

# WISCONSIN TAX BULLETIN

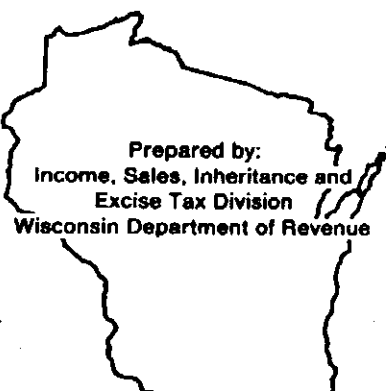
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## WISCONSIN DEPARTMENT OF ADMINISTRATION

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## INTEREST FROM GNMA NOW TAXABLE

As a result of the United States Supreme Court decision in the case of *Rockford Life Insurance Company vs. Illinois Department of Revenue et al.*, income received from financial instruments known as Government National Mortgage Association bonds ("Ginnie Maes") is not exempt from state taxation under section 3701 of the United States Code.

The Wisconsin Department of Revenue has issued an emergency rule amending

section Tax 3.095, Wis. Adm. Code, effective for interest accrued on or after August 1, 1987. This rule now provides that interest received from "Ginnie Maes" and similar instruments, including Farmers Home Administration insured notes and Small Business Investment Company debentures, is subject to Wisconsin income tax.

(Note: Interest accrued before August 1, 1987, from "Ginnie Maes" and similar instruments is exempt from Wisconsin income taxation.)

## WISCONSIN INFORMATION RETURNS NOT REQUIRED FOR INTEREST AND DIVIDENDS

Payments of interest and dividends made during 1987 and thereafter are no longer required to be reported on Wisconsin information returns. The Wisconsin reporting requirements for these items were repealed by 1987 Wisconsin Act 27.

The reason for the repeal of the Wisconsin interest and dividend reporting requirements is the extensive document matching program currently performed by the Internal Revenue Service on federal information returns which include these same income items. The department has an exchange agreement with the IRS and receives information from IRS as to the results of its matching program. Therefore, it is not necessary for the Wisconsin Department of Revenue to continue a separate audit program for these items.

**Important:** This change in Wisconsin law does not affect information returns for interest and dividends which are required to be filed by federal law with the IRS.

## NO CHANGE IN WISCONSIN WITHHOLDING TABLES

Although the income tax rates for individuals have been changed for the 1987

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taxable year, there is no plan to change the withholding tables.

Employer's should **not** use the new Wisconsin tax rates to calculate withholding at this time. The withholding tables and rates set forth in the Wisconsin Employer's Withholding Tax Guide dated January 1986 (effective for payroll periods beginning on or after January 1, 1986) should continue to be used until further notice.

## INCREASE IN IRS STANDARD MILEAGE RATE ALSO APPLIES FOR WISCONSIN FOR 1987

The optional standard mileage rate specified by the IRS for computing business automobile expenses for 1987 also applies for Wisconsin. The IRS increased the rate from 21¢ to 22.5¢ for the first 15,000 business miles driven in an automobile that is not fully depreciated. After 15,000 miles of business use in one year and for all mileage on a fully depreciated automobile, the rate remains at 11¢ per mile. If the optional method for computing costs of business use of an automobile is used, depreciation is considered to be allowed at 10¢ per mile for 1987.

The mileage rate used to calculate automobile expenses for charitable deduction purposes, which remains at 12¢ a mile in 1987, also applies for Wisconsin.

For both federal and Wisconsin purposes, a rate of 9¢ per mile is used to calculate automobile expenses for medical and moving expense deductions.

## FORM CHANGES FOR 1987

Following is a brief description of many of the changes made to the income tax, homestead credit, and farmland preservation credit forms for 1987.

### 1. Income Tax (Forms 1, 1A, WI-Z and 1NPR)

- Tax district area is redesigned to eliminate errors.
- Renter and homeowner's credit is replaced with the school property tax credit.
- Check boxes for refunds less than \$2 previously at the bottom of each form are eliminated.
- Married couple credit schedules on the back of Forms 1 and 1A and last page of Form 1NPR have been revised.
- Location of the married couple credit entry line now appears after the alternative minimum tax entry line on Form 1 (line 15) and Form 1NPR (line 41).
- Entry lines for the federal married couple deduction and moving expenses to move from Wisconsin are eliminated from Schedule 1 on the back of Form 1.
- New entry lines are added to Schedule 2 on the back of Form 1 for non-taxable unemployment compensation and the capital gain/loss adjustment.
- Schedules for computing the itemized deduction credit on the last pages of Forms 1 and 1NPR have been revised because there are additional items that may be used in computing the credit.
- Line for IRA penalties on Form 1 (line 18) and Form 1NPR (line 44) is changed to "penalties on retirement plans."
- Entry lines for total and taxable unemployment compensation received have been added to Form 1A (lines 4a and 4b). A schedule to determine taxable unemployment compensation is also added on the back of Form 1A.

- Line titles on Form 1NPR have been reworded to conform with changes to the federal income tax returns.
- Entry lines for the self-employed insurance deduction and repayment of supplemental unemployment benefits have been added to Form 1NPR (lines 19 and 23).
- Caution has been included on line 36 of Form 1NPR advising nonresidents that they are not eligible for the school property tax credit.

### 2. Homestead Credit (Schedule H)

- Question is added relating to business use of property (line 6).
- Schedule on the back of Schedule H and entry lines on the front are added due to a change in the definition of household income.
- Space is added so that claimants may indicate the date an income tax return was previously filed (line 9).
- Rent line (line 14) has been changed whereby entry will depend on whether heat was included in rent paid.
- Rent certificate is revised, removing the entry lines for the value of utilities, furnishings, and other items. In addition, the computation of rent that may be used on Schedule H is changed.

### 3. Farmland Preservation Credit (Schedule FC)

- A schedule titled "Income Adjustments" is added to the back of Schedule FC for claimants to enter household income. The total is brought to the front of Schedule FC.
- Entry lines for real estate taxes have been reduced to one line (line 11).
- Schedule of addback items has been expanded due to changes in the definition of household income (Schedule 3 on back of Schedule FC).

#### 4. Other Form Changes

- Schedule MT is new this year and is used by individuals, estates, and trusts to compute Wisconsin alternative minimum tax.
- Schedule WD has been developed to report capital gains and losses for Wisconsin individual income tax purposes.

Copies of the 1987 Wisconsin Forms 1, 1A, WI-Z, and 1NPR are included on pages 22 through 30 of this issue.

### NEW TAX-OPTION (S) CORPORATION TAX FORMS FOR 1987

As reported in Wisconsin Tax Bulletin Number 52, the legislature has enacted a corporate tax reform plan which federalizes Wisconsin's corporate franchise or income tax law. Beginning with the 1987 taxable year, corporations will compute their net income under the Internal Revenue Code as amended to December 31, 1986, with certain exceptions. Additionally, the treatment of tax-option (S) corporation income has been revised to allow the pass-through to the corporation's shareholders of individual items of income, loss, and deduction.

The corporation franchise or income tax forms have been redesigned to reflect the law changes. All tax-option (S) corporations must use Form 5S. Multistate corporations, other than tax-option (S) corporations, that determine their net income by either the apportionment method or the separate accounting method must use Form 4. Corporations, other than tax-option (S) corporations, whose entire business income is attributable to and taxable by Wisconsin must use Form 5.

Beginning with the 1987 taxable year, a corporation that is an S corporation for federal tax purposes may elect not to be a tax-option (S) corporation for Wisconsin tax purposes. Corporations that have

elected out of tax-option status for Wisconsin by filing Form 5E must file Form 4 or Form 5. Special instructions for filing Form 4 or Form 5 are included on the back of Form 5E.

See pages 31 through 33 for a copy of the 1987 Form 5S.

### COMBINED WISCONSIN INCOME TAX RETURN FOR NONRESIDENT PARTNERS

A partnership that operates in Wisconsin and has two or more nonresident partners who derive no taxable income from Wisconsin other than their distributive shares of Wisconsin partnership income may file a combined individual income tax return on behalf of those partners, beginning in 1987. The partnership will file this combined return on Form 1CNP.

A partner may not participate in this combined return in any of the following cases:

- The partner is a partnership or corporation.
- The partner files his or her individual income tax return on a fiscal year basis.
- The partner is a resident of Wisconsin during any part of 1987.
- The partner derives taxable income from Wisconsin in 1987 other than his or her distributive share of partnership income.

Each qualifying and participating partner's distributive share of partnership income for partnership years ending January 31, 1987, through December 31, 1987, is reported on a 1987 Form 1CNP. The combined return replaces the separate 1987 Wisconsin individual income tax returns that would be filed by each of the qualifying and participating nonresident partners.

Form 1CNP will require the partnership to compute the total Wisconsin partner-

ship income of the qualifying and participating nonresident partners. This income will be allocated to each of the partners and tax will be computed on their distributive shares. No deductions or credits will be allowed. The partnership can make combined estimated tax payments of behalf of the nonresident partners. The partners' balances due or overpayments will be totaled on Form 1CNP, and one remittance will be submitted by the partnership or one refund check will be issued to the partnership.

The 1987 Form 1CNP will be due on April 15, 1988. If the partnership is granted an extension by the federal Internal Revenue Service for filing its federal return, this automatically gives a Wisconsin extension to file Form 1CNP to the same extended due date. A copy of the federal extension should be attached to the Form 1CNP filed with the department.

Form 1CNP will be available in December, 1987 from any Department of Revenue office or by calling (608) 266-1961. Additional information about the combined individual income tax return may be obtained by writing Diane Hardt, Director, Tax Processing Bureau, Post Office Box 8903, Madison, Wisconsin 53708 or by calling (608) 267-5190.

### AUTOMATE PROCESSING OF 1988 INDIVIDUAL ESTIMATED TAX PAYMENTS

Estimated tax payment vouchers for individuals (Form 1-ES) will be printed with scan lines in a machine-readable font beginning with the 1988 taxable year. The scan line on each voucher will include taxpayer identification information, and the voucher and payment will be processed on optical character recognition (OCR) equipment at the State's depository bank. The bank will then forward the taxpayer identification and payment information to the Department of Revenue via computer tape.

Individuals who made estimated tax payments in 1986 or 1987, or who were assessed underpayment penalties for failing to make estimated tax payments in 1986, will automatically be mailed 1988 forms with the personalized scan line printed on the forms. These forms will be mailed during the week of January 25, 1988.

Individuals who are making estimated tax payments for the first time will need to use department-printed forms that have a generic scan line that can still be processed on the OCR equipment. These forms may be obtained by writing the Wisconsin Department of Revenue, Shipping and Mailing Section, Post Office Box 8903, Madison, Wisconsin 53708 or calling (608) 266-1961.

Printers of substitute forms must meet department specifications and obtain department approval of the substitute forms. Department approval or additional information may be obtained by writing James Warner at the Wisconsin Department of Revenue, Processing Bureau, Post Office Box 8903, Madison, Wisconsin 53708.

## **WISCONSIN WITHDRAWS FROM GREAT LAKES INTERSTATE SALES COMPACT**

As reported in Wisconsin Tax Bulletin 48, Wisconsin, along with Illinois, Indiana, Michigan, Minnesota, and Ohio signed the Great Lakes Interstate Sales Compact as a means of increasing compliance with use tax laws, primarily with respect to transactions made across state boundaries.

Wisconsin will no longer be able to participate in the Great Lakes Interstate Sales Compact. The Budget/Revenue Bill passed by the Legislature in July 1987 included a provision requiring Wisconsin to withdraw from the Compact. Governor Thompson vetoed this provision in the bill when he signed it on July 31, 1987.

However, in his veto message he indicated that the state would withdraw from the Compact by executive order.

Governor Thompson issued an executive order for withdrawal from the Compact on August 31, 1987. In a letter sent September 15, 1987, Secretary Case notified the other members of the Compact of Wisconsin's withdrawal from the Compact.

## **PACKAGE WI-X REVISED FOR 1987**

The department will again be offering Package WI-X which will contain actual size copies of most 1987 Wisconsin individual, fiduciary, and corporation income tax, gift tax, inheritance tax, motor fuel tax, sales tax, and withholding tax forms.

Some revisions to the 1987 Package WI-X include increasing page size, perforating pages, and printing a title on the spine of the book. Content is primarily the same as in 1986.

Package WI-X should be available by December 31, 1987. The cost is \$5.00 per copy. This year, the Package WI-X may be ordered on the bulk order blank (Form P-744). The bulk order blank was mailed in October. See the following article for more information on bulk orders.

If you do not receive an order blank and wish to purchase copies of 1987 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, P. O. Box 8903, Madison, Wisconsin 53708.

## **BULK ORDERS OF TAX FORMS**

In October, the department mailed the order blank (Form P-744) which practitioners and other persons or organizations should use to request bulk orders of 1987 Wisconsin income tax forms. As in past years, professional tax preparers are subject to a handling charge on their orders. No charge is made for forms used for distribution to the general public (for example, in a bank, library or post office).

This year's mailing list for bulk order blanks contains the names of all persons and organizations who placed orders for 1986 forms. If you are not on this mailing list and do not receive a Form P-744 you may request the bulk order blank by contacting any department office or by writing to the Wisconsin Department of Revenue, Central Services Section, P.O. Box 8903, Madison, Wisconsin 53708. You may also call the Shipping and Mailing Section at (608) 266-1961.

Orders should be placed as early as possible after you receive the order blank. By receiving the orders early, the department can better identify possible shortages of specific forms. Practitioner orders received by December 1, 1987, will be mailed by January 4, 1988, and other orders received by December 1, 1987, will be mailed early in January.

## **TAXPAYERS TO RECEIVE FORMS 1099-G IN JANUARY 1988**

An information return, Form 1099-G, will be mailed to taxpayers who received a Wisconsin income tax refund in 1987. Only such taxpayers who claimed itemized deductions on their 1986 federal income tax returns should receive Forms 1099-G. Section 6050E of the Internal Revenue Code requires the Department of Revenue to send this 1987 information return to taxpayers.

## TAX RETURN STATISTICS FOR 1987

There were 2,256,000 Wisconsin individual income tax returns filed during the period from July 1, 1986, to June 30, 1987. This compares to 2,280,000 income tax returns filed for the twelve months ending June 30, 1986.

The 2,256,000 returns were filed by 3,288,000 individuals. In 1985, a husband and wife could file a combined return and in 1986, a husband and wife could file a joint return.

There were 265,000 homestead credit claims and 23,000 farmland credit claims filed during the year. This compares to 277,000 homestead credit claims and 20,000 farmland credit claims filed for the prior year.

Taxpayers were issued a total of 1,654,900 income tax refunds during the twelve months ending June 30, 1987, for an average refund of \$314. The average refund for the prior year was \$264.

Homestead credit refunds averaged \$392 per claimant, an increase from the average refund of \$375 issued last year. About 46% of the claimants were age 65 or older. Of all individuals claiming homestead credit, 45% were renters and 55% were homeowners.

An average farmland preservation credit of \$1,557 was issued to each claimant. The average payment for 1985 claims was \$1,671.

An itemized deduction credit was claimed by 15% of the taxpayers on 1986 tax returns. The average credit allowed was \$207.81.

## TAXPAYERS DESIGNATE \$396,700 TO STATE ELEC- TION CAMPAIGN FUND

The 1986 Wisconsin income tax returns, Forms 1, 1A, and WI-Z, included a box

for taxpayers to designate \$1 to the State Election Campaign Fund. If the box was checked "yes," there was no increase in tax liability or reduction in refund for making the designation.

During the period July 1, 1986, to June 30, 1987, taxpayers designated \$396,700 to the election campaign fund on their Wisconsin tax returns. This compares to \$476,536 for the prior twelve months ending June 30, 1986.

## CONTRIBUTIONS TO ENDANGERED RESOURCES PROGRAM INCREASE

The 1986 Wisconsin income tax returns, Forms 1, 1A, and WI-Z included a line for taxpayers to contribute to the Wisconsin Endangered Resources Fund. These donations either reduce a taxpayer's refund or increase the amount owed. Amounts contributed go to the Wisconsin Department of Natural Resources to help protect and care for Wisconsin's endangered species, nongame wildlife and rare plant and animal habitats.

On 1986 Wisconsin income tax returns filed, 57,825 taxpayers contributed \$515,965 to the Endangered Resources Fund. This compares with 1985 income tax returns where 61,081 taxpayers contributed \$441,235.

## REMINDER: FILING DEADLINES FOR 1986 HOMESTEAD AND FARM- LAND PRESERVATION CREDIT CLAIMS

December 31, 1987, is the deadline for filing a 1986 homestead credit claim. Farmland preservation credit claims for 1986 must be filed no later than 12 months after the farmland owner's 1986 taxable year ends. December 31, 1987, is the deadline for filing a 1986 farmland pres-

ervation credit claim for farmland owners who are calendar year taxpayers.

No extensions of time are available for filing claims for these two credits.

## REMINDER: EMPLOYERS MUST SUBMIT COPIES OF CERTAIN EMPLOYEE WITHHOLDING EXEMPTION CERTIFICATES TO THE DEPARTMENT

Wisconsin law requires employers to submit copies of employee withholding exemption certificates to the department whenever they are required to provide such information to the Internal Revenue Service (IRS). The copies must be submitted to the department within 15 days after they are filed with the IRS.

For both federal and Wisconsin purposes, employers are required to submit copies of any employee's withholding exemption certificate if (1) the number of exemptions claimed is more than 10 or (2) the employee is claiming complete exemption from withholding and he or she earns more than \$200 per week.

## REMINDER: NOTIFY DEPARTMENT OF FEDERAL ADJUSTMENTS AND AMENDED RETURNS

If a taxpayer's federal income tax return is adjusted by the Internal Revenue Service (IRS), and the adjustments affect the amount of Wisconsin income reportable or tax payable, such adjustments must be reported to the Wisconsin Department of Revenue within 90 days after they become final.

In addition, taxpayers filing an amended return with the IRS or another state must also notify the department within 90 days

of filing if information in the amended return affects the amount of Wisconsin income reportable or tax payable.

If a taxpayer does not report adjustments made by the IRS or amended returns are not filed in the time period specified above, the department may make an assessment against the taxpayer or a refund to the taxpayer within 10 years after the date which the original tax return was filed or within 2 years after the date when the federal determination of tax became final, whichever was later. (Note: Effective for taxable year 1987, the department may make an assessment against the taxpayer or a refund to the taxpayer within 4 years after discovery by the department.)

An amended Wisconsin return or copy of the federal audit report should be sent to the Wisconsin Department of Revenue, Audit Bureau, P. O. Box 8906, Madison, Wisconsin 53708.

## REMINDER: NONRESIDENT ENTERTAINERS REQUIRED TO FILE SURETY BOND OR CASH DEPOSIT

A "nonresident" entertainer who performs in Wisconsin for a contract price that exceeds \$3,200 is required to file a surety bond or cash deposit with the Department of Revenue in an amount of 6% of his or her total contract price.

If the bond or deposit is not filed, the "employer" at the event is required to withhold the 6% from the nonresident entertainer's payment. If the employer fails to withhold the required amount, the employer will be held liable for the amount that should have been withheld.

A "nonresident entertainer" is a nonresident person who furnishes amusement, entertainment or public speaking services, or performs in one or more sporting events, and includes a foreign corporation (one not organized under the laws of Wisconsin) not regularly engaged in busi-

ness in Wisconsin which derives income from any of these activities or from these services performed by a nonresident person.

An "employer" is any Wisconsin resident person or firm which contracts for the services of a nonresident entertainer. In the absence of such resident contracting person, the employer is the last resident person or firm to have receipt, custody or control of the proceeds of the event. If there is neither a resident contracting person nor a resident with control of the proceeds, the employer is any nonresident person or firm who contracts for or has control of the proceeds of the event.

Amounts of cash deposited with the Department of Revenue with Form WT-10 (Nonresident Entertainer's Application & Receipt for Surety Bond or Cash Deposit) and amounts withheld by employers and reported on Form WT-11 (Nonresident Entertainer's Receipt for Withholding by Employer) may be claimed as a credit by the nonresident entertainer on his or her Wisconsin individual income tax return or on the corporation's franchise or income tax return for the year in which the appearance was made. Any amounts deposited or withheld that are in excess of the nonresident entertainer's Wisconsin tax liability per the return will be refunded.

Surety bonds filed with the Department of Revenue with Form WT-10 will be released upon request when the nonresident entertainer's tax liability for the year involved has been satisfied.

Additional information may be obtained by requesting Publication 508, entitled Wisconsin Tax Requirements Relating to Nonresident Entertainers.

Copies of Publication 508, Form WT-10, Form WT-11, and the Nonresident Entertainer's Surety Bond may be obtained from the Wisconsin Department of Revenue, Central Services Section, P. O. Box 8903, Madison, Wisconsin 53708.

Any questions about the requirements of this law may be directed to Edward Pelner, Wisconsin Department of Reve-

nue, P. O. Box 8906, Madison, Wisconsin 53708, telephone (608) 266-3645.

## CRIMINAL ENFORCEMENT ACTIVITIES

### Franchise or Income Taxes

A former Stoughton man accused of embezzling more than \$645,000 from the company he headed has been arrested in California.

A criminal complaint filed in Dane County Circuit Court accuses Gary William Homberg, 48, of 48 counts of embezzlement and 4 counts of filing fraudulent income tax returns. The tax fraud charges were filed by the Wisconsin Department of Revenue.

Homberg was president and 48 percent stockholder of Millfab, Inc., Stoughton, from September 1982 to August 22, 1986. Millfab is a division of Stoughton Trailers.

According to the complaint, Homberg reported taxable income of \$21,149 in 1982; \$49,073 in 1983; \$13,820 in 1984 and \$2,438 in 1985. The complaint says Homberg underestimated his income by \$37,309 in 1982; \$87,796 in 1983; \$201,000 in 1984 and \$239,066 in 1985.

Homberg owes more than \$50,000 in back taxes on the unreported income.

A Hayward area businessman and his wife have been ordered to pay \$23,200 in fines, penalty assessments and court costs and to serve jail time for Wisconsin state income tax violations.

James A. Taylor and Jean M. Taylor, who formerly operated the Mr. Burger restaurant in Hayward, were sentenced in Dane County Circuit Court, Branch 12, Madison, by Circuit Judge Mark A. Frankel. Judge Frankel withheld sentencing and ordered Mr. and Mrs. Taylor to each serve one year probation on each of two counts

of being parties to a crime of individual state income tax evasion and state corporation franchise or income tax evasion. Under the conditions of probation, the Taylors must each serve 30 days in jail and pay \$10,000 in fines plus a \$1,500 penalty assessment and \$100 in court costs. The jail time may be served in the Douglas County Jail during nonworking hours.

The Taylors were charged with failing to report more than \$20,000 in taxable income and evading more than \$1,500 in individual state income and state corporation franchise or income taxes. They pled no contest to the charges before they were sentenced.

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### Homestead Credit

A Green Bay man has been ordered to serve five years in prison for violation of Wisconsin homestead credit tax law.

Gary L. Brice, Sr., who formerly resided at 1713 Main Street, Green Bay, Wisconsin, was sentenced in Dodge County Circuit Court, Branch 2, Juneau, Wisconsin, by Circuit Judge Joseph E. Schultz after he was convicted on one count of filing a false Wisconsin homestead credit claim for 1985. Judge Schultz sentenced Brice to five years in the Wisconsin Correctional Institute at Waupun after Brice entered a guilty plea to the charge. A second count was dismissed in accord with a plea agreement.

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

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### Sales/Use Taxes

Three Wisconsin men have been ordered to pay fines of \$200 each for criminal violations of Wisconsin's sales and use tax law.

Dwayne A. Braun, Route 4, Beaver Dam; Craig A. Lapp, 8243 Cooper Road, Ke-

nosha; and Curtis R. Greaves, 1004 South Erie, Street, De Pere were sentenced June 17, 1987, by Dane County Judicial Court Commissioner Todd Meurer after they each pled no contest to one count of filing a false MV-1 report. In addition to the fines, each of them must pay the additional taxes, penalties, and interest due.

They were each charged with filing false applications for motor vehicle title/registration forms which are combined with the state sales and use tax report. The criminal complaints alleged the men each reported the purchase price of a vehicle he bought to be less than the actual purchase price and that each paid less tax than was due.

Filing a false sales and use tax return is a crime punishable by a fine of not more than \$500 or imprisonment not to exceed thirty days 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 violation.

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### Excise Taxes

A Madison beer wholesaler pled no contest and was found guilty of 18 counts of violating the state's beer sales laws.

In a disposition agreed upon by the company and the state Revenue Department, Wisconsin Distributors, Inc., 2921 Syene Road, was ordered to pay \$10,005 in fines and penalty assessment by Rock County Circuit Court Judge Mark J. Farnum. Violations occurred in Rock, Columbia, Dane, Green, and Walworth counties, according to the complaint filed by the state Justice Department.

The conviction was the result of a fifteen-month probe of the company's trade practices, made by the Alcohol & Tobacco Enforcement Section of the state Revenue Department. The complaint alleges that Wisconsin Distributors reimbursed its employees for monies spent at taverns to promote its products in violation of s. 125.33 of the state statutes, known as the

"tied house law". This law forbids beer wholesalers from furnishing things of value to tavern licensees.

In agreeing to this disposition, Wisconsin Distributors did not admit to any violations of law.

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Council Davis was found guilty on July 13, 1987, of selling beer without a license at Sharp's Grocery, 928 West Burleigh, Milwaukee. Davis was fined \$100.00 for the violation.

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Anthony Sharp, 928 West Burleigh, Milwaukee, pled guilty and was found guilty on July 10, 1987, of failing to have a licensed operator present on his fermented malt beverage licensed premises and failing to have his Class "A" license posted. Sharp was fined \$100.00 on each count.

## 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 October 30, 1987. Part C lists new rules and amendments which are adopted. Part D lists emergency rules. ("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

### A. Rules at Legislative Council Rules Clearinghouse

- 2.16 Change in method of accounting for corporations-A
- 2.19 Installment method of accounting for corporations-A
- 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies-A

- 2.21 Accounting for incorporated contractors-A
- 2.22 Accounting for incorporated dealers in securities-R&R
- 2.24 Accounting for incorporated retail merchants-A
- 2.25 Corporation accounting generally-A
- 2.26 "Last in, first out" method of inventorying for corporations-A
- 2.395 Sales factor option-NR
- 2.45 Apportionment in special cases-A
- 2.50 Apportionment of net business income of interstate public utilities-A
- 2.505 Apportionment of net business income of interstate professional sports clubs-A
- 2.53 Stock dividends and stock rights received by corporations-A
- 2.56 Insurance proceeds received by corporations-A
- 2.65 Interest received by corporations-A
- 2.72 Exchanges of property by corporations generally-A
- 2.721 Exchanges of property held for productive use or investment by corporations-A
- 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations-A
- 2.88 Interest rates-A
- 3.44 Organization and financing expenses—corporations-R&R
- 3.45 Bond premium, discount and expense—corporations-A

#### **B. Rules at Legislative Standing Committees**

- 11.10 Occasional sales-A

#### **C. Rules Adopted in 1987 (effective 8/1/87)**

- 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
- 11.05 Governmental units-A
- 11.08 Medical appliances, prosthetic devices and aids-A
- 11.09 Medicines-A
- 11.10 Occasional sales-A
- 11.12 Farming, agriculture, horticulture and floriculture-A
- 11.14 Exemption certificates (including resale certificates)-A
- 11.16 Common or contract carriers-A
- 11.27 Warranties-A
- 11.28 Gifts, advertising specialties, coupons, premiums and trading stamps-A
- 11.39 Manufacturing-A
- 11.41 Exemption of property consumed or destroyed in manufacturing-A
- 11.45 Sales by pharmacies and drug stores-A
- 11.49 Service stations and fuel oil dealers-A
- 11.65 Admissions-A
- 11.66 Communication and CATV services-A
- 11.80 Sales of ice-A
- 11.84 Aircraft-A
- 11.85 Boats, vessels and barges-A
- 11.88 Mobile homes-A
- 11.94 Wisconsin sales and taxable transportation charges-A
- 11.96 Interest rates-A

#### **D. Emergency Rules (effective 8/1/87)**

- 3.095 Interest income from federal obligations-A

*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 nonacquiescence" 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**

Capital Preservation Fund, Inc., et al. (p. 8)

Interest income—mutual funds

James F. Honzik (p. 9)

Capitalized expenses

#### **Corporation Franchise or Income Taxes**

Regency Nursing Homes, Inc. (p. 9)  
Business loss carryforward (prior law)

#### **Sales/Use Taxes**

PAE Communications, Inc. (p. 10)  
Cable TV

Susie Q Fish Company, Inc. (p. 10)  
Boats, vessels and barges

Valley Veterinary Clinic, S.C. and Dairyland Veterinary Associates, S.C. (p. 11)  
Farming—livestock medicines

#### **Homestead Credit**

John H. Jackson (p. 11)  
Household income

### **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*

#### **INDIVIDUAL INCOME TAXES**

**Interest income—mutual funds.** *Capital Preservation Fund, Inc., Trust for Short Term U.S. Government Securities, Lee R. Hribar, Unrquhart L. Meeter, and*



*James E. Bartelt v. Wisconsin Department of Revenue* (Circuit Court of Dane County, May 11, 1987). Capital Preservation Fund (Fund), Trust for Short Term U.S. Government Securities (Trust), and individual investor/taxpayers claim that the taxing of dividends distributed to investors from mutual funds investing solely and exclusively in U.S. Government securities under Chapter 71, Wis. Stats., is an unconstitutional violation of the prohibition in 31 U.S.C., s. 3124(a) against direct or indirect taxation, by any state, of United States Government securities or income from those securities. Similarly, this prohibition is incorporated in s. 71.05(b)(1), Wis. Stats., exempting income, "which by federal law is exempt from taxation by this state."

The Trust and Fund are diversified investment companies qualifying as regulated investment companies (commonly known as mutual funds) under ss. 851-855 of the Internal Revenue Code of 1954, as amended. The Fund is a California corporation with its principal office in Palo Alto, California. The Trust is a no-load, open-end, diversified investment company established as a Massachusetts Business Trust under a Declaration of Trust. The Trust operates as a regulated investment company under the Internal Revenue Code, 20 U.S.C., ss. 851-855. As such, the Trust itself is exempt from federal corporate income taxation. The stated purpose of the Trust is to provide investors with, "high current income consistent with stability of principal and liquidity." The Trust and the Fund invest exclusively and directly in United States Government securities. The Trust invests in direct federal credit obligations, securities issued by or guaranteed by federal agencies. These federal securities are exempt from state taxation under 31 U.S.C., s. 3124(a).

Shares in the Trust and the Fund have been and are currently sold to individual investors in many states, including Wisconsin. The income derived from investment in U.S. Government securities is primarily distributed as "dividends" to shareholders and beneficiaries in two alternative forms: cash or additional shares.

An individual invests in the Trust by purchasing shares at net asset value. One share equals one dollar. The Fund operates in a similar manner, also restricting its investments to federal securities and obligations.

Lee R. Hribar, Unruh L. Meeter and Barbara C. Meeter are individual investors in the Fund. Cumulatively, they own 441,752 shares. James E. Bartelt is an investor in and a beneficiary of the Trust, owning 2,000 shares.

The dividend distributions which each taxpayer receives monthly from either the Fund or the Trust have been reported by the investors on their individual Wisconsin income tax returns as gross income and that income has been taxed by the Department of Revenue.

The Circuit Court concluded that in order to protect this interest codified in 31 U.S.C., s. 3124(a), the Fund, Trust and taxpayers' motion for summary judgment is granted. The department's practices of taxing the dividends from the Fund and Trust are declared to be in violation of s. 3124(a) of Title 31 U.S.C.

The department has appealed this decision.

□

**Capitalized expenses.** *James F. Honzik vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 12, 1987). The issue to be decided by the Commission is whether the expenditures incurred in the renovation of the duplex were repair expenses deductible under section 162 of the Internal Revenue Code or part of a general plan of improvement and rehabilitation which must be capitalized.

Sometime in 1982 or 1983, the taxpayer purchased a fully rented duplex located in the City of Milwaukee. Upon examination of the property, the taxpayer noticed that a hot water pipe leaked from the

ceiling, the basement had flooded and old pipe was rusting through. These leaks were fixed by running new pipes across the ceiling rather than replacing the old pipe under the concrete floor. The taxpayer also replaced copper pipes to the radiators where constriction was taking place as a result of being joined to galvanized pipe. The furnace was also rewired. As a result of the flooding and above mentioned work, the holes in the plaster and ceiling were covered by paneling the basement. Taken as a whole, the above mentioned projects were not repair but rehabilitation of the duplex.

The Commission concluded that the expenses in dispute must be capitalized and are not deductible as an expense under IRC section 162.

The taxpayer has appealed this decision.

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## CORPORATION FRANCHISE OR INCOME TAXES

**Business loss carryforward (prior law).** *Regency Nursing Homes, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, District I, February 12, 1987). Regency Nursing Homes, Inc. (Regency) appeals from a judgment affirming an order of the Wisconsin Tax Appeals Commission (Commission) upholding the assessment of additional franchise tax and interest. (See WTB 41 and 48 for a summary of the Commission and Circuit Court decisions.)

Regency owned and operated a nursing home facility during fiscal years ending in 1971 through 1975 and sustained net business losses during that time. During the fiscal year ending in 1975, the facility was sold. Regency realized a gain on the sale. Thereafter, Regency ceased business operations, and it liquidated in 1976. On its 1975 Wisconsin corporate income tax return, Regency offset the prior years' net business losses against the income realized on the sale. The department as-

sessed additional franchise taxes after concluding that the offset was inappropriate because the income from the sale of assets prior to liquidation was not "net business income" as defined by s. 71.06, Stats. (1973). The department, the Commission, and the Circuit Court concluded that s. 71.06 required that the business continue after the sale.

The Court of Appeals ordered that the judgment of the Circuit Court is summarily affirmed.

The taxpayer has not appealed this decision.



## SALES/USE TAXES

**Cable TV.** *PAE Communications, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 10, 1987). The issues are:

A. Whether underground television cable including main line, feeders and drops become part of the real estate upon installation and lose their character as tangible personal property so as to not be subject to the sales tax on services described in s. 77.52(2)(a)10, Wis. Stats.

B. Whether installing an underground cable television drop line on the subscriber's premises between the feeder line and the subscriber's house is a taxable service described in s. 77.52(2)(a)12, Wis. Stats.

C. Whether the installation of risers was a taxable service under s. 77.52(2)(a)10, Wis. Stats.

PAE Communications, Inc., is a Wisconsin corporation. The taxpayer was organized in 1978 as J. W. Romlein, Inc. The taxpayer's principal (100%) stockholder at that time was James W. Romlein, Wauwatertown, Wisconsin. During February 1980, Romlein sold 80% of his stock to Pacific Architects and Engineers, a Cali-

fornia corporation. During 1983, the corporate name was changed to PAE Communications, Inc. The taxpayer's primary business was providing consulting services to the telecommunications industry. It had offices located in Wisconsin, Indiana, and Florida.

During the period of 1980 through 1983, the taxpayer was in the business among others of installing cable for cable television companies. As part of the Department of Revenue's regular audit program, the department conducted a field audit of the taxpayer in 1984 for the period of June 1, 1979 through December 31, 1983. The taxpayer was not registered for sales or use tax or had not filed any sales or use tax returns for the period under review. The taxpayer is objecting to the department's assessment of sales tax for the laying of cable underground for cable television companies. The taxpayer did not charge a sales tax to the cable television companies for installing cable. The contracting cable television companies were responsible for necessary easements and permits.

The underground cable is buried either by "trenching" or by a process called "plow cable" 24 to 36 inches, and one could not just reach down to remove it, but rather would have to trench down to dig it up. This would be done only if a piece of cable was damaged and in need of repair or replacement. There would be no occasion to simply remove the cable. If use of the cable system was discontinued the cable would be abandoned. Cable is not buried with the idea of someday removing it. The process of laying cable television lines is very similar to underground telephone lines. The only difference is that television cables are a little "touchier" to handle. Gas and electric lines are also buried underground. The methods may be slightly different, but the principle is the same as for cable television lines.

The Commission concluded:

A. This decision is rendered under the provisions of s. 73.01(4)(e), Wis. Stats.

B. The taxpayer's installation of underground television cables was not a taxable

service described in s. 77.52(2)(a)10, Wis. Stats., and section Tax 11.68(4) and (6), Wis. Adm. Code.

C. The taxpayer's installation of underground television cables (drop lines) was not a "sale of cable television system services including installation charges" within the meaning of s. 77.52(2)(a)12 and (am), Wis. Stats., and section Tax 11.66(1)(e), Wis. Adm. Code.

D. The taxpayer's installation of "risers" was a taxable service described in s. 77.52(2)(a)10, Wis. Stats.

The taxpayer and the department have not appealed this decision.



**Boats, vessels and barges.** *Susie Q Fish Company, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, February 5, 1987). This matter is a review of an assessment by the department which levies a use tax against Susie Q Fish Company, Inc., for the period beginning July 1, 1977, and ending June 30, 1983.

The large majority of the assessment relates to taxes imposed on various items purchased for use in the taxpayer's commercial fishing activities on the Great Lakes and in particular the two commercial fishing vessels owned and operated by the taxpayer.

The taxpayer believes these items are exempt from tax under the exemption afforded commercial fishermen found in s. 77.54(13), Wis. Stats.

A minor portion of the assessment relates to parts the taxpayer purchased for a semi-tractor and a Ford van it purchased which it alleges is exempt from tax under the common or contract carriage exemption language contained in s. 77.54(5)(b), Wis. Stats.

The Susie Q Fish Company, Inc. is a Wisconsin corporation which, during the

period involved, namely July 1, 1977, through June 30, 1983, was engaged in the commercial fishing business.

In its commercial fishing activity, which consisted of trawling for alewives on Lake Michigan between Door County and Racine, the taxpayer owned and operated two commercial fishing vessels: the "Susie Q," which it purchased in 1965, and the "Avis-J," which it purchased in 1960.

The Commission concluded that the taxpayer was, during the period under review, primarily engaged in commercial fishing on Lake Michigan, utilizing two commercial fishing vessels, the "Susie Q" and the "Avis-J," both of which exceeded 50 ton burden, and thus is entitled to the exemption from sales and use tax contained in s. 77.54(13), Wis. Stats.

The taxpayer has not met its burden of proof to show by clear and convincing evidence that its purchase of truck parts or a 1975 Ford van fall clearly within the common or contract carriage exemption from tax, and thus is not entitled to that exemption as contained in s. 77.54(5)(b), Wis. Stats.

The department has not appealed but has adopted a position of nonacquiescence in regard to this decision.

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**Farming—livestock medicines.** *Valley Veterinary Clinic, S.C. and Dairyland Veterinary Associates, S.C. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, March 16, 1987). The issues to be determined by the Commission are as follows:

A. Whether dewormers were medicines for animals purchased by veterinarians within the meaning of s. 77.51(7)(o), Wis. Stats., and, therefore, subject to the use tax under s. 77.53(1), Wis. Stats.

B. Whether teat dip, udder wash, and disinfectant were medicines for animals

purchased by veterinarians within the meaning of s. 77.51(7)(o), Wis. Stats., and, therefore, subject to the use tax under s. 77.53(1), Wis. Stats.

C. Whether freight charges on taxable purchases are included in the sales price within the meaning of s. 77.51(12), Wis. Stats.

D. Whether the taxpayers are entitled to a credit, but not to exceed the amount of the tax assessed, against the respective assessments here at issue for sales taxes paid to Wisconsin suppliers on purchases which were exempt from the sales and use tax.

Valley Veterinary Clinic, S.C. (Valley) and Dairyland Veterinary Associates, S.C. (Dairyland) are service corporations composed of veterinarians engaged in the practice of veterinary medicine and related activities. Valley has its principal office in Seymour, Wisconsin. Dairyland has its principal office in Fond du Lac, Wisconsin.

The dewormers, udder wash, teat dips, disinfectants, seed and feed supplements at issue in this proceeding were sold by the taxpayers to farmers. The primary purpose of the dewormers is the prevention of disease in livestock and poultry by the destruction of nematodes or other invertebrate animals injurious to plants and animals. The taxpayers also purchased a product called "Doc's Teat Dip" which is applied to cows immediately after milking. The taxpayer also purchased Bovadine Teat Dip, Quartermat Teat Dip, Blue Udder Wash, and Iosan Udder Wash, all used to wash cows teats and udders before milking to aid in the control of mastitis causing bacteria.

The taxpayer's purchases from Nelson Jameson, Calumet Dairy Supply, Van's Dairy Supply, and Paddock Laboratories, Inc., were preparations used to destroy insects, mites, nematodes, slugs, and other invertebrate animals injurious to plants and animals.

All of the items in dispute which the taxpayers purchased from their suppliers

and resold to Wisconsin farmers were also available and were commonly sold over-the-counter at farm supply retail stores.

The taxpayers paid sales tax to various Wisconsin suppliers on dewormers, teat dip, udder wash and disinfectants.

The Commission concluded:

A. The dewormers, teat dips, udder washes and disinfectants involved in this proceeding do not constitute "medicine for animals" within the intent and meaning of s. 77.51(7)(o), Wis. Stats., and are not subject to use tax under s. 77.53(1), Wis. Stats.

B. Freight charges on taxable purchases are properly includable as part of taxable gross receipts (sales price) for purposes of sales and use taxes, within the intent and meaning of s. 77.51(12), Wis. Stats.

C. The taxpayer who actually paid the tax in question to Wisconsin is the person entitled to claim its refund and/or credit. The taxpayers in this proceeding were not that taxpayer and, thus, lack the standing to claim a refund and/or credit.

The taxpayer and the department have not appealed this decision.

□

## HOMESTEAD CREDIT

**Household income.** *John H. Jackson vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, April 20, 1987). The only issue in dispute is whether the claimant must report the amounts he received for AFDC as part of his household income on his 1983 and 1984 Wisconsin homestead credit claim forms.

During the years 1983 and 1984, legal custody of Camille Jackson and Kimberly Jackson was with their natural mother, Pearl Mae Jackson. Camille Jackson

and Kimberly Jackson are the grandchildren of the claimant. During the years 1983 and 1984, Camille Jackson and Kimberly Jackson resided with their grandfather rather than with their mother, Pearl Mae Jackson.

The claimant applied for AFDC and received AFDC checks in the amounts of

\$5,120 in 1983 and \$5,334 in 1984 for the support of his granddaughters. The claimant did not report the AFDC payments as household income on his 1983 and 1984 Wisconsin homestead credit claims.

The Commission concluded that the claimant is required to report as income on his 1983 and 1984 Wisconsin home-

stead credit forms the AFDC checks received for the support of his granddaughters.

The claimant 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. Credit for Income Taxes Paid to Other States (p. 12)
2. Depreciation of Luxury Automobiles (p. 14)
3. Filing Requirement for Dependents with Unearned Income (p. 14)
4. Interest Received from Student Loan Marketing Association Obligations (p. 15)
5. Itemized Deduction Credit-Interest Paid on a Loan to Purchase Stock in an Employee-Owned Business (p. 15)

### Corporation Franchise or Income Taxes

1. Mortgage Banker's Apportionment Formula (p. 16)
2. Sales Factor: Treatment of Intangible Income (p. 17)

### Sales/Use Taxes

1. Real vs. Personal Property-Service Station Canopies (p. 17)
2. Sales/Use Tax Due on the "Trade-In" of Motor Vehicles (p. 18)
3. Third Party Purchases Car Through Auto Manufacturer's Employee (p. 18)

### County Sales/Use Taxes

1. Contracts Entered Into Before Effective Date of County Tax (p. 18)
2. County Tax: Location at Which Metered Gas and Electricity is Sold (p. 19)

## INDIVIDUAL INCOME TAXES

### 1. Credit for Income Taxes Paid to Other States

**Statutes:** Section 71.09(8)(c), 1985 Wis. Stats., and section 71.60, 1983 Wis. Stats., 1985 Wis. Stats.

**Note:** This Tax Release supersedes the Tax Releases titled "Credit for Minimum Tax Paid to Other States" in *Wisconsin Tax Bulletin* 37 and "Credit for Taxes Paid to Other States - New York Minimum Income Tax" in *Wisconsin Tax Bulletin* 44.

**Facts:** Section 71.09(8)(c), Wis. Stats., provides for a credit against Wisconsin net income taxes for income taxes paid to other states. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

**Question 1:** If a taxpayer pays a minimum tax to another state based on tax preference items enumerated in section 57(a)(2) [accelerated depreciation on real property], (3) [accelerated depreciation on leased personal property], (6) [circulation and research and experimental expenditures], (8) [depletion], (9) [capital gains deductions], (11) [intangible drilling costs], and (12) [accelerated cost recovery deduction] of the Internal Revenue Code, may this minimum tax payment be claimed as a credit against Wisconsin net income taxes?

**Answer 1:** Yes, a minimum tax paid to another state which is based on the tax preference items enumerated in s. 71.60(1)(d), 1983 Wis. Stats., may be claimed as a credit against Wisconsin net income taxes. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

**Example A:** In 1985, a full-year Wisconsin resident sold real estate located in California and realized a \$60,000 long-term capital gain. Under California law, one-half of the gain on property held more than 5 years, or \$30,000, is reported as part of the computation of the California income tax. The other half of the gain is reported as a capital gain tax preference item in the computation of the California minimum tax. The taxpayer paid \$2,070 of California income tax and \$930 of California minimum tax, for a total of \$3,000.

Since the taxpayer was a full-year Wisconsin resident, the gain on the sale of California real estate is taxable by Wisconsin. Forty percent of the gain, or \$24,000, is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain, or \$36,000, is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The entire \$60,000 of gain is taxed by both California and Wisconsin. Therefore, the taxpayer may claim both the \$2,070 California income tax payment and the \$930 California minimum tax payment, for a total of \$3,000, as a credit against Wisconsin net income taxes.

**Example B:** Assume in Example A that the taxpayer had realized only a \$15,000 long-term capital gain. One-half of the gain, or \$7,500, is reported as part of the computation of the California income tax. The other half is reported as a capital gain tax preference item in the computation of the California minimum tax. The taxpayer paid \$300 of California income tax and \$10 of California minimum tax, for a total of \$310.

Forty percent of the gain, or \$6,000, is reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for Wisconsin minimum tax because the sum of the taxpayer's capital gain deduction and other tax preference items is below the \$10,000 Wisconsin minimum tax threshold for 1985. Only \$6,000 of the gain is taxed by both California and Wisconsin. Therefore, the taxpayer may claim only \$240 of the California income tax payment as a credit against Wisconsin income taxes. The \$240 credit is computed as follows:

$$\frac{\$6,000 \text{ taxed by both CA and WI}}{\$7,500 \text{ taxed for CA income tax purposes}} \times \$300 \text{ CA income tax paid} = \$240 \text{ credit for taxes paid to CA}$$

The taxpayer cannot claim credit for any part of the \$10 California minimum tax payment.

**Question 2:** If a taxpayer pays an income tax to another state on an item which is a tax preference item enumerated in s. 71.60(1)(d), 1983 Wis. Stats., may this income tax payment be claimed as a credit against Wisconsin net income taxes?

**Answer 2:** Yes, an income tax paid to another state on an item which is a tax preference item enumerated in s. 71.60(1)(d), 1983 Wis. Stats., may be claimed as a credit against Wisconsin net income taxes. The credit is allowed only if the income taxed by another state is also taxed by Wisconsin.

**Example C:** In 1985, a full-year Wisconsin resident sold real estate located in Illinois and realized a \$50,000 long-term capital gain. Under Illinois law, the entire gain is reported as part of the computation of the Illinois income tax. The taxpayer paid \$1,230 of Illinois income tax.

Since the taxpayer was a full-year Wisconsin resident, the gain on the sale of Illinois real estate is taxable by Wisconsin. Forty percent of the gain, or \$20,000, is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain, or

\$30,000, is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The entire \$50,000 of gain is taxed by both Illinois and Wisconsin. Therefore, the taxpayer may claim the entire \$1,230 Illinois income tax payment as a credit against Wisconsin net income taxes.

**Example D:** Assume in Example C that the taxpayer had realized only a \$10,000 long-term capital gain on the sale of Illinois real estate. The entire gain is reported as part of the computation of the Illinois income tax. The taxpayer paid \$240 of Illinois income tax.

Forty percent of the gain, or \$4,000, is reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for Wisconsin minimum tax because the sum of the taxpayer's capital gain deduction and other tax preference items is below the \$10,000 Wisconsin minimum tax threshold for 1985. Only \$4,000 of the gain is taxed by both Illinois and Wisconsin. Therefore, the taxpayer may claim only \$96 of the Illinois income tax payment as a credit against Wisconsin net income taxes. The \$96 credit is computed as follows:

$$\frac{\$4,000 \text{ taxed by both IL and WI}}{\$10,000 \text{ taxed for IL income tax purposes}} \times \$240 \text{ IL income tax paid} = \$96 \text{ credit for taxes paid to IL}$$

**Question 3:** May the credit for taxes paid to another state be offset against both the Wisconsin net income tax computed under s. 71.09, Wis. Stats., and the Wisconsin minimum tax computed under s. 71.60, Wis. Stats.?

**Answer 3:** For 1981 and subsequent taxable years, the credit allowable under s. 71.09(8)(c), Wis. Stats., may be offset against both the Wisconsin net income tax computed under s. 71.09 and the Wisconsin minimum tax computed under s. 71.60.

**Example E:** In 1985, a full-year Wisconsin resident sold Illinois real estate and paid \$1,230 of Illinois income tax on the gain realized. Forty percent of the gain is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The taxpayer owes \$850 of Wisconsin net income tax and \$1,000 of Wisconsin minimum tax. The taxpayer may claim the entire \$1,230 Illinois income tax payment as a credit against the Wisconsin net income tax of \$850 and Wisconsin minimum tax of \$1,000, resulting in net Wisconsin tax due of \$620.

**Question 4:** May a New York minimum income tax payment based on the 60% capital gain deduction (i.e., that portion of the capital gain which is not subject to the New York income tax) be claimed as a credit against Wisconsin net income taxes?

**Answer 4:** Yes, a New York minimum income tax paid which is based on the 60% capital gain deduction may be claimed as a credit against Wisconsin net income taxes. The credit is allowed only if the income taxed by New York is also taxed by Wisconsin.

For the 1982 taxable year, 80% of net long-term capital gains was reported as part of the computation of the Wisconsin income tax. If the sum of the taxpayer's 1982 capital gain deduction and other tax preference items was below the \$10,000 Wisconsin minimum tax threshold, 2/3 of the New York minimum income tax paid may be claimed as a credit against Wisconsin net income taxes.

For the 1983 taxable year, 60% of net long-term capital gains was reported as part of the computation of the Wisconsin income tax. If the sum of the taxpayer's 1983 capital gain deduction and other tax preference items was below the \$10,000 Wisconsin minimum tax threshold, 1/3 of the New York minimum income tax paid may be claimed as a credit against Wisconsin net income taxes.

For the 1984 taxable year and thereafter, the New York minimum income tax paid may be claimed as a credit only if the capital gain deduction is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax.

**Example F:** In 1985, a full-year Wisconsin resident sold real estate located in New York and realized a \$100,000 long-term capital gain. Forty percent of the gain, or \$40,000, is reported as part of the computation of the New York income tax. Sixty percent of the gain, or \$60,000, is reported as a capital gain tax preference item in the computation of the New York minimum income tax. The taxpayer paid \$3,700 of New York income tax and \$3,080 of New York minimum income tax.

Since the taxpayer was a full-year Wisconsin resident, the gain on the sale of New York real estate is taxable by Wisconsin. Forty percent of the gain is reported as part of the computation of the Wisconsin income tax. Sixty percent of the gain is reported as a capital gain tax preference item in the computation of the Wisconsin minimum tax. The entire \$100,000 of gain is taxed by both New York and Wisconsin. Therefore, the taxpayer may claim both the \$3,700 New York income tax payment and the \$3,080 New York minimum income tax payment, for a total of \$6,780, as a credit against Wisconsin net income taxes.

**Example G:** Assume in Example F that the taxpayer had realized only a \$15,000 long-term capital gain on the sale of New York real estate. The taxpayer paid \$160 of New York income tax and \$230 of New York minimum income tax. Forty percent of the gain, or \$6,000, is reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for Wisconsin minimum tax because the sum of the taxpayer's capital gain deduction and other tax preference items is below the \$10,000 Wisconsin minimum tax threshold for 1985. Therefore, the taxpayer may claim only the \$160 New York income tax payment as a credit against net Wisconsin income taxes.

**Example H:** In 1986, a full-year Wisconsin resident sold New York real estate and realized a \$50,000 long-term capital gain. Forty percent of the gain is reported as part of the computation of the New York income tax. Sixty percent of the gain is reported as a capital gain tax preference item in the computation of the New York minimum income tax. Forty percent of the gain is also

reported as part of the computation of the Wisconsin income tax. The taxpayer is not liable for the Wisconsin minimum tax. Only \$20,000 of the gain is taxed by both New York and Wisconsin. Therefore, the taxpayer may claim only the New York income tax payment as a credit against Wisconsin net income taxes.



## 2. Depreciation of Luxury Automobiles

**Statutes:** Section 71.02(2)(d)11 and 12, 1985 Wis. Stats.

**Background:** Section 71.02(2)(d)11, 1985 Wis. Stats., provides that the Internal Revenue Code as of December 31, 1984 is to be used in determining Wisconsin adjusted gross income for the tax year 1985. Section 280F of the IRC as of December 31, 1984, provides that depreciation allowable on luxury automobiles in the first year placed in service is \$4,000 and the amount allowable in subsequent years is \$6,000. Federal law changed in regard to this depreciation deduction in 1985 as a result of an amendment by Public Law 99-44. This amendment provided that for the 1985 tax year the amount of depreciation deductible on luxury automobiles in the first year placed in service was \$3,200 and \$4,800 in subsequent years. This change takes effect for Wisconsin beginning with the 1986 tax year pursuant to s. 71.02(2)(d)12, 1985 Wis. Stats.

**Question:** A taxpayer places a luxury automobile in service in 1985. For Wisconsin tax purposes, the Internal Revenue Code as of December 31, 1984, applies and provides that the taxpayer may deduct \$4,000 of depreciation in regard to the automobile for the 1985 tax year. What depreciation may the taxpayer deduct in 1986 for Wisconsin purposes for this automobile?

**Answer:** The taxpayer may deduct \$6,000 of depreciation in 1986. The provisions of Internal Revenue Code section 280F which were in effect on the date the automobile was first placed in service apply for both the first year's and succeeding year's depreciation, even though depreciation limits changed for Wisconsin for the 1986 tax year. The new depreciation limits for luxury automobiles provided by s. 71.02(2)(d)12, 1985 Wis. Stats. (\$3,200 first year and \$4,800 subsequent year) apply only to those automobiles placed in service in the 1986 tax year and thereafter.



## 3. Filing Requirement for Dependents with Unearned Income

**Statutes:** Section 71.10(2)(a)5.d and (d), 1985 Wis. Stats.

**Background:** Section 71.10(2)(a)5.d, 1985 Wis. Stats., provides that every natural person who can be claimed as a dependent on another taxpayer's income tax return shall file a return if that natural person has gross income, not including earned income, of \$1,000 or more. Gross income is defined in s. 71.10(2)(d), 1985 Wis. Stats., as all income from whatever source whether in money, property or services, which is not exempt from Wisconsin income tax.

**Question 1:** In 1986, a dependent received dividend income of \$1,050. The dependent is entitled to the \$100 dividend exclusion. Is the dependent required to file a 1986 Wisconsin income tax return?

**Answer 1:** No. The dependent's gross income, not including earned income, is \$950. The first \$100 of dividends received by a dependent are excluded from gross income. Because gross income, not including earned income, is less than \$1,000, the dependent is not required to file a 1986 Wisconsin income tax return.

**Question 2:** In 1986, a dependent received interest income of \$800 and a nontaxable distribution which was a return of capital of \$400. Is the dependent required to file a 1986 Wisconsin income tax return?

**Answer 2:** No. A return of capital is exempt from Wisconsin income tax. Therefore, gross income, not including earned income, is \$800. Because gross income, not including earned income, is less than \$1,000, the dependent is not required to file a 1986 Wisconsin income tax return.

**Question 3:** A dependent received \$800 of interest income in 1986. In addition, the dependent incurred a short-term capital loss of \$500 from the sale of stock. The selling price of the stock was \$1,000. Is the dependent required to file a 1986 Wisconsin income tax return?

**Answer 3:** Yes. Gross income, not including earned income, is \$1,800, the amount of interest income (\$800) plus the selling price of the stock (\$1,000). Because gross income, not including earned income, is greater than \$1,000, the dependent must file a 1986 Wisconsin income tax return.



#### 4. Interest Received From Student Loan Marketing Association Obligations

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

**Facts and Question:** A Wisconsin resident receives interest income from an obligation issued by the Student Loan Marketing Association (Sallie Mae). Is the interest income received from

this security considered to be income from an obligation of the United States government which is exempt from Wisconsin income tax under s. 71.05(1)(b)1, 1985 Wis. Stats.?

**Answer:** Yes. Interest income which an individual receives from a Sallie Mae obligation is exempt from Wisconsin income tax. Although Sallie Mae obligations are not direct obligations of the United States Government, federal law (Section 20 USCS 1087-2(l)) provides that for purposes of taxation by states, the obligations of Sallie Mae shall be deemed to be obligations of the United States.



#### 5. Itemized Deduction Credit- Interest Paid on a Loan to Purchase Stock in an Employee-Owned Business

**Statutes:** Section 71.09(6r)(a), 1985 Wis. Stats.

**Note:** This Tax Release applies to the taxable year 1986.

**Background:** Persons filing a 1986 Wisconsin income tax return may claim a 5% credit against, but not to exceed the amount of, Wisconsin net income taxes due. The credit is based on certain expenses deductible as itemized deductions for federal income tax purposes. One such expense is interest paid on a loan to purchase stock in an employee-owned business from which the employee receives at least 50% of that employee's wage and salary income.

If the interest is paid by an employee on a loan to purchase stock in an employee-owned business from which the employee receives at least 50% of that employee's wage and salary income, the entire amount of interest may be used in computing the itemized deduction credit. If not, the interest that may be used in computing the itemized deduction credit is limited to \$1,200 of "other interest" (see the Tax Release titled "Interest Allowable in Computing the Wisconsin Itemized Deduction Credit" in Wisconsin Tax Bulletin 47).

**Question 1:** What is an "employee-owned business"?

**Answer 1:** An "employee owned business" is defined in s. 560.16(1)(c), 1985 Wis. Stats., as a business located in Wisconsin determined by the Department of Development to involve substantial employee participation or a cooperative organized under Chapter 185 of the statutes or a corporation in which employees own the stock of the corporation through an employee stock ownership plan as defined in 26 USC 4975(e)(7). In addition, all of the following conditions must exist.

1. A majority of the voting rights are held by employees of the business and all employees owning stock have a right to vote.

2. Shares are voted in such a manner that the vote of the majority of employees controls the vote of the majority shares.
3. The pass-through voting requirements under 26 USC 409A(e) are met.
4. The majority of the board of directors are elected by the employees.

**Question 2:** What are the voting requirements under 26 USC 409A(e)?

**Answer 2:** The voting requirements under 26 USC 409A(e) are as follows:

1. If the employer has registration-type securities, the employee must be entitled to direct the manner in which the securities allocated to him or her are voted by the employee stock ownership plan. Registration-type securities are publicly traded stocks of the employer which provide voting and dividend rights equivalent to the rights possessed by shareholders of the highest class of stock of the issuing corporation which is readily available on a public market.
2. If the securities of the employer are not registration-type securities (i.e., stock of a closely held corporation), the employee must be entitled to direct how the employee stock ownership plan will vote stock allocated to him or her on matters which must be decided by more than a majority vote of outstanding common shares.

**Question 3:** A Delaware corporation doing business primarily in Wisconsin employs 100 people. Of the 100 employees, 7 own 84.7% of all voting stock in the corporation. The remainder of shares are owned by persons outside the corporation. Does this meet the requirement, under s. 560.16(1)(c)2, 1985 Wis. Stats., that the vote of the majority of employees controls the vote of the majority of shares?

**Answer 3:** No. The term "majority of employees" is interpreted by the Department of Development to require that over 50% of *all* employees of the corporation own stock in the corporation and, as a group, control the vote of the majority of shares. In this example, 51 employees would have to own some of the corporation's stock and in total they must control over 50% of all voting stock in the corporation for it to qualify as an employee-owned business.

**Question 4:** A taxpayer is a major shareholder in a small corporation owning 40% of the corporation's stock. Twenty percent of stock is held equally by the other 5 employees of the corporation. The remaining 40% of the stock is held by persons outside the corporation. May the taxpayer use the entire amount of interest paid on a loan to purchase stock in the corporation in computing the itemized deduction credit?

**Answer 4:** If the taxpayer is an employee of the corporation and receives 50% of all his or her 1986 wage and salary income from the corporation, the first condition given in Answer 1 is met and provided the corporation meets all other conditions in Answer 1, the taxpayer may use the entire amount of interest paid in computing the itemized deduction credit.

**Question 5:** A taxpayer took out a loan in 1985 to purchase stock in an employee-owned business. At the time the stock was purchased, the taxpayer was an employee of the business. On January 1, 1986, the taxpayer retired from the business. Can the taxpayer use the entire amount of interest paid in 1986 on the loan to purchase stock in the employee-owned business in computing the Wisconsin itemized deduction credit?

**Answer 5:** No. Because the taxpayer is no longer an employee of the business, the interest is not being "paid by an employee" and therefore, does not qualify as interest paid on a loan to purchase stock in an employee-owned business. However, the interest is "other interest" and may be used subject to the \$1,200 limitation.

**Question 6:** An employee has an option to purchase stock in the company which employs him or her. The stock, if acquired, is subject to a substantial risk of forfeiture, as defined in Internal Revenue Code Section 83(c), for two years. If the corporation is an employee-owned business as defined in s. 560.16(1), 1985 Wis. Stats., is the entire amount of interest paid on a loan to purchase the restricted stock allowable in computing the itemized deduction credit or is the interest subject to the \$1,200 "other interest" limitation until the restrictions lapse?

**Answer 6:** The entire amount of interest paid on a loan to purchase the restricted stock is allowable in computing the itemized deduction credit. Section 71.09(6r)(a), 1985 Wis. Stats., doesn't contain any provision to treat restricted stock differently from stock not subject to restrictions.



## CORPORATION FRANCHISE OR INCOME TAXES

### 1. Mortgage Banker's Apportionment Formula

**Statutes:** Sections 71.07(2), 71.07(2)(d)1 and (e), 1985 Wis. Stats.

**Wis. Adm. Code:** Section Tax 2.49, July 1978 Register

**Facts and Question:** Section 71.07(2)(e), 1985 Wis. Stats., provides that financial organizations engaged in business within and without Wisconsin must apportion their net business income pursuant to rules of the Department of Revenue. "Financial organization" is defined in s. 71.07(2)(d)1, 1985 Wis. Stats., and



means "any bank, trust company, savings bank, industrial bank, land bank, safe deposit company, private banker, savings and loan association, credit union, cooperative bank, small loan company, sales finance company, investment company, brokerage house, underwriter or any type of insurance company." Section Tax 2.49, Wis. Adm. Code, requires financial organizations to use a 2-factor apportionment formula rather than the standard 3-factor apportionment formula provided for in s. 71.07(2), 1985 Wis. Stats.

Mortgage banker XYZ's primary business activities involve the originating of first mortgage loans on residential real estate and the pooling of these loans in GNMA mortgage backed securities. Even though the mortgage banker has, in effect, sold these loans, it continues servicing the loans, which includes collecting the monthly principal, interest, and real estate tax escrow payments and remitting these amounts to the appropriate parties.

Is mortgage banker XYZ a "financial organization" within the meaning of s. 71.07(2)(d)1, 1985 Wis. Stats., and, therefore, required to apportion its income under section Tax 2.49, Wis. Adm. Code?

**Answer:** No, mortgage banker XYZ is not included within the definition of financial organizations under s. 71.07(2)(d)1, 1985 Wis. Stats. Therefore, mortgage banker XYZ is required to use the standard 3-factor apportionment formula provided for in s. 71.07(2), 1985 Wis. Stats.

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## 2. Sales Factor: Treatment of Intangible Income

**Statutes:** Section 71.07(2)(c), (cm) and (cr), 1985 Wis. Stats.

**Background:** In a Tax Release published in April 1986 in *Wisconsin Tax Bulletin* 46, the department provided some examples of intangible incomes which are includable in the sales factor of multi-state businesses based on the *U.S. Steel* and *IBM* Tax Appeals Commission decisions of May 9, 1985. The types of intangible income described in that Tax Release are includable only in taxable years prior to 1986 where the taxpayer has not exercised the option in 1985 Wisconsin Act 120. Wisconsin Act 120 provides, in part, that beginning with taxable year 1986, apportionable income from intangibles is not included in the sales factor computation except for certain royalties and franchise fees; however, at the taxpayer's option this treatment may be applied retroactively to all years prior to 1986 open to assessment or refund.

Part II. B. (1)(i) of the Tax Release states that "Gross receipts from dispositions (sales, exchanges or redemptions) of intangible assets (other than investments in nonunitary affiliates)

includable in apportionable income" are includable in the sales factor.

**Question 1:** Do such dispositions include redemptions of certificates of deposit, bankers acceptances, repurchase agreements and time deposits?

**Answer 1:** Yes, proceeds from redemptions of certificates of deposit, bankers acceptances, repurchase agreements and time deposits are includable in the sales factor.

**Question 2:** Do such dispositions include withdrawals from money market funds, savings accounts and NOW checking accounts?

**Answer 2:** No, these withdrawals are not includable in the sales factor because they are not proceeds from the disposition of intangible investments.

**Question 3:** Are collections of receivables includable in the sales factor?

**Answer 3:** No, collections of accounts which had been included in the sales factor when they were recorded are not includable in the sales factor.

**Question 4:** Are sales of its own stocks and bonds by a corporation includable in the sales factor?

**Answer 4:** No, receipts from a corporation issuing its own securities are not proceeds from the disposition of intangible investments.

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## SALES/USE TAXES

### 1. Real vs. Personal Property- Service Station Canopies

**Statutes:** Sections 70.03, 77.51(2) and (20), 1985 Wis. Stats.

**Wis. Adm. Code:** Section Tax 11.68(4), (5), and (6)(a)6, October 1986 Register

**Wis. Tax Bulletin:** Issue Number 4, page 4

**Facts and Question:** Section 70.03, 1985 Wis. Stats., defines real property as "The terms 'real property', 'real estate' and 'land' when used in chs. 70 to 79, shall include not only the land itself but all buildings and improvements thereon, and all fixtures and rights and privileges appertaining thereto. . ."

Service station canopies are constructed in a similar manner to the construction of a building. The supporting columns of the

actual roof of the canopy are secured within and imbedded into a concrete foundation which begins five feet below ground level. The completed canopy cannot be removed from the columns without destroying the columns. Nor can the columns be removed without destroying the foundation and the surrounding real estate into which they are affixed. For both Wisconsin state building codes and Wisconsin state property tax classification the constructed canopies are considered real property. Are these canopies considered to be real property or personal property for sales/use tax purposes?

**Answer:** Service station canopies constructed in the manner described above are deemed to be real property improvements for sales/use tax purposes. The gross receipts from the construction of such canopies are not subject to the sales tax. The person engaged in real property construction activities is the consumer of, and must pay tax on the purchase of, the building materials used in altering, repairing, or improving real property.

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## 2. Sales/Use Tax Due on the "Trade-in" of Motor Vehicles

**Statutes:** Sections 77.51(4)(b)3 and (15)(b)4 and 77.53(1), 1985 Wis. Stats.

**Facts and Question:** An automobile dealer purchased for \$10,600 a wrecker subject to the sales and use tax for use in its business. The dealer took an automobile from inventory and used it to obtain a trade-in allowance of \$3,000, making the net cash payment for the wrecker \$7,600. The automobile used as a trade-in on the purchase of the wrecker was previously acquired for a trade-in allowance of \$2,000 by the automobile dealer on the sale of a new automobile.

What sales and use taxes are due on the automobile dealer's purchase of the wrecker and the trade-in of a used vehicle acquired by trade-in?

**Answer:** Under s. 77.51(4)(b)3, 1985 Wis. Stats., the dealer should be charged sales tax by the seller of the wrecker, measured by the selling price of the wrecker minus the trade-in allowance, i.e., \$7,600 (\$10,600 - \$3,000). The dealer also must report and pay tax to the Department of Revenue on the traded-in vehicle measured by the dealer's \$2,000 cost of the vehicle because the dealer is using the vehicle for something other than resale. Since the dealer allowed \$2,000 on the trade-in of this vehicle, the dealer's cost is considered to be \$2,000.

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## 3. Third Party Purchases Car Through Auto Manufacturer's Employee

**Statutes:** Section 77.52(14), 1985 Wis. Stats.

**Wis. Adm. Code:** Section Tax 11.14(6)(a), June 1983 Register.

**Facts and Question:** An employee of an auto manufacturer purchased a car for his father-in-law in February 1985. He traded in his father-in-law's car. The father-in-law obtained a loan and bank draft using the new car as collateral. The bank draft which was endorsed by the father-in-law was used by the son-in-law to pay the dealer the net purchase price, plus sales tax, title fee and loan fee.

Although the son-in-law never used the car, or intended to use it, it was registered to him as required by the auto manufacturer. Then 11 months later in January 1986, the title was transferred to the father-in-law. On the application for title transfer they claimed exemption from sales tax by "gift."

Two transactions occurred in the acquisition and titling of this vehicle. Is a sales tax due on each transfer? Since the son-in-law never used the vehicle, could he claim the "resale" exemption even though the vehicle was titled in his name for approximately 11 months?

**Answer:** Sales tax is due on the original purchase of the vehicle from the dealer. The "resale" exemption cannot apply because the son-in-law is not a retailer who can issue a valid resale certificate. There is no sales tax due on the second transaction because no taxable gross receipts are involved in the second transfer.

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## COUNTY SALES/USE TAXES

### 1. Contracts Entered Into Before Effective Date of County Tax

**Statutes:** Section 77.77(3), 1985 Wis. Stats.

**Wis. Adm. Code:** Section Tax 11.68(12), October 1986 Register

**Facts and Question:** If a contractor irrevocably enters into a written construction contract for a fixed price, without regard to the contractor's costs incurred in performing that contract, or irrevocably submitted a formal written bid accompanied by a bond or other performance guaranty prior to the effective date of the imposition of the 1/2% county use tax on construction materials, the building materials used in that particular construction contract are exempt from the 1/2% county tax.

If there is a change order to the contract or written bid before or after the county tax is in effect, are the building materials reflected in the change order also exempt from the tax?

**Answer:** The exemption in s. 77.77(3), 1985 Wis. Stats., for building materials used in a contract which the contractor must perform for a fixed price, only applies to construction projects irrevocably entered into before the tax was in effect in a particular county which adopted the county tax. The exemption also applies to formal written bids submitted before the tax is in effect. If there are change orders entered into after the county tax is in effect which increase the total contract price or the bid price, these change orders are not entitled to this exemption. However, change orders entered into before the county tax is in effect do not affect the exemption. Example: If a job was bid for \$4,000,000 before the tax was in effect and a change order increases the total bid price to \$4,300,000 after the county tax is in effect, building materials used in the \$300,000 addition do not qualify for exemption under s. 77.77(3), 1985 Wis. Stats. However, if a change order merely substitutes one type of fixture for another type of fixture and the total contract price does not change, the exemption in s. 77.77(3), 1985 Wis. Stats., continues to apply.

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## 2. County Tax: Location at Which Metered Gas and Electricity are Sold

**Statutes:** Section 77.72(1), 1985 Wis. Stats.

**Facts and Question:** A service station is located on a county line. County "A" has the county tax and county "B" does not have a county tax. The electric meter is located in county "A" and the gas meter is located in county "B". The purchaser uses the electricity and gas in the building which is located in both counties. Is the location of the meter the point where the sale is made because possession of the product sold is transferred to the customer at that location?

**Answer:** Yes, possession of gas and electricity is transferred at the meter. If a gas or electric meter is located in a county which has adopted the county tax, the 1/2% county sales and use tax applies to the gross receipts from sales of gas or electricity made through that meter, even though a portion of the product purchased is used in a county which has not adopted the county tax. Conversely, if the meter is located in a county which has not adopted the county tax, such gross receipts from sales of gas and electricity are not subject to the county tax.

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