "modified taxable income" as computed for that year.

Example: The same taxpayer in the previous example computes his deduction for the Wisconsin net operating loss for 1986 as follows:

Self-employment income from Schedule C	\$15,000
Gain on sale of stock	\$10,000
Less 60% capital gain exclusion	6,000
Taxable capital gain	4,000
Wisconsin adjusted gross income (without NOL)	19,000
Less standard deduction based on single filing status and income of \$19,000	3,820
Allowable NOL deduction for 1986	<u>\$15,180</u>

Thus the taxpayer is allowed to deduct \$15,180 as a net operating loss on his Wisconsin income tax return for 1986. However, the amount of loss absorbed for 1986 is not equal to the amount of the net operating loss allowable as a deduction for 1986. Rather, the amount absorbed is equal to "modified taxable income."

"Modified taxable income" is computed as follows:

Self-employment income from Schedule C	\$15,000
Gain on sale of stock (60% capital gain exclusion not allowed)	10,000
Net operating loss deduction	-0-
Total	25,000
Less standard deduction based on single filing status and income of \$25,000	3,100
Wisconsin modified taxable income	<u>\$21,900</u>

The amount of net operating loss carryover to 1987 is computed as follows:

Amount of net operating loss carried to 1986	\$30,000
Less "Wisconsin modified taxable income" for 1986	21,900
Amount of net operating loss carryover available for 1987	<u>\$ 8,100</u>

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CORPORATION FRANCHISE/INCOME TAXES

1. Payroll Factor-Section 401(k) Earnings

Statutes: Section 71.07(2)(b), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 2.39(4), January 1978 Register

Facts and Question: Section 71.07(2)(b), 1985 Wis. Stats., provides in part that the payroll factor of the standard 3-factor Wisconsin apportionment formula includes the total compensation paid during the taxable year. Wisconsin Administrative

Code section Tax 2.39(4) defines the term compensation to include wages, salaries, commissions and any other form of remuneration paid to employees for personal services rendered.

A qualified cash or deferred arrangement under Section 401(k) of the Internal Revenue Code is any arrangement which is part of a profit-sharing or stock bonus plan which meets the requirements of Section 401(a):

1. under which a covered employee may elect to have the employer make payments as contributions to a trust under the plan on behalf of the employee, or to the employee directly in cash;
2. under which amounts held by the trust which are attributable to employee contributions made pursuant to the employee's election may not be distributable to participants or other beneficiaries earlier than upon retirement, death, disability, or separation from service (or in the case of a profit-sharing or stock bonus plan, hardship or the attainment of age 59 1/2) and will not be distributable merely by reason of the completion of a stated period of participation or the lapse of a fixed number of years; and which provides that an employee's right to his or her accrued benefit derived from employer contributions made to the trust pursuant to his or her election are nonforfeitable.
3. which provides that an employee's right to his or her accrued benefit derived from employer contributions made to the trust pursuant to his or her election are nonforfeitable.

Are wages included in a qualified cash or deferred arrangement under Section 401(k) of the Internal Revenue Code which are excluded (deferred) from taxable income included in the computation of the payroll factor?

Answer: Yes. Total wages are included in the payroll factor computation under s. 71.07(2)(b), 1985 Wis. Stats., and Wis. Adm. Code section Tax 2.39(4) in the period in which they are earned. An employee's election to defer from taxation until a later time a portion of his or her salary does not also defer inclusion of these wages in the payroll factor computation until that later date.

Example: ABC Corporation has a total company payroll of \$5,500,000 for its 1985 taxable year, including a Wisconsin payroll of \$2,200,000. Certain employees have elected under Section 401(k) of the Internal Revenue Code to defer a portion of their 1985 wages. These deferred wages include \$185,000 attributable to Wisconsin employees and \$500,000 overall. In computing its 1985 payroll factor for Wisconsin apportionment purposes, ABC Corporation will include the entire \$2,200,000 Wisconsin payroll in the numerator and the entire total company payroll of \$5,500,000 in the denominator resulting in a payroll factor percentage of 40%. The payroll factor is not reduced for the wages deferred under Section 401(k) plan.

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SALES/USE TAXES

1. Animal Bedding Used by Farmers

Statutes: Section 77.54(3m), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.12(4)(b), September 1984 Register

Facts and Question: A sales/use tax exemption for animal bedding purchased by farmers was added to s. 77.54(3m), Wis. Stats., by 1985 Wisconsin Act 29, effective July 1, 1986. Does this exemption apply to a farmer's purchases of absorbent litter for farm animals to sleep on, such as straw, shavings, and sawdust and to nonabsorbent items, such as rubber floor.

Answer: This new sales/use tax exemption for farm animal bedding applies to a farmer's purchases of loose items which will absorb urine, such as straw, shavings, and sawdust. The exemption does not apply to a farmer's purchases of non-absorbent items, such as rubber floor mats.



2. Claim for Refund of Sales and Use Tax

Statutes: Sections 77.59(4), (4)(a), (8m), 1985 Wis. Stats.

Background: The Wisconsin Statutes contain four provisions for filing claims for refund of sales and use tax. The time periods for filing the claims for refund are as follows:

1. Claims For Refund Where No Office Audit or Field Audit Determination Was Made (s. 77.59(4), 1985 Wis. Stats.)

Claims for refund may be filed within 4 years after the unextended due date of the taxpayer's Wisconsin income or franchise tax return, or if exempt from filing Wisconsin income or franchise tax returns, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year. (Note: This applies to refund claims relating to the 1969 taxable year and thereafter.)

2. Claims For Refund Where an Office Audit Determination Was Made (s. 77.59(4)(a), 1985 Wis. Stats.)

Within two years of a determination of sales or use tax assessed by office audit and paid, a claim for refund of the tax assessed by office audit may be filed if the tax was not protested by the filing of a petition for redetermination. (Note: This applies to refund claims relating to office audit determinations dated on or after January 1, 1975.)

3. Claims For Refund Where a Field Audit Determination Was Made (s. 77.59(4)(a), 1985 Wis. Stats.)

Within two years of a determination of sales or use tax assessed by field audit and paid, a claim for refund of the tax assessed by field audit may be filed if the tax was not protested by the filing of a petition for redetermination.

(Note: This applies to refund claims relating to field audit determinations dated on or after April 30, 1986.)

4. Claims For Refund Where a Field Audit Determination Was Made and the Refund is Passed Along to the Customer (s. 77.59(8m), 1985 Wis. Stats.)

Claims for refund may be filed within 4 years after the due date of the taxpayer's Wisconsin income or franchise return, or if exempt from filing Wisconsin income or franchise tax returns, within 4 years of the 15th day of the 4th month of the year following the close of the calendar or fiscal year, if (a) the applicant's customers have filed valid claims for refunds with the applicant and (b) the refund is passed along by the applicant to the customers. (Note: This applies on or after April 30, 1986.)

Note: (a) Of the above four provisions for filing claims for refund of sales and use taxes, only number "4" (s. 77.59(8m), 1985 Wis. Stats.) requires the person, as a condition of the refund claim, to pass along the refunded taxes to the customers. This refund provision applies to taxes paid by customers to retailers and remitted through self-assessment to the Department of Revenue even if the person applying for the refund has been field audited in respect to those taxes. A retailer may not benefit under this provision. It is intended to put the customer on the same basis as customers of other retailers that have not been audited.

(b) The refund provisions in Background numbers "2" and "3" apply to additional taxes assessed by office or field audit.

The following examples illustrate how these four refund provisions apply to various situations. (Note: In all ten examples, assume the taxpayer is a corporation which files corporate franchise tax returns on a calendar-year basis and that petitions for redetermination are *not* filed in regard to any office audit or field audit determinations, except examples "6," "9" and "10" in which a petition for redetermination is filed. The taxpayer has paid any office audit or field audit assessment prior to filing the claim for refund.

Facts and Question 1: A taxpayer files a claim for refund under s. 77.59(4) on April 30, 1986, for the 1981 through 1984 tax years. The taxpayer has not been issued an office audit or field audit determination. Does the taxpayer have a timely claim for refund?

Answer 1: The taxpayer has a timely claim for refund for the years 1982 through 1984. The claim for 1981 is not timely because the 1981 year expired on March 15, 1986, which is 4 years after the due date of the 1981 corporate franchise tax return.

Facts and Question 2: An office audit determination was issued on January 15, 1985, to the taxpayer for the tax years 1980 and 1981. Taxpayer then files a claim for refund under s. 77.59(4)(a) for the tax years 1980 through 1981 for items included in an office audit determination. The claim for refund does not include a claim for taxes self assessed. Does the taxpayer have a timely claim for refund if filed January 10, 1987?, if filed January 30, 1987?

Answer 2: The claim for refund filed on January 10, 1987 is timely because the claim was made within 2 years of January 15, 1985, the date of the office audit determination. The claim filed January 30, 1987 is not timely because it was filed later than 2 years after the office audit determination.

Facts and Question 3: Taxpayer was issued a field audit determination for 1982 and 1983, on March 1, 1985. On June 1, 1986, taxpayer files a claim for refund under s. 77.59(4)(a) for excess sales and use taxes assessed by field audit for the years 1982 and 1983. Is this a timely claim for refund?

Answer 3: No, because the field audit determination was dated before April 30, 1986. Section 77.59(4)(a), 1985 Wis. Stats., applies only to field audit determinations dated on or after April 30, 1986.

Facts and Question 4: Taxpayer was issued a field audit determination dated April 30, 1986 for the years 1982-1985. Taxpayer files a claim for refund under s. 77.59(4)(a) on May 30, 1986, for excess sales and use taxes assessed by field audit for the years. Is this a timely claim?

Answer 4: Yes, the taxpayer's claim is timely under s. 77.59(4)(a), 1985 Wis. Stats., because the taxpayer filed the claim within 2 years after the determination notice dated April 30, 1986.

Facts and Question 5: Taxpayer received claims for refunds of sales tax from his/her customers for the 1981-1983 tax years. Taxpayer files a claim for refund with the department on April 15, 1986 for the years 1981-1983 with the intent to pass it along to his/her customers. The claim for refund states that it is based on claims for refund filed with the taxpayer by its customers and the refund will be passed along to the customers. Taxpayer was field audited for 1981-1983 and the determination was dated April 20, 1985 and was not appealed by the taxpayer. As of April 30, 1986, the department had not issued a determination on the taxpayer's refund claim. May the refund claim filed on April 15, 1986 be paid by the department to the taxpayer.

Answer 5: Yes in part. The taxpayer would be granted the claim for refund on or after April 30, 1986, the date s. 77.59(8m), 1985 Wis. Stats., became effective for 1982 and 1983. However, the 1981 year is closed to adjustment under the four year statute in s. 77.59(4)(intro.), 1985 Wis. Stats.

Facts and Question 6: Taxpayer was issued a field audit determination for 1984 on May 3, 1986. The taxpayer filed a petition for redetermination on May 26, 1986. On July 1, 1986, while the petition is still pending, taxpayer filed a claim for refund for the year 1984 under s. 77.59(4)(a), 1985 Wis. Stats. Is the claim affected by the appeal?

Answer 6: Yes. The taxpayer must withdraw the petition for redetermination before the claim may be refunded.

Facts and Question 7: Taxpayer was field audited for the years 1983 through 1985. A "no change" letter was sent to the taxpayer on March 1, 1986, stating that no additional sales and use tax liability was determined. On June 1, 1986, taxpayer files a claim for refund under s. 77.59(8m), 1985 Wis. Stats., for excess taxes paid, with the intention of remitting the refund

to his/her customers. The customers had filed claims for refund with the taxpayer for those years. Is this a valid claim?

Answer 7: Yes, taxpayer meets the requirements of s. 77.59(8m), 1985 Wis. Stats. In the Moebius Printing Company case the Wisconsin Supreme Court held that a "no change" letter issued by the department constituted a field audit per s. 77.59(2), 1985 Wis. Stats. However, even though the taxpayer was issued a field audit determination (e.g., a no change letter) before April 30, 1986, a claim for refund may still be filed on or after April 30, 1986 under s. 77.59(8m), 1985 Wis. Stats.

Facts and Question 8: Taxpayer was issued a field audit determination for the taxable years 1984 and 1985 on July 1, 1986. The department made two adjustments, one to taxable sales of merchandise normally sold at retail and one to untaxed purchases. On December 1, 1986, the taxpayer filed a claim for refund, under s. 77.59(4)(a), 1985 Wis. Stats., for an overpayment of taxes regarding taxable sales of the merchandise adjusted by field audit and for an overpayment of taxes in regard to the sale of capital assets not adjusted by field audit. The department in acting on the claim disallows the portion of the claim regarding the sale of capital assets (on which the tax was self-assessed by the taxpayer) and also makes an additional assessment to the untaxed purchases adjusted by field audit. Is this action by the department correct?

Answer 8: Yes. Under s. 77.59(4)(a), 1985 Wis. Stats., no claim may be allowed for any tax self-assessed by the taxpayer because the years are closed to adjustment per s. 77.59(2), 1985 Wis. Stats. The department may make an additional assessment in respect to any item that was a subject of the prior assessment.

Facts and Question 9: Taxpayer was issued a field audit determination for 1983 and 1984 on May 30, 1986. The taxpayer filed a petition for redetermination with the department on June 15, 1986. The petition was denied by the department so the taxpayer appealed the matter to the Wisconsin Tax Appeals Commission. The taxpayer lost on appeal to the Commission and soon after filed a claim for refund for overpayment of sales and use taxes paid, under s. 77.59(8m), 1985 Wis. Stats. The claim for refund states that it is based on claims for refund filed with the taxpayer by its customers and the refund will be passed along to the customer. Is this a valid claim for refund if the overpayment claimed relates to items adjusted by field audit that were part of the taxpayer's appeal?

Answer 9: No. Pursuant to s. 73.01(4)(e), 1985 Wis. Stats., the decision and order of the Commission is final and binding upon the taxpayer unless an appeal is taken from the decision and order of the Commission. Therefore, any item adjusted by field audit which is decided by the Commission adversely to the taxpayer on an appeal may not be the subject of a claim for refund.

Facts and Question 10: Assume the same facts as in Facts and Question 9 except that the claim for refund involves items that were adjusted by field audit but were not part of the taxpayer's appeal. Is this a valid claim?

Answer 10: Yes. Taxpayer may make a claim for refund under s. 77.59(8m), 1985 Wis. Stats., if the item that is the subject of the claim for refund has not been appealed or if an appeal

was made was not decided adversely to the taxpayer and the claim otherwise meets the requirements of s. 77.59(8m), 1985 Wis. Stats.



3. Federal Food Stamp Receipts of Grocers

Statutes: Section 77.54(1) and (20), 1985 Wis. Stats.

Wis. Adm. Code: Section Tax 11.51(2)(b), September 1984 Register.

Facts and Question: Federal law provides that federal food stamps may be used to purchase any food or food product for home consumption, except alcoholic beverages, tobacco and hot foods or hot food products ready for immediate consumption. Federal food stamps may also be used to purchase seeds and plants for use in gardens to produce food for the personal consumption of the eligible household.

Are a grocer's receipts from federal food stamps used to purchase items authorized under federal law subject to the state sales tax?

Answer: No, a grocer's receipts from federal food stamps are not subject to the Wisconsin sales tax and have never been subject to the state sales tax. This interpretation is set forth in subsection (2)(b) of section Tax 11.51, the "Grocers' guidelist," which is part of the Wisconsin Administrative Code.

Groceries sold for the home preparation of meals are exempt under s. 77.54(20), Wis. Stats. However, if federal food stamps are used to purchase food products, such as the following authorized items, which would otherwise be taxable because they are not exempt groceries under s. 77.54(20), 1985 Wis. Stats., the gross receipt from such sales are also exempt from the Wisconsin sales tax: candy, popcorn, gum, confections, snacks, soft drinks and concentrates and powders to produce soft drinks, ades, cocktails and punches which are not pure fruit juices, and seeds and garden plants used to produce food.



FARMLAND PRESERVATION CREDIT

1. Farmland Credit - Dairy Termination and Conservation Reserve

Statutes: Sections 71.09(11)(a)3 and 3m, 91.01(1) and 91.01(6), 1985 Wis. Stats.

Background: The federal Food Security Act of 1985 (P.L. 99-198) established a dairy termination program and a conservation reserve program. Under the dairy termination program, producers agree to sell for slaughter or export all dairy cattle in which the producers have an interest, and during a period of

three to five years after the sale not to acquire any interest in dairy cattle or in the production of milk. In return the producer receives two types of payments. The first payment is income from the slaughterhouse or exporter for the sale of the cattle. If the sale results in a gain, the gain will be treated as a capital gain if the cattle were raised or held for twenty-four months or more from their acquisition date. The second type of payment is a stream of income the producer will receive over a five-year period. The income depends on the producer's milk production base, bid, and contract with the federal government. These payments are treated as ordinary income.

Under the conservation reserve program, owners of highly erodible cropland agree to place the land in a conservation reserve. Under this agreement the owners may not use the land for agricultural purposes, and may not conduct any harvesting or grazing on the land, or otherwise make commercial use of the forage on the land. In return the owner will receive an annual rental payment in an amount necessary to compensate the owner for the conversion of the cropland to a conservation use, and the retirement of any cropland base that the owner agrees to retire permanently. The rental payments may be made as payments-in-kind with commodities.

Under Wisconsin law, farmland may be eligible for a farmland preservation credit if the farmland produces at least \$6,000 of gross farm profits for the taxable year resulting from the farmland's agricultural use (or \$18,000 of gross farm profits for the taxable year and the two prior years combined).

"Gross farm profits" means gross receipts, excluding rent, from the land's agricultural use including the fair market value at the time of disposition of payments-in-kind for placing land in federal programs, less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the income year (s. 71.09(11)(a)3m, 1985 Wis. Stats.).

"Agricultural use" is defined to include dairying, livestock raising, raising of grain and seed crops, placing land in federal programs in return for payments in kind, and other farming activities listed in s. 91.01(1), 1985 Wis. Stats.

Question 1: If a farmer participates in a dairy termination program does the payment for the sale of the cattle qualify as gross farm profits resulting from the farmland's agricultural use for purposes of the farmland preservation credit \$6,000 gross profit requirement?

Answer 1: Yes, income from the sale of the cattle less the cost or other basis of the cattle is considered gross farm profits for purposes of the \$6,000 gross farm profits requirement. This income is considered to be gross farm profits resulting from the farmland's agricultural use since the farmland was used for the agricultural use of dairying or raising livestock.

Question 2: If a farmer participates in a dairy termination program, do the payments received pursuant to the producer's contract with the federal government for the purpose of terminating the farmer's milk production qualify as gross farm profits resulting from the farmland's agricultural use for purposes of the farmland preservation credit \$6,000 gross profit requirement?

Answer 2: No, these payments are a result of the farmer's production termination contract rather than a result of the farmland's agricultural use.

Question 3: If a farmer participates in a conservation reserve program, are cash rental payments considered gross farm profits resulting from the farmland's agricultural use for purposes of the farmland preservation credit \$6,000 gross profit requirement?

Answer 3: No, the definition of gross farm profits under s. 71.09(11)(a)3m, 1983 Wis. Stats., specifically exclude rental income. Thus, the cash rental payments may not be included in gross farm profits for purposes of the \$6,000 requirement.

Question 4: If a farmer participates in a conservation reserve program, does the disposition of payments-in-kind constitute gross farm profits resulting from the farmland's agricultural use for purposes of the farmland preservation credit \$6,000 gross profit requirement.

Answer 4: Yes, under Wisconsin Statutes gross farm profits are defined to include the fair market value at the time of disposition of payments-in-kind for placing land in federal programs.

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2. Gross Farm Profits Requirement

Statutes: Sections 71.09(11)(a)3 and 3m, and 91.01(6), 1985 Wis. Stats.

Background: For farmland preservation credit purposes, farmland must produce at least \$6,000 in gross farm profits for the

year of the farmland claim, or at least a total of \$18,000 in gross farm profits for the year of the claim and the two prior years combined.

"Gross farm profits" is defined under s. 71.09(11)(a)3m, 1985 Wis. Stats., to mean gross receipts, excluding rent, from agricultural use, less the cost or other basis of livestock or other items purchased for resale which are sold or otherwise disposed of during the income year.

Gross receipts means the total amount received from all sources. Gross receipts includes the total property, usually cash, received from the sale of farm products.

Facts and Question: Farmer A grows a crop of corn during the year which has a fair market value greater than \$6,000, but Farmer A does not receive cash for the crop during the year because the crop is stored rather than sold to a third party. Farmer B also grows more than \$6,000 worth of corn, but feeds the corn to his cattle which were not sold during the year.

For farmland preservation credit purposes, may Farmer A or B include the fair market value of the crop grown in determining whether the \$6,000 gross farm profits requirement is met for the year the crop is grown?

Answer: No, the fair market value of the crop grown by Farmers A and B may not be included in gross farm profits to determine if the \$6,000 requirement is met. No gross receipts were received from these crops.

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