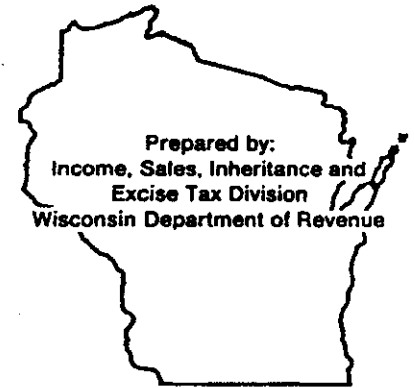


WISCONSIN TAX BULLETIN

January 1989
NUMBER 59

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ADDITIONAL COUNTIES ADOPT COUNTY SALES TAX

Effective April 1, 1989, six new counties have adopted the county sales and use tax: Burnett, Columbia, Marquette, Portage, Richland, and Waupaca. The county tax results from the county boards in these counties approving an ordinance to adopt the tax. On pages 18 through 21 of this Bulletin is the December 1988 Tax Report which explains how the county tax affects retailers.

NEW EXEMPTION PROVISIONS FOR NONPROFIT ORGANIZA- TIONS TAKE EFFECT JANUARY 1, 1989

Effective January 1, 1989, a nonprofit organization's sales of tangible personal property and services, including admissions or tickets to an event conducted by the organization, are exempt from sales tax if:

1. There is no admission to professional entertainment,
2. The organization is not engaged in a trade or business, and
3. The organization is not otherwise required to have a Wisconsin seller's permit.

An organization is deemed to be engaged in a trade or business if its sales of tangible

IN THIS ISSUE

	Page
Additional Counties Adopt County Sales Tax	1
New Exemption Provisions for Nonprofit Organizations Take Effect January 1, 1989	1
Paying Wisconsin Taxes by Credit Card	1
Information Returns for Interest and Dividends	2
1986 Wisconsin Minimum Tax — Constitutionality and Tax Benefit Rule	2
Federal Tax Laws Enacted in 1988 Do Not Apply for Wisconsin for 1988	2
Package WI-X Available for 1988	2
How to Obtain Wisconsin Tax Forms	3
Extensions of Time to File Available	3
Use of Federal Estate Tax Valuations for Closely Held Stock for Inheritance Tax Purposes	3
Historic Structure Credit May Be Carried Forward	3
Forms 1099-G Mailed to Taxpayers	3
New Wisconsin Franchise or Income Tax Return — Form 4T	4
Change in Taxation of Nonresident Partners	4
Corporation Application for Quick Refund	4
New Publication for Colleges	5
"Gross Rent" Changes Affect Homestead Credit Claimants in Nursing Homes	5
Criminal Enforcement Activities	5
New ISI&E Division Rules and Rule Amendments in Process	5
ISI&E Division Offers Taxpayer Assistance	7
Report on Litigation	7
Tax Releases	
Individual Income Taxes	10
Individual and Corporation Franchise or Income Taxes	12
Farmland Preservation Credit	12
Homestead Credit	13
Sales/Use Taxes	14
All Taxes	16
December Tax Report	18
Copy of Schedule I	22
Copy of Form 4466W	28
Publication 204 - Sales and Use Tax Information for Colleges, Universities, and Vocational Schools	29

personal property or services (not including sales of tickets to events), or its events, occur on more than 20 days during the year. However, if an organization's receipts do not exceed \$15,000 for the year, it is not considered to be engaged in a trade or business even if its sales and/or events exceed 20 days.

For more information about these new exemption provisions, read the Tax Release beginning on page 14 of this Bulletin.

PAYING WISCONSIN TAXES BY CREDIT CARD

Taxpayers in southeastern Wisconsin may be saying "charge it" when paying state income, sales, and other taxes. "We're looking for ways to simplify Wisconsin's tax system," State Revenue Secretary Mark Bugher explained. "While using charge cards to pay taxes won't be for everyone, we want to experiment with this idea to learn if it will be helpful to some taxpayers."

Bugher announced that a credit card option is available on a pilot basis in Milwaukee, Waukesha, Ozaukee, Kenosha, Racine, Walworth, and Washington counties. Taxpayers can pay current or delinquent state taxes by using the cash advance features of their Mastercard or Visa credit cards.

A sliding fee for this service will be charged by Comdata Network, which will

process the cash advances. Service charges will range from \$3.95 for payments of \$50 or less to \$31.95 for a payment of \$1,500. Payments are limited to the amount of cash advance available on the credit card. Fees are in addition to other charges made by the bank issuing the card. No additional costs to the state or reductions in state tax collections will result.

Bugher stressed that the credit card plan is strictly optional. "We feel that it is important to explore new ways to accommodate the needs of taxpayers. Our goal is to experiment with this concept for six months and to then evaluate the costs and benefits. We also welcome taxpayer comments and suggestions on this plan and other ways the Department of Revenue can ease the burden of paying taxes," Bugher added.

To use the credit card option, taxpayers will be required to present a Mastercard or Visa card to a revenue agent in the Milwaukee District Office or another office in one of the 7 counties offering the option. The revenue agent will request authorization of a cash advance on the card and will complete a "Comchek", which is signed by the cardholder much like a credit card form at a retail store.

Information about the credit card plan or other state tax issues is available by calling the closest Department of Revenue office. Phone numbers for offices in counties included in the pilot study are:

Milwaukee	(414)227-4000
Elkhorn	(414)723-4098
Grafton	(414)377-6700
Kenosha	(414)656-7100
Racine	(414)636-3711
Waukesha	(414)521-5310
West Bend	(414)338-4730

INFORMATION RETURNS FOR INTEREST AND DIVIDENDS

Information returns reporting interest and dividend payments do not have to be sent

to the Department of Revenue. However, such information returns are still required to be sent to the Internal Revenue Service and the recipient of such interest and dividends.

Wisconsin does require that rents and royalties of \$600 or more paid to a Wisconsin resident individual or certain non-resident individuals must be reported to the department. Also, annuities, pensions, and other nonwage compensation of \$600 or more not reported on a wage statement which is paid to a Wisconsin resident or to a nonresident who performed services in Wisconsin must be reported to the department. Such reporting is made on Wisconsin Form 9B. Federal Form 1099 may be used in lieu of Form 9b.

1986 WISCONSIN MINIMUM TAX — CONSTITUTIONALITY AND TAX BENEFIT RULE

In administering the 1986 Wisconsin minimum tax, the Wisconsin Department of Revenue has been concerned over challenges to the validity of sec. 71.60(4), Wis. Stats. (1985-86), which states as follows:

"(4) TAX BENEFIT RULE. The tax benefit rule contained in Section 58(h) of the internal revenue code applies to the tax under this section only in respect to determining whether there is a federal alternative minimum tax. No separate tax benefit rule is allowable for the tax under this section." (Emphasis supplied)

On April 19, 1988, former Secretary of Revenue Karen Case wrote a letter to Attorney General Donald Hanaway. This letter mentioned two concerns:

1. Does the nonapplicability of the tax benefit rule as prescribed in the last sentence of sec. 71.60(4), Wis. Stats. (1985-86), result in the administration of a tax law not constitutionally authorized?

2. If the answer to this question is in the affirmative, should the department administer the 1986 Wisconsin minimum tax as an income tax by ignoring the last sentence of sec. 71.60(4), Wis. Stats. (1985-86)?

After reviewing the Wisconsin Statutes and the response of the Attorney General's office, the Wisconsin Department of Revenue will consider the 1986 Wisconsin minimum tax to be constitutional and subject to administration as written without a tax benefit rule. Accordingly, sec. 71.60(4), Wis. Stats. (1985-86), will be interpreted to mean that a taxpayer would have to pay a 1986 Wisconsin minimum tax if he or she owed a federal minimum tax under section 55 of the internal revenue code, even if that taxpayer did not receive a tax benefit for Wisconsin income tax purposes.

FEDERAL TAX LAWS ENACTED IN 1988 DO NOT APPLY FOR WISCONSIN FOR 1988

As a result of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100-647, several changes have been made to the Internal Revenue Code for 1988 which may result in a difference between certain income and deduction items for Wisconsin and federal purposes for 1988.

Federal tax laws enacted during 1988 do not apply for Wisconsin purposes for 1988. Differences between Wisconsin and federal income and deduction items which affect individuals should be reported on Wisconsin Schedule I. A copy of Schedule I and its instructions is reproduced in this Bulletin, beginning on page 22.

PACKAGE WI-X AVAILABLE FOR 1988

Package WI-X contains actual size copies of most 1988 Wisconsin individual, fidu-

ciary, and corporation income tax, gift tax, inheritance tax, motor fuel tax, sales tax, and withholding tax forms. If you have not yet ordered your 1988 Package WI-X, send your request and \$5 per copy requested to: Wisconsin Department of Revenue, Shipping and Mailing Section, Post Office Box 8903, Madison, Wisconsin 53708.

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 generally limited to six copies of any single form. This is necessary to prevent 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, except in the case of items marked "Do Not Photocopy."

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

EXTENSIONS OF TIME TO FILE AVAILABLE

Federal law provides that corporations can receive from the IRS a 6-month extension of time to file their federal corporate income tax returns (federal Form 1120 series) by filing Form 7004, Application for Automatic Extension of Time to File Corporate Income Tax Return. Individuals can receive a federal 4-month extension of time to file their federal individual income tax return (Form 1040) by filing Form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return.

Wisconsin law provides that any extension of time granted by the IRS for filing a federal return will also extend the time for filing the corresponding Wisconsin return. Therefore, corporations and individuals allowed an extension by the IRS will also be allowed an extension to file their Wisconsin income or franchise tax return. A copy of the federal extension must be attached to the Wisconsin return when it is filed.

In lieu of the federal extension, a taxpayer may request from the Wisconsin Department of Revenue a 30-day extension of time to file a Wisconsin income or franchise tax return. The request must be made prior to the original due date of the tax return. Only one 30-day extension may be granted to a taxpayer. A 30-day extension will not be granted if a federal extension of time has already extended the due date for filing the Wisconsin income or franchise tax return.

Individuals may request a 30-day extension by filing Form I-101, Application for Extension of Time to File Wisconsin Income Tax Return. Corporations may request a 30-day extension by filing Form IC-830, Application for Extension of Time to File Wisconsin Franchise or Income Tax Return. Fiduciaries may request a 30-day extension by writing to the department at P.O. Box 8904, Madison, WI 53708. No particular form is necessary.

USE OF FEDERAL ESTATE TAX VALUATIONS FOR CLOSELY HELD STOCK FOR INHERITANCE TAX PURPOSES

In the interest of reducing duplication and facilitating preparation of Wisconsin inheritance returns by Wisconsin practitioners, the department has been reviewing numerous alternatives, including a defined policy as to when federal audit values will be accepted. Historically, the Department of Revenue, Bureau of Inheritance and Excise Tax has accepted the federal audit adjustment if in conformity

with Wisconsin law. While attempting to define this policy, some confusion has resulted. Therefore, the designated policy of the department regarding accepting federal audit values is now more fully defined as follows:

For estates of persons who die on or after January 1, 1988, the final federal values for closely held stocks (stocks not actively traded on an organized exchange), real estate, partnerships, sole proprietorships, and similar business enterprises will be accepted as the proper value to be used for Wisconsin inheritance tax purposes for all estates which are required to file a federal estate tax return, if the value of the property is actively verified by a federal estate tax examiner. This rule will not apply in the following situations:

1. Alternate and special use valuations.
2. Blockage and excessive discounts.
3. Buy-sell and restrictive agreements.
4. Transfers in contemplation of death.
5. Property not appraised by a qualified and disinterested appraiser.

HISTORIC STRUCTURE CREDIT MAY BE CARRIED FORWARD

The unused amount of historic structure credit, first available for taxable year 1989 and thereafter, may be carried forward for up to 15 years to the extent not used to offset taxes otherwise due in intervening years. This clarifies an article published in WTB 56, page 6, which indicated that no carryforward of the historic structure credit would be allowed.

FORMS 1099-G MAILED TO TAXPAYERS

Federal law requires that the Department of Revenue provide information returns (Forms 1099-G) to persons who claimed

state income tax payments as an itemized deduction on Schedule A of a federal income tax return and received a refund in 1988 from a Wisconsin income tax return. Approximately 675,000 Forms 1099-G reporting refunds received in 1988 will be mailed to taxpayers by late January 1989.

A taxpayer may have to report all or a portion of a Wisconsin income tax refund as income on a 1988 federal tax return. The refund should not be reported as income on the Wisconsin tax return.

The Form 1099-G for 1988 has been improved. It now has an explanation box on the right side, showing how the refund reported to the IRS was determined. The first line shows the amount of the refund check, and subsequent lines show plus or minus adjustments for amounts applied to next year's estimated taxes, endangered resources donations, late filing penalties and interest, homestead and farmland preservation credits, IRA penalties, and any other adjustments. The last line shows the amount of refund reported to the IRS. This information replaces a flyer that was mailed with Form 1099-G in previous years.

Form 1099-G for 1988 also includes an explanation if part or all of an overpayment is applied to delinquent taxes or to any other delinquent account.

NEW WISCONSIN FRANCHISE OR INCOME TAX RETURN — FORM 4T

Beginning with the 1988 taxable year, tax-exempt organizations which are subject to tax on unrelated business income for federal tax purposes under section 511 of the Internal Revenue Code and file federal Form 990-T, are also subject to tax on unrelated business income for Wisconsin purposes.

Organizations subject to the Wisconsin tax on unrelated business income will be required to file Wisconsin Form 4T, Exempt Organization Business Franchise or Income Tax Return.

Forms 4T have been mailed to nearly 600 organizations which filed federal unrelated business income returns, Form 990-T, with the IRS for 1987, using a Wisconsin address.

CHANGE IN TAXATION OF NONRESIDENT PARTNERS

Prior Position: The department had previously held that a nonresident partner of a personal service or professional partnership was taxable on his or her share of partnership income attributable to personal services performed in Wisconsin, regardless of whether or not the nonresident partner personally performed services in Wisconsin.

New Position: The department has revised its position to provide that partnership income derived from personal services, including professional services, is taxable to a nonresident partner **only if that nonresident partner personally performs services in Wisconsin.** The amount of personal service income attributable to the nonresident partner's services performed in Wisconsin is taxable. This new position applies to general partners for all years open under the statute of limitations, as well as prospectively. (Note: Business income continues to be taxable whether or not the individual partner conducts business in Wisconsin.)

Example: A CPA firm operates as a partnership and performs services in Wisconsin, Illinois, and Minnesota. Partner A is a nonresident of Wisconsin and performs personal services partly in Wisconsin and partly in Illinois. Partner B is also a nonresident of Wisconsin and performs personal services exclusively in Minnesota.

Partner A would be taxed on the amount of personal service income attributable to his or her personal services performed in Wisconsin. Partner B would not be taxed by Wisconsin on any partnership income attributable to personal services as he or she performed no personal services in Wisconsin. (Note: This example also

applies to other types of personal service or professional partnerships.)

As a result of this change in position, two Tax Releases titled "Taxation of Partnership Income for Wisconsin Income Tax Purposes" which appeared in WTB 41, page 14 and "Wisconsin Taxation of Partnership Income Received by Part-Year Residents" which appeared in WTB 48, page 12 will be superseded by a new Tax Release that will appear in the April 1989 WTB.

CORPORATION APPLICATION FOR QUICK REFUND

Any corporation that overpaid its estimated tax for any taxable year may apply for a quick refund if the overpayment is (1) at least 10% of the expected liability and (2) at least \$500.

A corporation may apply for the quick refund by filing Wisconsin Form 4466W, Corporation Application for Quick Refund of Overpayment of Estimated Tax, after the end of the taxable year and before the corporation files its tax return. A copy of this form is provided on page 28 of this Bulletin. Form 4466W may be obtained by writing the Department of Revenue, Post Office Box 8903, Madison, Wisconsin 53708 or by calling (608) 266-1961.

A copy of Form 4466W must be attached to the related tax return when it is filed.

The Department of Revenue may disallow, without further action, any application that contains material omissions or errors that cannot be corrected. Also, the department may disallow any application that cannot be completely processed before the tax return is due.

If a corporation receives a refund or credit that is later found to be excessive, there is no additional charge on an excessive refund or credit as provided under federal law. However, for Wisconsin tax purposes, taxes due during an extension period accrue interest at the rate of 12% per

year and taxes not paid by the due date of the tax return accrue delinquent interest at the rate of 18% per year. Also, any estimated taxes not paid by the fifteenth day of the third month following the close of the taxable year, along with any interest for underpayment of estimated tax, accrue delinquent interest at the rate of 18% per year.

NEW PUBLICATION FOR COLLEGES

Publication 204, "Sales and Use Tax Information for Colleges, Universities, and Vocational Schools," was mailed by the department in October 1988, to each Wisconsin college, university, and vocational school. This publication explains how the sales and use tax law applies to their various transactions. A copy of this publication is found on pages 29 to 35 of this Bulletin.

"GROSS RENT" CHANGES AFFECT HOMESTEAD CREDIT CLAIMANTS IN NURSING HOMES

The definition of "gross rent" for homestead credit is changed for 1988. Gross rent for 1988 does not include charges for food, medical services, and other personal services, such as laundry, transportation, counseling, grooming, recreational, and therapeutic services. A letter explaining this change was sent by the department in December 1988 to nursing homes. This letter also explained two methods which may be used by a nursing home operator to compute rent paid for occupancy for residents filing a homestead credit claim.

The two methods that follow take into account that gross rent does not have to be reduced by charges for utilities and furnishings, but must be reduced by charges for food, medical services, and other personal services.

Method 1

A standard rate of \$40 per week but not more than the actual rent paid by the claimant. (Note: The standard rate for prior years' claims was \$15 per week.)

Method 2

The "percentage of building occupancy expenses" method. The formula shown below may be completed by a nursing home operator to compute a percentage. That percentage is then multiplied by the total amount paid to the nursing home by a resident filing a homestead credit claim, to determine the rent paid for occupancy. Only expenses attributable to real estate and furnishings may be claimed in the computation.

- a. Building Occupancy Expenses - Real Estate and Furnishings Only
 - 1 Property taxes _____
 - 2 Interest _____
 - 3 Lease or rent expense _____
 - 4 Depreciation _____
 - 5 Upkeep and repairs _____
 - 6 Utilities _____
 - 7 Total Building _____
- Occupancy Expenses _____
- b. Gross Income, Including Indirect Payments _____
- c. Percentage Rate (line a.7 divided by line b) _____

CRIMINAL ENFORCEMENT ACTIVITIES

Income Taxes

A Forest County man has been ordered to serve 30 days in jail and pay a \$500 fine for failing to timely file a state income tax return on gross income in excess of \$60,000 for 1984.

Jack A. Flannery, Route 1, Crandon, Wisconsin, was sentenced in Dane County Circuit Court. Judge Nichol sentenced Flannery to 30 days in jail and ordered him to pay a \$500 fine plus \$115

in court costs and penalty assessment after he pled no contest to the violation. A charge for 1983 was dismissed after Flannery pled no contest to the violation for 1984.

Sales/Use Taxes

An Elkhart Lake woman has been fined \$1,000 for criminal violations of the Wisconsin sales and use tax law. Christine E. Budrecki, 391 South Lake Street, Elkhart Lake, Wisconsin, was found guilty on two counts of filing false Motor Vehicle Registration Application forms, MV-1, after she pled no contest to the charges on September 13 in Sheboygan County Circuit Court.

Judge Stengel ordered Budrecki to pay a \$500 fine on each count after she agreed to make restitution in the amount of \$1,714.12 in sales and use tax, penalties, and interest due the Wisconsin Department of Revenue. Judge Stengel also ordered Budrecki to pay \$302 in court costs and penalty assessments.

NEW ISI&E DIVISION RULES AND RULE AMENDMENTS IN PROCESS

Listed below, under Parts A, B, and C, are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their state in the process as of January 4, 1989. Part D lists new rules and amendments which were adopted in 1988. Part E 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

- 2.41 Separate accounting method-A
- 2.46 Apportionment of business income of interstate air carriers-R&R
- 2.47 Apportionment of net business

- income of interstate motor carriers of property-A
- 2.49 Apportionment of net business incomes of interstate finance companies-R&R
- 2.57 Annuity payments received by corporations-A
- 2.60 Dividends on stock sold "short" by corporations-A
- 2.61 Building and loan dividends on installment shares received by corporations-R
- 2.63 Dividends accrued on stock -A
- 2.70 Gain or loss on capital assets of corporations; basis of determination-A
- 2.956 Historic structure and rehabilitation of nondepreciable historic property credits-NR
- 3.01 Rents paid by corporations-A
- 3.05 Profit-sharing distributions by corporations-A
- 3.07 Bonuses and retroactive wage adjustments paid by corporations-A
- 3.14 Losses from bad debts by corporations -A
- 3.17 Corporation losses, miscellaneous-A
- 3.35 Depletion, basis for allowance to corporations-A
- 3.36 Depletion of timber by corporations-A
- 3.43 Amortization of trademark or trade name expenditures-A
- 3.48 Research or experimental expenditures-A
- 3.52 Automobile expenses-corporations-R&R
- 3.83 Domestic international sales corporations (DISCs)-A
- 11.05 Government units-A
- 11.09 Medicines-A
- 11.10 Occasional sales-A
- 11.12 Farming, agriculture, horticulture and floriculture-A
- 11.16 Common or contract carriers-A
- 11.18 Dentists and their suppliers-A
- 11.19 Printed material exemptions-A
- 11.26 Other taxes in taxable gross receipts and sales price-A
- 11.32 "Gross receipts" and "sales price"-A
- 11.40 Exemption of machines and processing equipment-A
- 11.41 Exemption of property consumed or destroyed in manufacturing-A
- 11.51 Grocers' guidelist-A
- 11.57 Public utilities-A
- 11.61 Veterinarians and their suppliers-A
- 11.66 Communications and CATV services-A
- 11.67 Service enterprises-A
- 11.68 Construction contractors-A
- 11.84 Aircraft-A
- 11.85 Boats, vessels and barges-A
- 14.01 Administrative provisions-R&R
- 14.02 Qualification for credit-R&R
- 14.03 Household income-R&R
- 14.04 Property taxes accrued-R&R
- 14.05 Rent constituting property taxes accrued-R&R
- B. Rules at Revisor of Statutes Office for Publication of Hearing Notice**
- 1.001 Definition-A
- 2.14 Aggregate of personal exemptions-A
- 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
- 2.45 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 sport 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
- 2.90 Withholding; wages-A
- 2.91 Withholding; fiscal year taxpayers-A
- 2.92 Withholding tax exemptions-A
- 2.93 Withholding from wages of a deceased employee and from death benefit payments-A
- 3.09 Exempt compensation of military personnel-A
- 3.095 Income tax status of interest and dividends from municipal, state and federal obligations received by individuals and fiduciaries-A
- 3.098 Railroad retirement supplemental annuities-A
- 3.44 Organization and financing expenses—corporations-A
- 3.45 Bond premium, discount and expense—corporations-A
- 3.82 Evasion of tax through affiliated interests-A
- C. Rules at Legislative Standing Committee**
- 11.10 Occasional sales-A
- D. Rules Adopted in 1988**
- 3.095 Interest income from federal obligations-R&R (effective 5/1/88)
- 11.10 Occasional sales-A (effective 1/1/88)
- 11.12 Farming, agriculture, horticulture and floriculture-A (effective 12/1/88)
- E. Emergency Rules**
- 2.956 Historic structure and rehabilitation of nondepreciable historic property credits-NR (effective 12/28/88)
- 3.095 Income tax status of interest and dividends from municipal, state, and federal obligations received by individuals and fiduciaries-A (effective 1/1/89)

ISI&E DIVISION OFFERS TAXPAYER ASSISTANCE

During the filing season of January through April 17, 1989, department personnel 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 is an exception for Ashland and Janesville as noted below.

Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
*Appleton	265 W. Northland	(414)832-2727	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)227-4000	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 (b)
Baraboo	1007 Washington	(608) 356-8973	7:45-4:30
Beaver Dam	211 S. Spring St.	(414) 887-8108	7:45-4:30
Grafton	220 Oak St.	(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	1810 Crestview Dr.	(715) 386-8224	7:45-4:30
Janesville	101 E. Milwaukee	(608) 755-2750	7:45-4:30 (a)
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
Rhineland	203 Schiek 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) 392-7985	8:00-4:30
Tomah	City Hall	(608) 372-3256	8:00-12:00
Watertown	600 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) 842-8665	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) Monday through Wednesday

(b) Tuesday only

*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 nonacquiescence" or (3) "the department has not appealed" (in this case the department has acquiesced to the Commission's decision).

The following decisions are included:

Individual Income Taxes

Laird C. Cleaver (p. 7)

Gain or loss — property transferred by gift

Urban P. Van Susteren (p. 8)

Assessments — failure to file

Corporation Franchise or Income Taxes

Mobil Oil Corporation (p. 8)

Franchise tax — constitutionality

Savings League of Wisconsin Ltd., et al. (p. 9)

Franchise tax — imposition

William Wrigley, Jr., Co. (p. 9)

Nexus

Sales/Use Taxes

Dairyland Harvestore, Inc. et al. (p. 9)

Refunds and remedies of taxpayer — claims for refund

INDIVIDUAL INCOME TAXES

Gain or loss — property transferred by gift. Laird C. Cleaver vs. Wisconsin Department of Revenue (Circuit Court of Dane County, August 16, 1988). The key

issue in this case is whether section 1026 of federal Public Law 98-369 should apply to the computation of Wisconsin income for Wisconsin income tax purposes during taxable year 1977.

In December of 1976, after establishing the Laird C. Cleaver Issue Trust, the taxpayer transferred irrevocably to the trustees of the trust 25,000 shares of Coca Cola Company common stock having a total value of \$1,895,312.50. At the time of the transfer, the trustees assumed the obligation to make payments for any and all gift taxes associated with the transfer, it being Cleaver's intention to transfer the stock as a "net gift."

In 1981, the Internal Revenue Service (IRS) issued an assessment against Cleaver for additional income taxes due of \$178,866. The assessment was based on the concept that the gift was part sale and that taxable gain should be recognized to the extent of the difference between the gift taxes paid and Cleaver's basis in the transferred property. Cleaver appealed to the U.S. Tax Court.

In 1982, in *Diedrich v. Commissioner*, 457 U.S. 191 (1982), the United States Supreme Court affirmed an earlier 8th Circuit Court of Appeals decision holding that when the donee pays the gift tax on a transfer of property, the donor realizes a taxable gain to the extent that the gift taxes paid exceed the donor's basis in the property.

In December of 1982, Cleaver settled with the IRS by paying additional income taxes of \$152,901, based on the payment of the gift taxes in taxable year 1977. At the same time, pursuant to sec. 71.11 (21m), Wis. Stats., Cleaver filed an amended Wisconsin income tax return incorporating the 1977 federal income tax changes, including an additional \$431,566 of gain because of the gift taxes paid on his behalf.

On July 18, 1984, the President signed into law Public Law 98-369, referred to as the Tax Reform Act of 1984 (TRA). Act section 1026, a non-Internal Revenue Code provision of the TRA, provided that

for property transferred prior to March 4, 1981, the donor's gross income did not need to include any amount attributable to the donee's payment of gift taxes on that property. Subsequently, Cleaver filed a claim for a refund of the federal income taxes he had paid as a result of the gift tax payment by his donee.

On August 1, 1984, Cleaver filed a second amended Wisconsin income tax return claiming a refund of \$49,199 based on the same reduction in gross income as claimed on the amended federal income tax return. The Department of Revenue (DOR) denied his Wisconsin refund claim. Cleaver then protested the denial and the DOR issued its denial of the petition for redetermination.

Cleaver filed a Petition for Review with the Wisconsin Tax Appeals Commission (TAC). By decision dated December 28, 1987, the TAC affirmed the department's denial of Cleaver's claimed refund.

The Court concluded that statutory language should not be read to include a special Congressional exception to the Code such as section 1026 of the TRA. Section 1026 of the TRA is not an interpretation or modification of the definition of gross income under the Code. Rather, it is a special exception to the retroactive effect of the *Diedrich* court's final interpretation of the definition of income under the Code for taxable year 1977. This reading is supported by the legislative history of section 1026. For a similar policy to apply in Wisconsin, the state legislature would need to enact a similar provision. To date it has not done so. Consequently, the meaning of gross income stands as interpreted by the *Diedrich* court for the 1977 tax year.

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

Assessments — failure to file. *Urban P. Van Susteren vs. Wisconsin Department of Revenue* (Court of Appeals, November

17, 1988). Urban Van Susteren appeals from an order of the Circuit Court of Outagamie County affirming a decision and order of the Tax Appeals Commission upholding an income tax assessment against him for tax years 1979, 1980, 1981, and 1982, including a fifty percent penalty pursuant to sec. 71.11(6)(b), Wis. Stats. (1985-86). The validity of the penalty is the only issue argued by the taxpayer.

The Court of Appeals concluded that the department did not establish by clear and convincing evidence that the taxpayer failed to make income tax reports with intent to defeat or evade the income tax assessment required by law and therefore reversed the order and remanded with directions to the trial court to reverse the decision and order of the Commission. (See WTB 50 for a summary of the Wisconsin Tax Appeals Commission decision.)

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



CORPORATION FRANCHISE OR INCOME TAXES

Franchise tax — constitutionality. *Mobil Oil Corporation v. Michael W. Ley, Secretary of the Wisconsin Department of Revenue* (Court of Appeals, October 27, 1987). Mobil Oil Corporation appeals a summary judgment granted to Michael Ley in its suit by seeking a declaratory judgment that the Wisconsin corporate franchise tax is unconstitutional. The issue is whether the constitutional restrictions on the income tax under Article VIII, Section 1, of the Wisconsin Constitution apply to the Wisconsin corporate franchise tax measured by a corporation's net income.

Mobil contends that the Wisconsin Constitution requires that an income tax may be assessed only on profit or gain and not against capital or gross receipts. Mobile argues that these restrictions on

income tax apply to the Wisconsin corporate franchise tax because that tax is measured in the same manner as an income tax.

Mobil also contends that the windfall profit tax, which is paid by the producer at the wellhead at the time crude oil is produced, is invested capital and a cost of Mobil's production of crude oil. It asserts that this cost is then added to inventory and, when the crude oil is sold, becomes part of Mobil's cost of goods sold, which must be offset against gross receipts to determine net income. Mobil argues that by refusing to allow the windfall profit tax deductions under sec. 71.04(3), Wis. Stats., the Wisconsin Legislature is taxing income that is not profit. It concludes that unless an offset against gross receipts is permitted or Mobil is allowed to deduct the windfall profit tax from gross income to calculate net income, the state is taxing Mobil's capital or property contrary to Article VIII, Section 1 of the Wisconsin Constitution.

Mobil also argues that because net income has been selected as the method by which the amount of the tax is calculated, all constraints on the Legislature in imposing an income tax apply to the corporate franchise tax as well. It contends that one looks to the natural and reasonable affect of the tax, not to the language in which the Legislature frames the statute.

The Court of Appeals concluded that the Wisconsin Legislature was within its discretion to measure the corporate franchise tax by the corporation's net income without deducting the windfall profit tax. The Legislature was not required to adopt the method as suggested by Mobil in calculating the franchise tax, nor was it required to include any specific exemptions. This conclusion is in accord with other jurisdictions that, although interpreting somewhat different language, have allowed wide discretion in state legislatures' use of franchise and excise taxing power.

Furthermore, Mobil's argument that a tax, which looks and operates like an income tax, is by necessity an income tax, misses the issue. Clearly, the state is taxing the

income of the corporation by levying the corporate franchise tax, sec. 71.01(2), Wis. Stats. However, the issue is not whether the corporate franchise tax is a tax on income, but whether the constraints on the Legislature's power to levy an income tax apply to a corporate franchise tax measured by income. The limitations on the Legislature's ability to tax income do not apply to the corporate franchise tax. Accordingly, the Wisconsin corporate franchise tax calculated by net income without credit for the windfall profit tax paid does not violate Article VIII, Section 1 of the Wisconsin Constitution authorizing the Legislature to tax "privileges."

The taxpayer appealed this decision to the Wisconsin Supreme Court. The Wisconsin Supreme Court denied the petition for review on May 3, 1988.



Franchise tax — imposition. *Savings League of Wisconsin, Ltd., Equitable Savings & Loan Association, Liberty Savings & Loan Association, and Marathon County Savings & Loan Association v. Wisconsin Department of Revenue* (Court of Appeals, District IV, October 15, 1987). A summary of this case appeared in WTB 57. It was reported that the taxpayers had appealed the decision of the Court of Appeals to the Supreme Court. The Wisconsin Supreme Court denied the petition for review on May 3, 1988. A further petition for review was dismissed by the United States Supreme Court on October 3, 1988.



Nexus. *William Wrigley, Jr., Co. vs. Wisconsin Department of Revenue* (Circuit Court of Dane County, October 19, 1988). The William Wrigley, Jr. Co. (Wrigley) is seeking a review of a decision dated November 25, 1987, of the Wisconsin Tax Appeals Commission which upholds the imposition of a franchise tax on its sales in

Wisconsin for the years 1973 through 1978. The Department of Revenue is seeking a review of that part of the Commission's decision disallowing the imposition of interest on the tax in question at the delinquent tax rate.

These issues were first decided by the Commission on November 18, 1986. (See WTB 50 for a summary of the Commission's decision.) On August 20, 1987, the Circuit Court remanded the case to the Commission for further proceedings. On November 25, 1987, the Commission affirmed its decision and order of November 18, 1986. (See WTB 55 for summaries of the remand by the Circuit Court and the Commission's decision.)

The Circuit Court concluded that by reason of the operation of 15 U.S.C. § 381, Wisconsin was without power to impose a tax upon Wrigley's net income during the years in question. Therefore, the Commission's determination was reversed. Because Wisconsin was prohibited from imposing the tax in question, it was unnecessary to reach the department's contention that interest should have been assessed at a higher rate than that allowed by the Commission.

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



SALES/USE TAXES

Refunds and remedies of taxpayer — claims for refund. *Dairyland Harvester, Inc. and Badgerland Harvester Systems, Inc., f/k/a Badgerland Harvester Products vs. Wisconsin Department of Revenue* (Circuit Court of Dane County, June 13, 1988). Dairyland Harvester, Inc., and Badgerland Harvester Systems, Inc., jointly bring a petition for review of the Tax Commissioner's holding that Dairyland and Badgerland were not "persons" within the meaning of sec. 77.59(4), Wis. Stats., and, therefore, did not have standing to file a claim against

the Department of Revenue for an offset of sales taxes erroneously paid.

The Court must decide the issue of whether or not Badgerland and Dairyland are "persons" within sec. 77.59(4), Wis. Stats.

The department held that the taxpayers are not "persons" within sec. 77.59(4), Wis. Stats., because they were not the

ones who were required to pay the sales tax and were not the ones who paid the sales tax to the department. It was A. O. Smith, the department says, who was required to pay the sales tax and who in fact did pay such tax.

The Court held that A. O. Smith was the retailer and the seller and, therefore, the required person under sec. 77.58(3)(a), Wis. Stats., to file sales and use tax re-

turns. The taxpayers were not the required persons to pay the sales and use taxes to the department and cannot file a claim for a refund or an offset for sales taxes erroneously paid.

The taxpayers have appealed this decision to the Court of Appeals.

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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. Differences in Wisconsin and Federal Tax Treatment of Educational Assistance Program Benefits (p. 10)
2. Farm Loss Carryover (p. 11)
3. Moving Expenses Allowable When Taxpayer Retains Wisconsin Domicile (p. 12)

Individual and Corporation Franchise or Income Taxes

1. Appeal of Interest Charge for Underpayment of Estimated Taxes (p. 12)

Farmland Preservation Credit

1. Farmland Preservation Credit - Who Is the Claimant? (p. 12)

Homestead Credit

1. Homestead Credit: Methods for Determining Property Taxes on Property Used for Business Purposes (p. 13)

Sales/Use Taxes

1. Occasional Sales by Nonprofit Organizations (p. 14)

All Taxes

1. Time for Filing or Payment When the Statutory Due Date Falls on a Saturday, Sunday, or Legal Holiday (p. 16)

INDIVIDUAL INCOME TAXES

1. Differences in Wisconsin and Federal Tax Treatment of Educational Assistance Program Benefits

Statutes: Sections 71.01(6), Wis. Stats. (1987-88), 71.02(2)(d)11 and 12, Wis. Stats. (1985-86)

Facts and Question: Section 127 of the Internal Revenue Code (IRC) provides that gross income of an employee does not include amounts paid or expenses incurred by an employer for educational assistance to the employee if the assistance is furnished pursuant to a qualified educational assistance program.

Generally, the Wisconsin Statutes require that Wisconsin individual income taxpayers use the IRC as amended to December 31 of the prior year to determine Wisconsin net income. For example, for the 1988 taxable year, the IRC as amended to December 31, 1987, with some modifications, is used to determine 1988 Wisconsin net income.

Is the amount of exclusion allowable for Wisconsin for payments under an educational assistance program the same as for federal tax purposes?

Answer: Because Wisconsin generally uses the provisions of the IRC as amended to December 31 of the prior year, there are differences in some years in the amount of exclusion allowable. The maximum amount that may be excluded from gross income under an educational assistance program is as follows:

Tax Year	Maximum Allowable Exclusion	
	Federal	Wisconsin
1985	\$5,000	\$5,000
1986	\$5,250	0
1987	\$5,250	\$5,250
1988	\$5,250	0

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2. Farm Loss Carryover

Statutes: Section 71.05(6)(a)10 and (b)9 and 10, Wis. Stats. (1987-88)

Note: This Tax Release applies only with respect to taxable year 1988 and thereafter.

Background: Effective for taxable year 1986 and thereafter, sec. 71.05(6)(a)10, Wis. Stats. (1987-88), limits the amount of farm loss that may be deducted each year. The limitations are based on the amount of the taxpayer's nonfarm Wisconsin adjusted gross income.

Section 71.05(6)(b)10, Wis. Stats. (1987-88), effective for the 1988 tax year and thereafter, allows a subtraction for farm losses which were not allowed in prior years because of the limitations in sec. 71.05(6)(a)10, Wis. Stats. (1987-88). The farm losses may be carried over for 15 years and subtracted to the extent that they are not offset against farm income of any year between the loss year and the taxable year for which the subtraction is claimed. The farm losses may be subtracted only to the extent that they do not exceed the net profits or net gains from the sale or exchange of capital or business assets in the current taxable year from the same farming business or portion of that business to which the limits on deductible farm losses applied in the loss year.

Question 1: Are net losses used in the computation of net profits or net gains from the sale of capital or business assets?

Answer 1: No. Net losses are not used when determining net profits or net gains from the sale or exchange of capital or business assets. Section 71.05(6)(b)10, Wis. Stats. (1987-88), provides the subtraction for the farm loss carryover to the extent that the farm losses do not exceed "the net profits or net gains from the sale or exchange of capital or business assets." There is no provision which provides for the use of net losses.

Example: A taxpayer has a farm loss carryover from 1987 of \$30,000. For 1988, the taxpayer reports the following income (loss) from the same farming business to which the limits applied in 1987:

Net farm profit from Schedule F	\$ 20,000
Net loss from the sale of business assets:	
Gain from sale of raised dairy cattle held more than 24 months	\$ 1,000
Loss on sale of farm equipment held more than 1 year	(6,000)
Net loss	\$(5,000)

The taxpayer would claim a subtraction of \$20,000 for the farm loss carryover on his or her 1988 Wisconsin tax return.

Question 2: Can a taxpayer be subject to the farm loss limitations in the same year he or she is claiming a subtraction for a farm loss carryover?

Answer 2: Yes. A taxpayer can be subject to the farm loss limitations in the same year he or she is claiming a subtraction for a farm loss carryover. The farm loss limitation and the amount of farm loss carryover that can be subtracted are computed separately.

Example: A single taxpayer has a farm loss carryover from 1987 of \$10,000. For 1988, the taxpayer reports the following income (loss):

Nonfarm income	\$120,000
Net farm loss from Schedule F	(20,000)
Ordinary gain from the sale of farm equipment from Form 4797	6,000

The \$20,000 farm loss and the \$6,000 gain from the sale of farm equipment are from the same farming business to which the limits applied in 1987.

Because the taxpayer has nonfarm income of \$120,000, the maximum farm loss that can be deducted for Wisconsin tax purposes is \$15,000. Thus, the taxpayer must add \$5,000 (\$20,000 minus \$15,000) to his or her federal adjusted gross income (the starting point for computing Wisconsin taxable income). The taxpayer would also claim a subtraction of \$6,000, which is the amount of farm loss carryover that can be used to offset the gain from the sale of farm equipment.

Question 3: Does the Wisconsin capital gain exclusion affect the amount of farm loss carryover that may be claimed?

Answer 3: No. The Wisconsin exclusion for 60% of the capital gain from assets held more than one year is provided by sec. 71.05(6)(b)9, Wis. Stats. (1987-88), and the farm loss carryover by sec. 71.05(6)(a)10, Wis. Stats. (1987-88). As the two statutes are mutually exclusive, a taxpayer can claim both the capital gain exclusion and the farm loss carryover.

Example: A taxpayer has a farm loss carryover from 1986 of \$25,000. For 1988, the taxpayer reports the following income for federal tax purposes:

Interest income	\$30,000
Capital gain from the sale of farm equipment held more than one year (Form 4797 and Schedule D)	10,000
Federal adjusted gross income	\$40,000

The gain from the sale of farm equipment is from the same farming business to which the limits applied in 1986. The taxpayer can claim both a \$6,000 subtraction for the 60% capital gain exclusion and a \$10,000 subtraction for a farm loss carryover.



3. Moving Expenses Allowable When Taxpayer Retains Wisconsin Domicile

Statute: Section 71.07(5)(a)4, Wis. Stats. (1987-88)

Note: This Tax Release applies only with respect to taxable years 1987 and thereafter.

Facts and Question: The federal Tax Reform Act of 1986 provides that, effective for the 1987 tax year and thereafter, qualified moving expenses may be claimed as an itemized deduction. (Prior to 1987, moving expenses were claimed as an adjustment to income.)

Section 71.07(5)(a)4, Wis. Stats. (1987-88), provides that, for the 1987 taxable year and thereafter, moving expenses allowed as a federal itemized deduction may be used to compute the Wisconsin itemized deduction credit, except for expenses to move from Wisconsin.

Can qualified moving expenses be used for computing the Wisconsin itemized deduction credit when the taxpayer moves from Wisconsin to another state but retains his or her Wisconsin domicile?

Answer: Yes. Qualified moving expenses may be used to compute the Wisconsin itemized deduction credit if the taxpayer retains his or her Wisconsin domicile after moving to another state and continues to be subject to Wisconsin's taxing jurisdiction.



INDIVIDUAL AND CORPORATION FRANCHISE OR INCOME TAXES

1. Appeal of Interest Charge for Underpayment of Estimated Taxes

Statute: Section 71.84(1) and (2), Wis. Stats. (1987-88)

Background: Section 71.84(1) and (2), Wis. Stats. (1987-88), provides for the imposition of "interest" on the underpayment of estimated taxes by corporations, individuals, estates, and trusts for taxable years 1988 and thereafter. Previously, a "penalty" was imposed for underpayment of estimated taxes.

Question: May a taxpayer petition the Department of Revenue for a redetermination under sec. 71.88(1), Wis. Stats. (1987-88), with respect to interest imposed for taxable years 1988 and thereafter for underpayment of estimated taxes pursuant to sec. 71.84(1) and (2), Wis. Stats. (1987-88).

Answer: Yes. A petition for redetermination may be filed with the department's Appellate Bureau under sec. 71.88(1), Wis. Stats. (1987-88) with respect to interest imposed for underpayment of estimated taxes.



FARMLAND PRESERVATION CREDIT

1. Farmland Preservation Credit - Who Is the Claimant?

Statutes: Sections 71.58(1) and 71.59(2)(intro.) and (a) and (3), Wis. Stats. (1987-88)

Background: In general, the person who may claim a farmland preservation credit is the owner of the Wisconsin farmland on which the claim is based.

A claimant may be an individual or a corporation. However, a tax-option (S) corporation may not be a claimant. For farmland owned by a tax-option (S) corporation, the credit must be claimed by each individual shareholder on his or her individual income tax return.

If farmland is owned by a partnership, the individual partners must file for the farmland credit as individuals on their income tax returns.

The personal representative of an estate and the trustee of a trust are considered owners of the farmland and may claim this credit on the estate or trust return.

Section 71.59(2)(intro.) and (a), Wis. Stats. (1987-88), provides that a farmland claim must be filed within 12 months after the end of the taxable year for which the claim is filed.

Facts and Question 1: Company ABC, a tax-option (S) corporation, is the owner of Wisconsin farmland. ABC incorrectly claimed a 1984 farmland preservation credit on a claim filed December 30, 1985. ABC and its shareholders are all calendar-year filers for income tax purposes.

After December 31, 1985 (the deadline for filing a 1984 calendar-year farmland preservation credit claim), may the claim be amended and treated as timely claims of the individual shareholders?

Answer 1: Yes. If amended returns are received from the shareholders of the tax-option (S) corporation, the amended returns will be accepted as timely claims if they are received within the 4-year statutory time period for amending returns under sec. 71.59 (3), Wis. Stats. (1987-88).

In general, if a farmland preservation claim is timely filed by an improper claimant, and is filed within the 12-month period after

the end of the correct claimant's tax year, an amended return by the correct claimant will be accepted as timely filed and the correct amount of farmland preservation credit will be allowed.

Example 1: A father and his son each own 50% of the farmland. The son files for the farmland preservation credit, basing his claim on 100% of the taxes, prior to the deadline for filing the claim. The actual claimants are both the father and his son who may each claim 50% of the taxes of the farmland for the year. The father, assuming he meets the qualifications for filing for farmland credit, may amend the claim for 50% of the taxes and it will be considered timely-filed. The son must amend his claim to allow for only 50% of the taxes, rather than 100%.

Example 2: A beneficiary of an estate files for farmland preservation credit by the deadline for filing a farmland preservation credit claim. The actual claimant should be the estate. The estate may amend the claim for farmland preservation credit within the 4-year statutory period provided under sec. 71.59(3), Wis. Stats. (1987-88), and the claim would be considered timely filed.

Example 3: A beneficiary of a trust files for farmland credit by the deadline for filing a farmland preservation credit claim. The actual claimant should be the trustee of the trust. The trustee may amend the claim for farmland preservation credit within the 4-year statutory period provided under sec. 71.59(3), Wis. Stats. (1987-88), and the claim would be considered timely filed.

Example 4: An individual shareholder files for farmland credit by the deadline for filing a farmland preservation credit claim. The actual claimant should be the owner corporation (not a tax-option (S) corporation). The corporation may amend the claim for farmland preservation credit within the 4-year statutory period provided under sec. 71.59(3), Wis. Stats. (1987-88), and the claim would be considered timely filed.

Facts and Question 2: XYZ, Inc., a tax-option (S) corporation, is the owner of Wisconsin farmland. XYZ incorrectly claimed a 1984 farmland preservation credit on a claim filed March 31, 1986. XYZ is a fiscal-year filer, with a tax year ending April 30. XYZ shareholders are all calendar year filers.

May the claim filed by XYZ be amended and treated as a timely claim of the individual shareholders?

Answer 2: No. The farmland claim was not received within the twelve month period after the end of the correct claimants' calendar years (December 31, 1985). The correct claimants are the individual shareholders of the tax-option (S) corporation.

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HOMESTEAD CREDIT

1. Homestead Credit: Methods for Determining Property Taxes on Property Used for Business Purposes

Statutes: Section 71.52(7), Wis. Stats. (1987-88)

Background: Section 71.52(7), Wis. Stats. (1987-88), provides that the property taxes accrued on multipurpose buildings shall be prorated to reflect only that part of the multipurpose building occupied by the household as a principal residence plus a similar percentage of the land surrounding it. When a portion of a property is used exclusively for business purposes, property taxes used in computing homestead credit may not include the portion of the property taxes that reflects business use. Therefore, if the property is used exclusively for business purposes for which a deduction is allowed or allowable for income tax purposes, the relating property taxes may not be used for homestead credit purposes. See Tax Release titled "Property Taxes on Property Used for Business Purposes" in WTB 54, page 15 for more information regarding this issue.

Question: A person's 1987 property taxes on his or her principal residence are \$1,200. A portion of this residence is used for business purposes. What methods may be used to determine the allowable taxes for homestead credit purposes.

Answer: The following three methods may be used to determine allowable taxes for homestead credit purposes.

Method 1: Number of Rooms (All rooms must be approximately the same size or the room used for business purposes must approximate the average size room in the principal residence). Example: One room of a seven room residence is used for business purposes and 6 rooms are used for personal residence purposes. Therefore, 6/7 of the \$1,200 of taxes or \$1,028.57 is the allowable amount of taxes for homestead credit purposes.

Method 2: Square Footage Example: The total area of the residence is 1,400 square feet. The area of the room used exclusively for business purposes is 500 square feet. Thus, the personal portion is 900 square feet. The allowable taxes for homestead credit purposes are \$771.43 ($900/1,400 \times \$1,200$).

Method 3: Assessed Value (Used in special situations such as when a separate structure, on the same parcel of land as the residence, is used for business purposes). Example: The total parcel (under 1 acre) has an assessed value of \$60,000. A separate building on the parcel is used for business purposes and has an assessed value of \$5,000. The assessed value of the personal portion is \$55,000. The allowable taxes for homestead credit purposes are \$1,100 ($55,000/60,000 \times \$1,200$).

NOTE: Any other method which properly allocates the business use of the property may also be used to determine the allowable taxes for homestead credit purposes.

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SALES/USE TAXES

1. Occasional Sales by Nonprofit Organizations

Statutes: Sections 77.52(7) and 77.54(7m), Wis. Stats. (1987-88)

Wis. Adm. Code: Tax 11.10, December 1987 Register

I. STANDARDS PRIOR TO JANUARY 1, 1989

The standards for determining the occasional sale exemption for nonprofit organizations for calendar years ending prior to January 1, 1989, are found in rule Tax 11.10. (Register, December 1987, No. 384, effective January 1, 1988.)

II. STANDARDS EFFECTIVE JANUARY 1, 1989

A. New Law Effective January 1, 1989 - Beginning January 1, 1989, the standards change for determining whether sales by a nonprofit organization qualify for the occasional sales exemption. The change results from the enactment of 1987 Act 399, which repealed s. 77.51 (9)(c), amended s. 77.52(7), and created s. 77.54(7m), effective January 1, 1989.

Section 77.52(7), reads in part: (effective January 1, 1989)

"A nonprofit organization that has gross receipts taxable under s. 77.54(7m) shall obtain a seller's permit and pay taxes under this subchapter on all taxable gross receipts received after it is required to obtain that permit. If that organization becomes eligible later for the exemption under s. 77.54(7m) except for its possession of a seller's permit, it may surrender that permit."

Section 77.54(7m) reads as follows: (effective January 1, 1989)

"Occasional sales of tangible personal property or services, including but not limited to admissions or tickets to an event; by a neighborhood association, church, civic group, garden club, social club or similar nonprofit organization; not involving professional entertainment, conducted by the organization if the organization is not engaged in a trade or business and is not required to have a seller's permit. For purposes of this subsection, an organization is engaged in a trade or business if its sales of tangible personal property or services, not including sales of tickets to events, or if its events occur on more than 20 days during the year, unless its receipts do not exceed \$15,000 during the year."

B. What standards apply to nonprofit organizations, effective January 1, 1989? - The following three standards must be met by a nonprofit organization for its sales to qualify as exempt occasional sales.

1. Professional entertainment is not involved at an event for which charges constitute admissions.
 - a. For this purpose, "professional entertainment" means entertainment provided at an "admission" event by all persons or groups (e.g., band or singers) who are paid in the aggregate \$300 or more per event by all persons for performing, as prize money or for reimbursement of expenses (see "b." below for definition of "admissions").

Example 1

Four different bands are paid \$100 each to perform at various times during a 3-day event. There is an admission charge for access to the event. Since the total payment (\$400) for entertainment exceeds \$300, professional entertainment is deemed to be involved. As a result, receipts from the event do not qualify as exempt occasional sales.

Example 2

Two nonprofit organizations co-sponsor an admission event at which a band is hired to perform. Each organization pays the band \$200. Since the total payment (\$400) for entertainment exceeds \$300, professional entertainment is deemed to be involved. As a result, receipts from the event do not qualify as exempt occasional sales.

- b. "Admissions" for purposes of 1 above are involved if access to the event involving professional entertainment is generally restricted to only those who pay a required fee, make a required "donation" or who must make a purchase of some kind (e.g., meal, raffle ticket).

Example 1

A nonprofit organization sponsors a dinner and dance in the high school gymnasium. The dance band is paid in excess of \$300. There is no separate admission charge, however, access to the dance is restricted to those who have purchased the meal. The "meal" charge constitutes an admission charge to an event involving professional entertainment, thus sales by the nonprofit organization at this event will not qualify as exempt occasional sales.

Example 2

A nonprofit organization holds a pig roast at the city park and hires a band to play at the park gazebo, so that patrons, if they so wish, can be

entertained while they eat. There is no admission charge and access to the band is open to anyone, whether they purchase the meal or not. The sales by the nonprofit organization may still qualify as exempt occasional sales.

- c. A nonprofit organization that would otherwise qualify for exempt occasional sales, except for the involvement of professional entertainment, may obtain a temporary seller's permit for the day or days involving professional entertainment, pay the sales tax on that event, and still have exempt occasional sales on days not covered by the temporary permit.

Note: Days and receipts from events involving admissions to professional entertainment are included in determining the 20-day test and the \$15,000 taxable receipts test in II.B.2.a. below.

Example

A nonprofit organization plans 5 events covering 3 days each (total of 15 days) for 1989. Professional entertainment will be involved at one event only. The sales by the nonprofit organization would qualify as exempt occasional sales except for the involvement of professional entertainment at the one event. The nonprofit organization may obtain a temporary seller's permit for the one event involving professional entertainment; thus, allowing the other 4 events to qualify as exempt occasional sales.

- 2. The organization is not engaged in a "trade or business."

- a. Two standards are used to determine whether a nonprofit organization is considered to be engaged in a trade or business: a 20-day standard and a \$15,000 receipts standard. Both of the standards must be exceeded before an organization is considered to be engaged in a trade or business.

(1) A nonprofit organization is not considered to be engaged in a "trade or business" if its sales of otherwise taxable tangible property or services or its events occur on 20 days or less during the calendar year, regardless of the dollar amount of sales. For events involving the sales of tickets, only the actual days of the events are counted, not the days of ticket sales.

- (2) A nonprofit organization is not considered engaged in a trade or business if its "receipts"

for the calendar year are \$15,000 or less, regardless of the number of days on which its sales or events occur.

- b. "Receipts" for purposes of a.(2), means the gross receipts from all sales in Wisconsin of otherwise taxable tangible personal property and services after subtracting allowable exemptions.

Example 1

A church sells cookies and cakes at a bake sale. Since the sale of cookies and cakes for off-premises consumption are exempt from sales tax, the receipts from the sale of these items are not counted as receipts for purposes of the \$15,000 receipts test.

Example 2

A nonprofit organization, which sells hundreds of Christmas trees, sells five Christmas trees for \$100 to a public school. Although Christmas trees are taxable tangible personal property, a public school can purchase tangible personal property exempt from sales tax. As a result, this \$100 exempt sale to the school is not counted as receipts for purposes of the \$15,000 receipts test.

- 3. The organization is not otherwise required to have a seller's permit.

Note: An organization required to hold a seller's permit solely for the purpose of conducting bingo games may still qualify for exempt occasional sales (on nonbingo sales) if it otherwise qualifies under standards 1 and 2.

C. Surrendering the Seller's Permit

- 1. The "good faith" test.

If a nonprofit organization intends and believes "in good faith" that its activities in 1989 would qualify as exempt occasional sales, except for its holding of a seller's permit, it may surrender that seller's permit and have its 1989 sales qualify as exempt occasional sales.

The facts in the situation will determine if the permit can be or was surrendered "in good faith." The answers to two questions will help in the examination of good faith: (1) what did the organization do in the preceding calendar year and (2) what does it expect to be different this year and why?

Example

A nonprofit organization has held seven 3-day events for a total of 21 days, each year for the past 5 years. Receipts were always over \$20,000, and there were no admissions to professional entertainment. One event has lost money for the past 2 years. The organization intends to discontinue that event for 1989; thus, it may anticipate coming under the 20-day standard and its permit may be surrendered in good faith.

2. If a nonprofit organization surrenders its seller's permit in good faith but later, due to unforeseen circumstances exceeds the standards, only the sales occurring after the standards are exceeded are subject to sales tax.

Example

A church held 18 days of events or sales in 1988 (receipts equalled \$30,000 and no professional entertainment was involved) and expects to hold the same 18 days of events in 1989. It surrendered its seller's permit; however, in mid-1989 the church garage is destroyed by fire. An additional 4-day event is held to raise funds to help replace the garage. Only the receipts from days 21 and 22, the days exceeding the standard, are subject to sales and use tax.

3. If a nonprofit organization fails to surrender its seller's permit before making any 1989 sales, the 1989 sales do not qualify as exempt occasional sales, even if all of the other standards for occasional sales are met.

Example

A nonprofit organization holds 15 days of sales or events in 1989. The organization holds a seller's permit, files and pays sales tax on all 1989 receipts. At the end of the year the organization realizes that its sales would have qualified as exempt occasional sales except for its holding of a seller's permit. The organization may not claim a refund of taxes paid while it held a seller's permit.

**ALL TAXES****1. Time for Filing or Payment When the Statutory Due Date Falls on a Saturday, Sunday, or Legal Holiday**

Statutes: Chapters 71, 72, 77, 78, and 139, ss. 895.20 and 990.001(4)(b), (c) and (e), Wis. Stats. (1987-88)

Facts: Chapters 71, 72, 77, 78, and 139, Wis. Stats. (1987-88), relating to individual income taxes and credit claims, corporation income/franchise taxes and credit claims, inheritance taxes, gift taxes, sales and use taxes, motor vehicle and general aviation fuel taxes, alcoholic beverage taxes, and tobacco taxes contain various due dates for filing returns, reports, statements, and other documents and for making payments.

Returns, reports, statements, and other documents and payments are considered timely filed if they are postmarked before midnight of the due date, mailed in a properly addressed envelope with postage prepaid, and actually received by the department within 5 days of the due date.

Question 1: What is the due date for filing returns, reports, statements, or other documents or for making payments when the statutory due date falls on a Saturday, Sunday, or legal holiday?

Answer 1: The filing of returns, reports, statements, or other documents and the making of payments under Chapters 71, 72, 77, 78, and 139, Wis. Stats. (1987-88), are considered timely if the return, report, statement, or other document is filed or the payment made on the next succeeding day which is not a Saturday, Sunday, or "legal holiday" (sec. 990.001(4)(b) and (c), Wis. Stats. (1987-88)).

Section 990.001(4)(c), Wis. Stats. (1987-88), provides that a due date falling on a Saturday is automatically extended to the next succeeding day that is not a Sunday or a legal holiday, if the agency with which the action must be taken does not have regularly scheduled Saturday office hours. The Wisconsin Department of Revenue does not have regularly scheduled Saturday office hours.

The term "legal holiday" is defined in sec. 990.001(4)(e), Wis. Stats. (1987-88), which reads as follows: "Legal holiday as used in this section means any statewide legal holiday provided in sec. 895.20. When an act is permitted to be done by the use of the postal service, and the last day within the time prescribed by law for performing such act falls on a legal public holiday under federal law, or other holiday designated by the president such that the postal service does not receive registered mail or make regular deliveries on that day, the day shall be considered a legal holiday for purposes of this section."

Section 895.20, Wis. Stats. (1987-88), reads as follows: "Legal holidays. January 1, January 15, the 3rd Monday in February (which shall be the day of celebration for February 12 and 22), the

last Monday in May (which shall be the day of celebration for May 30), July 4, the 1st Monday in September which shall be known as Labor day, the 2nd Monday in October, November 11, the 4th Thursday in November (which shall be the day of celebration for Thanksgiving), December 25, the day of holding the September primary election, and the day of holding the general election in November are legal holidays. On Good Friday the period from 11 a.m. to 3 p.m. shall uniformly be observed for the purpose of worship. In every 1st class city the day of holding any municipal election is a legal holiday, and in every such city the afternoon of each day upon which a primary election is held for the nomination of candidates for city offices is a half holiday and in counties having a population of 500,000 or more the county board may by ordinance provide that all county employees shall have a half holiday on the day of such primary election and a holiday on the day of such municipal election, and that employees whose duties require that they work on such days be given equivalent time off on other days. Whenever any of said days falls on Sunday, the succeeding Monday shall be the legal holiday."

Legal holidays, for purposes of filing returns, reports, statements, and other documents and for making payments, are the following:

New Year's Day - January 1
 Martin Luther King, Jr.'s Birthday - January 15
 Martin Luther King, Jr.'s Birthday (observed) - the third Monday in January
 Washington's Birthday (observed) - the third Monday in February
 Memorial Day - the last Monday in May
 Independence Day - July 4
 Labor Day - the first Monday in September
 September Primary Election Day
 Columbus Day - the second Monday in October
 November General Election Day
 Veteran's Day - November 11
 Thanksgiving Day - the fourth Thursday in November
 Christmas Day - December 25

Examples: A Wisconsin individual income tax return is due on April 15. However, in a particular year April 15 falls on a

Saturday. The due date is extended to the next day which is not a Saturday, Sunday, or legal holiday. Therefore, the actual due date is Monday, April 17 (assuming April 17 is not a legal holiday).

A sales tax return is due on Monday, February 20, which is the third Monday in February in a particular year and is therefore a legal holiday in that year. The due date is extended to the next day which is not a Saturday, Sunday, or legal holiday. Therefore, the actual due date is Tuesday, February 21.

A claim for refund of a paid office audit assessment may be filed within two years after the assessment of the tax (pursuant to sec. 71.75(5), Wis. Stats. (1987-88)). The last day of the two-year period falls on a Sunday. The due date is extended to the next day which is not a Saturday, Sunday, or legal holiday. Therefore, the last day of the two-year period is the following day, Monday (assuming Monday is not a legal holiday).

Question 2: Does an extension of the due date under sec. 990.001(4)(b) and (c), Wis. Stats. (1987-88), to the next succeeding day which is not a Saturday, Sunday, or legal holiday also apply for purposes of determining if a return, report, statement, document, or payment is received by the department within five days of the due date?

Answer 2: Yes, the provisions in sec. 990.001(4)(b) and (c), Wis. Stats. (1987-88), also apply for purposes of determining if a return, report, statement, document or payment is received within five days of the due date.

Example: If a return is due on a Saturday, the due date becomes the next business day, which is the following Monday (assuming Monday is not a legal holiday). As Monday is now the due date, the return must be postmarked before midnight on Monday and received within five days. However, since the fifth day is a Saturday, the time for receipt is extended to the next business day, which is the following Monday (assuming Monday is not a legal holiday).

