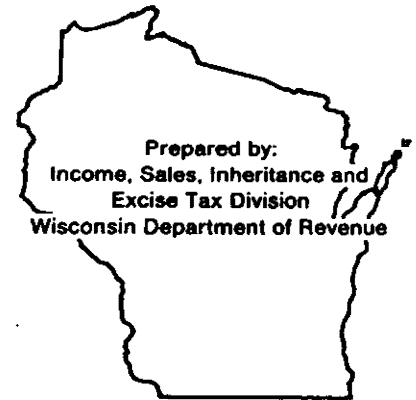


# WISCONSIN TAX BULLETIN

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## FOUR NEW COUNTIES ADOPT SALES TAX

Effective April 1, 1990, the Wisconsin counties of La Crosse, Monroe, Shawano, and Waushara have adopted the county sales tax. There are 24 other counties that have a 1/2% county tax. An explanation of the county sales tax can be found in the December issue of the *Tax Report*, which appears on pages 43 through 46 of this Bulletin.

## REMINDER: QUICK REFUNDS AVAILABLE FOR INDIVIDUALS

The Department of Revenue has implemented a Quick Refund Program for 1989 individual income tax returns processed in 1990. The objective of the Quick Refund Program is to issue individual income tax refunds to qualifying taxpayers in as little as two weeks after the return is received by the department. The return is actually coded, keyed, and checked for computation and other errors at a later date and, if necessary, an adjustment notice is mailed.

The following requirements must be met for an individual to qualify for a quick refund:

- File a 1989 Form 1, Form 1A, or Form WI-Z on or before April 1, 1990.
- Use the department-printed mailing label

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and all the information on the label is unchanged

- Have a Wisconsin address on the department-printed mailing label.
- File a signed and complete return, including all attachments.
- Have a refund due and enter that refund amount in the quick refund box on the return.
- Claim no homestead credit and owe no delinquent taxes or delinquent debts to other state agencies.
- Mail the return to Post Office Box 38, Madison, WI 53787.

The Wisconsin individual income tax returns, Forms 1, 1A, and WI-Z, will include a quick refund box. Qualifying taxpayers will be requested to enter their amount of refund less any amount carried over to 1990 estimated taxes in the quick refund box.

For more information about the Quick Refund Program, see *Wisconsin Tax Bulletin* 64.

## NEW TAX LAWS

As reported in *Wisconsin Tax Bulletin* 64, the Wisconsin Legislature passed 3 changes to the Wisconsin tax laws on November 10, 1989. Governor Tommy Thompson signed 1989 Wisconsin Act 100 (1989 SB 361) on December 6, 1989.

In addition, sec. 71.83(4), as created by 1989 Wisconsin Act 90, provides that penalties which are applicable to the incomplete or incorrect filing of income tax returns are not applicable to the failure to report, or the incomplete or incorrect reporting of, sales and use taxes due on income tax returns. This is effective for sales and use taxes reported on an income tax return for taxable year 1988 and thereafter.

## **WITHHOLDING TAX UPDATE PROVIDED TO EMPLOYERS**

The department has developed a new newsletter called the "Withholding Tax Update" that will be sent to all employers registered to withhold Wisconsin income tax. This annual newsletter will provide information about new tax laws affecting employers, withholding tax procedures, and other items of information regarding the withholding of Wisconsin income tax. This newsletter will also serve as an interim update for changes in the Withholding Tax Guide, which is revised only when withholding rates change.

The first issue was sent to employers in late December with their Forms WT-7, Employer's Annual Reconciliation of Wisconsin Income Tax Withheld From Wages. A copy of the Withholding Tax Update appears on pages 39 and 40 of this Bulletin.

## **EMERGENCY RULE FOR TELECOMMUNICATION SERVICES IN EFFECT**

Due to recent legislation, the department has adopted an emergency rule amending sec. Tax 11.66, Wis. Adm. Code, relating to telecommunication services for sales and use tax purposes. The emergency rule became effective October 1, 1989 and will be followed by an amendment to the permanent sec. Tax 11.66. A copy of the emergency rule can be found on pages 37 to 38 of this Bulletin.

## **FEDERAL TAX LAWS ENACTED IN 1989 DO NOT APPLY FOR WISCONSIN FOR 1989**

As a result of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (P.L. 101-73) and the Revenue Reconciliation Act of 1989 (part of P.L. 101-239), changes have been made to the Internal Revenue Code for 1989 which may result in a difference between certain income and deduction items for Wisconsin and federal purposes for 1989.

Federal tax laws enacted during 1989 do not apply for Wisconsin purposes for 1989 unless subsequently adopted by the Wisconsin Legislature. Differences between Wisconsin and federal income and deduction items resulting from federal tax law changes not applying for Wisconsin should be reported on Wisconsin Schedule I for individuals. For other taxpayers, please refer to the 1989 forms and instructions for information on how to account for these differences.

## **LABEL IT**

Tax preparers have discovered that computers do a great job preparing Wisconsin tax returns. However, there's one thing that a computer cannot do and that is remember to apply the preprinted address label to the completed return.

Taxpayers who use the preprinted label get their Wisconsin refund checks faster than by not using the label. Corrections to information on the label may be made directly on the label.

For 1989 individual income tax returns, the preprinted label is green, making it easy to separate from the federal label. Preparers should remember to use these address labels, even if they are preparing and filing computerized returns for clients.

## **TIPS TO SPEED REFUND PROCESSING**

You can avoid delays in the processing of Wisconsin income tax returns by following these tips:

1. Use the department-printed name and address label. If the information on the label is wrong, correct the label by drawing a line through the incorrect information and printing the correct information clearly on the label.
2. Make sure entries are made on the correct lines.
3. Print words and numbers legibly.
4. Attach the correct withholding statement(s) to the return.
5. Claim only Wisconsin taxes withheld from the withholding statement(s). Many taxpayers mistakenly use the federal tax withheld, the social security tax withheld, or state tax withheld for another state.
6. Attach the necessary schedules. Many taxpayers don't attach the necessary schedules from the back side of the Form 1A and Form 1.
7. Fill in all requested information when claiming the school property tax credit. Many taxpayers claim a credit but don't fill in the rent paid or property taxes paid.
8. Attach a complete copy of the federal income tax return and schedules to the Wisconsin Forms 1 and 1NPR.
9. Check your math.
10. Sign and date the return. If you are filing a joint return, both spouses must sign the return.
11. Attach a remittance with a paper clip to the return precisely where indicated.
12. Attach any extensions of time to file to the back of the return. An extension

of time for filing a federal return automatically gives a Wisconsin extension, provided a copy of the federal extension is attached to the Wisconsin return when it is filed.

13. Use the correct year's forms in filing amended returns. Use Form 1NPR to file an amended return for a part-year resident or nonresident.

## HOW TO REPORT A DISTRIBUTIVE SHARE OF CAPITAL LOSS CARRYOVERS FROM AN ESTATE OR TRUST

After the 1989 Wisconsin Schedule WD went to print, the Internal Revenue Service released Schedule K-1 (Beneficiary's Share of Income, Deductions, Credits, Etc.) of Form 1041. The 1989 federal Schedule K-1 changes the way in which capital gains and capital loss carryovers are reported. Capital gains and capital loss carryovers are reported separately, and the capital loss carryover from federal Schedule K-1 is included with other capital loss carryovers on federal Schedule D.

Because of this change in the federal reporting of capital loss carryovers from Schedule K-1, the instructions for Wisconsin Schedule WD may not be clear with respect to how a carryover loss from a Schedule K-1 is to be reported for Wisconsin by certain persons.

The 1989 instructions for Wisconsin Schedule WD include a list of items which need to be adjusted when determining the Wisconsin capital gain or loss. When an individual is affected by any of these adjustments, the instructions indicate each separate amount from the federal Schedule D (except capital loss carryovers) is to be entered on the Wisconsin Schedule WD. Although not stated in the Schedule WD instructions, any short-term capital loss carryover amount from the federal Schedule K-1 (or Wisconsin Schedule 2K-1, if appropriate) should be entered on line 9 of Wisconsin Schedule WD. An explanation

that this is the capital loss carryover from Schedule K-1 (or 2K-1) should be included in the description column.

## CLARIFICATION ON REPORTING PROCEEDS FROM PRE-1987 INSTALLMENT SALES ON SCHEDULE WD

The instructions for the 1989 Wisconsin Schedule WD indicate that for installment sales of property disposed of during 1987 or 1988, any gain is short-term capital gain for Wisconsin if, at the time of the sale, the property was held for one year or less. This instruction also applies to installment sales of property disposed of in any year prior to 1987. Under Wisconsin law, gain from the sale of property qualifies for a 60% Wisconsin capital gain exclusion only if the property is held for more than one year.

## ADDITIONAL SCHOOL PROPERTY TAX CREDIT

A one-time additional school property tax credit, based on property taxes or rent constituting property taxes paid in 1987 or 1988, will be issued to taxpayers in April 1990 under a nonstatutory provision of 1989 Wisconsin Act 31. The additional credit checks will be automatically issued by the Department of Revenue based on 1987 and 1988 returns filed. A taxpayer is not required to file a separate claim to obtain the additional credit.

The additional credit will be computed by increasing the 1987 school property tax credit from 6.9% to 13.4% and the 1988 school property tax credit from 8.5% to 15%. The credits are computed on the first \$2,000 of property taxes or rent constituting property taxes paid during the taxable year. Persons who claimed the school property tax credit on their 1987 or 1988 Wisconsin income tax returns will normally be sent one refund check equal to the lesser of (a) the additional credit amounts of 6.5% for each year or (b) the person's "net tax liability" as computed on the 1987 and

1988 tax returns. The maximum amount of additional credit to be refunded is \$260 (\$130 if married filing separately).

Below is a series of questions and answers about the additional school property tax credit.

### 1. DO PART-YEAR RESIDENTS OF WISCONSIN QUALIFY FOR THE ADDITIONAL SCHOOL PROPERTY TAX CREDIT?

Yes. The additional amount of credit for each year must be prorated based on the ratio of Wisconsin adjusted gross income to federal adjusted gross income for that year.

### 2. DO NONRESIDENTS OF WISCONSIN QUALIFY FOR THE ADDITIONAL SCHOOL PROPERTY TAX CREDIT?

No. Nonresidents are not eligible for the original school property tax credit and therefore, do not qualify for this additional credit.

### 3. WILL AN ADDITIONAL SCHOOL PROPERTY TAX CREDIT BE ISSUED TO A DECEASED TAXPAYER?

The additional school property tax credit is based on 1987 and 1988 returns filed. If a taxpayer dies before receiving his or her credit, the additional credit amount shall be paid to the taxpayer's estate.

### 4. TO WHOM WILL THE ADDITIONAL CREDIT CHECK BE ISSUED?

The additional credit check will normally be issued in the taxpayers' names as shown on the 1988 return. Exceptions will be made when there are filing status changes from 1987 to 1988. For example, if two single persons in 1987 were married and filed jointly in 1988, individual checks will be issued for 1987 and a joint check will be issued for 1988. Also, if two married persons filed jointly in 1987 and then were divorced and filed as single in 1988, the additional credit amount for 1987 will be equally divided between spouses. These amounts will then be combined with the separate 1988 credits and issued in one check to each person.

#### 5. TO WHAT ADDRESS WILL AN ADDITIONAL CREDIT CHECK BE MAILED?

An additional credit check will be mailed to the address shown on the 1988 income tax return, unless the taxpayer files a change of address with the Department of Revenue before January 31, 1990.

#### 6. HOW DOES A TAXPAYER FILE A CHANGE OF ADDRESS?

A taxpayer files a change of address by providing their name(s), social security number(s), the old address, and the new address. A change of address should be mailed to the Department of Revenue, Shipping and Mailing Section, Attention: Address Change, Post Office Box 8903, Madison, Wisconsin 53708. Taxpayers may also call the department at (608) 266-8047.

#### 7. WILL AN ADDITIONAL SCHOOL PROPERTY TAX CREDIT CHECK BE ISSUED ON A LATE-FILED 1987 OR 1988 TAX RETURN?

Yes. If a 1987 or 1988 tax return is filed after December 31, 1989, the additional school property tax credit check will be issued as soon as possible after receipt of the taxpayer's 1987 or 1988 income tax return.

#### 8. SHOULD A TAXPAYER CHANGE THE AMOUNT OF SCHOOL PROPERTY TAX CREDIT ON AN AMENDED OR LATE RETURN FILED TO REFLECT THE ADDITIONAL SCHOOL PROPERTY TAX CREDIT?

For returns filed on or before March 15, 1990, taxpayers should claim the amount of school property tax credit as provided for in the 1987 and 1988 income tax booklet instructions. An additional property tax credit check will automatically be issued in April 1990 or as soon as possible after receipt of a late-filed income tax return. For late or amended tax returns filed after March 15, 1990, taxpayers may claim the revised amounts of property tax credit (13.4% in 1987 and 15% in 1988) on the amended or late return. See the revised credit tables on pages 41 and 42. The department will ad-

just late or amended tax returns filed after March 15, 1990, to reflect the original and additional school property tax credits 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 1989 from a Wisconsin income tax return. Approximately 750,000 Forms 1099-G reporting refunds received in 1989 will be mailed to taxpayers by late January 1990.

A taxpayer may have to report all or a portion of a Wisconsin income tax refund as income on a 1989 federal tax return. The refund should not be reported as income on the Wisconsin tax return.

The Form 1099-G 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, 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, farmland preservation, and farmers' drought credits; retirement penalties; and any other adjustments. The last line shows the amount of refund reported to the IRS.

### 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 6 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, Shipping and Mailing Section, Post Office Box 8903, Madison, WI 53708.

### PACKAGE WI-X AVAILABLE FOR 1989

Package WI-X contains actual size copies of most 1989 Wisconsin individual, fiduciary, and corporation income tax, gift tax, inheritance tax, motor fuel tax, sales tax, and withholding tax forms. If you have not yet ordered your 1989 Package WI-X, send your request and \$6 per copy to: Wisconsin Department of Revenue, Shipping and Mailing Section, Post Office Box 8903, Madison, WI 53708.

### AMENDING WISCONSIN INCOME OR FRANCHISE TAX RETURNS

Wisconsin income or franchise tax returns are sometimes filed which contain errors or omissions. There are a number of reasons why a taxpayer should file an amended income or franchise tax return. Some examples of when a tax return should be amended are:

- income was overlooked and not reported on the original return
- another Form W-2 for wages not previously reported was received
- an interest statement or a Schedule K-1 from a partnership or tax-option (S) corporation arrived late
- a credit was overlooked
- an Individual Retirement Account (IRA) deduction was understated or overstated
- a federal amended return was filed

- the Internal Revenue Service changed the amount of taxable income or tax payable, and the change affects Wisconsin taxable income or tax payable
- another state adjusted a return on which a Wisconsin credit for net income tax paid to other states is based

Use Wisconsin Form 1X, Amended Return, if the original form filed was a Form 1, 1A, or WI-Z. If the original form filed was a Form 1NPR, use another Form 1NPR and mark it "amended" to amend the original return.

If the original form filed was a homestead credit claim (Schedule H) by itself, use another Schedule H and mark it "amended."

Use Wisconsin Form 4X, Amended Wisconsin Corporation Franchise or Income Tax Return, to amend a Form 4, 5, or 5S.

When filing a Form 1X, an amended Form 1NPR, or an amended Schedule H, use the form for the taxable year being amended. If an error or omission is detected before the original return is filed, make the change on the original return and do not file an amended return. Never attach an amended return to the face of an original return.

If a federal return was amended to change the amount of taxable income or tax payable, or if the amount of taxable income or tax payable has been changed by the Internal Revenue Service, any changes which also affect Wisconsin tax must be reported to Wisconsin within 90 days by filing either an amended return or a report detailing the changes. If a return for another state was amended and a credit against Wisconsin taxes has been allowed for taxes paid to that state, an amended return must be filed within 90 days if the change affects Wisconsin taxable income or the credit for taxes paid to that state.

With the exceptions as provided in sec. 71.75(2), Wis. Stats. (1987-88), a taxpayer has 4 years from the unextended due date of the original return to file an amended return.

If making a payment with the amended return, make the check or money order

payable to the Wisconsin Department of Revenue. Enter the taxpayer's social security number or corporation identification number on the front of the check or money order and attach the payment to the front of the return. If there is an additional amount due, calculate the interest and add it to the tax due. Interest on amounts due is 12% per year from the original due date of the tax return or credit claim to the date the additional amount due is paid.

Interest will be paid on all refunds of tax at the rate of 9% per year. However, by law, interest is not allowed on claims for additional homestead credit or farmland preservation credit.

## OBTAINING COPIES OF YOUR TAX RETURNS

### What is Available

Upon request, the Department of Revenue will provide copies of taxpayers' previously filed tax returns. This includes individual income tax returns, homestead credit claims, corporation or insurance franchise or income tax returns, sales and use tax returns, withholding tax returns and statements, partnership tax returns, fiduciary tax returns, and gift tax reports.

All requests for copies of returns must be made in writing or in person. Requests made by telephone or FAX will not be honored.

Individual income tax returns, partnership tax returns, and homestead credit claims are available for at least the 4 prior tax years. Income tax Forms 1 and 1NPR ordinarily include a copy of the federal tax return, which will be provided when a Form 1 or 1NPR copy is requested.

Copies of Forms 1A and WI-Z generally do not include copies of the federal tax return because federal copies are not required when filing those forms. Wage statement copies are not available with Forms 1A and WI-Z.

Withholding statements and fiduciary tax returns are available for at least the 5 prior

tax years. Gift tax reports are available for at least the 3 prior tax years for donor reports and 8 years for donee reports. Corporation or insurance franchise or income tax returns and microfilmed copies of sales, use, and withholding tax returns are available for at least the 10 prior tax years.

For all years prior to the retention periods indicated, limited information is available from department tax rolls, even though copies of complete tax returns are not available.

Copies of tax returns are generally not available until several months after they are filed. For example, an individual income tax return or homestead credit claim filed by April 15 of any year is normally not available for copying until November of that year.

### Who May Request Copies

A taxpayer or corporation officer may request copies of their own tax returns.

Persons other than the taxpayer or corporation officer may also request copies of tax returns. However, a power of attorney form or other written authorization, signed by the taxpayer or corporation officer, is required as part of the request.

Requests for copies of a deceased taxpayer's tax returns must include a certified domiciliary letter and be signed by the personal representative of the estate. If there is an estate, a certified copy of the death certificate and a statement of the reason for the request is required.

### Fees

The fee for obtaining copies of tax returns is \$1.50 for each return requested. There is an additional fee of 25¢ per return for a certified copy. Requests received without payment will be processed and a bill will be included with the copy mailed to the requester.

### How to Request

Written requests for copies must include the following:

1. Name(s) and address on the requested tax return.
2. Social security number(s) or other identification number of the taxpayer.
3. Year(s) or period(s) of the tax return being requested.
4. Address to which the copies are to be mailed.
5. Signature of the taxpayer or corporation officer.

### Where to Direct Requests

**Written Requests:** Mail your request to Wisconsin Department of Revenue, Central Files Section, Post Office Box 8903, Madison, WI 53708.

**In-Person Requests:** Make your request at the Department of Revenue, Audit Bureau, 4638 University Avenue, Room 132, Madison, Wisconsin. Office hours are 7:45 a.m. to 4:30 p.m. Proper identification (e.g., a driver's license) is required.

### Questions

If you have questions about obtaining copies of tax returns, you may call the Department of Revenue in Madison. Call (608) 266-2890 for information about individual income tax returns, homestead credit claims, gift tax reports, and fiduciary tax returns, and (608) 266-0678 for information about all other returns.

## CORPORATION FILING REQUIREMENTS

### Domestic Corporations

Corporations chartered by Wisconsin, called domestic corporations, must file a Wisconsin return unless specifically exempt. A Wisconsin return is required to be filed even though the domestic corporation has no operations or conducts all its operations outside Wisconsin.

If a domestic corporation has no operations, a properly signed Wisconsin franchise or income tax return with a statement that the corporation has no income or ex-

penses and the corporation is completely inactive is sufficient. If a domestic corporation is active but has no Wisconsin operations, a complete return must be filed to ensure that income is reported correctly.

### Foreign Corporations

Corporations chartered by states other than Wisconsin, called foreign corporations, that wish to transact business in Wisconsin must obtain a Certificate of Authority from the Wisconsin Secretary of State. Foreign corporations holding a Certificate of Authority are required to file a Wisconsin franchise or income tax return even though the corporation transacts no business in Wisconsin. Also, any foreign corporation not holding a Certificate of Authority that has nexus in Wisconsin is required to file a Wisconsin franchise or income tax return.

Foreign corporations required to file a Wisconsin return that transact no business in Wisconsin should enter the statement "No Business Transacted in Wisconsin" on the Wisconsin franchise or income tax return they file. The return must be signed.

### Inactive Corporations

Corporations transacting no business within and outside Wisconsin for an entire taxable year may file Wisconsin Form 4H, Declaration of Inactivity, in lieu of a Wisconsin franchise or income tax return. If Form 4H is filed, no future Wisconsin franchise or income tax returns are required to be filed until the corporation begins transacting business or is requested by the department to do so.

### Liquidated Corporations

Corporations that liquidate during the taxable year are required to file a final Wisconsin franchise or income tax return reporting the disposition of assets and liquidating dividends made to shareholders. A copy of the plan of liquidation and federal Form 966 must be attached to the final Wisconsin return.

### When to File

A Wisconsin corporation franchise or income tax return, including Form 4H, is due the 15th day of the 3rd month following the close of the corporation's taxable year.

**Exception:** Corporations filing a short period return for taxable years beginning on or after August 1, 1988, must file their Wisconsin return on or before the federal due date.

### Failure to File

If a corporation fails to file a Wisconsin franchise or income tax return, including Form 4H, by the due date, the department will issue a late filing fee of \$10 if less than 60 days late or \$20 if 60 or more days late. If the required return is not filed after the corporation is contacted by the department, the department will issue an assessment based on estimated income. The requested corporation's return should not be confused with the annual report (Form 18 or 19) filed with the Secretary of State.

## 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. These federal extensions also extend the time for filing the corresponding Wisconsin return if attached to the Wisconsin return.

If a federal extension of time to file is not requested, a 30-day Wisconsin extension of time to file a Wisconsin return may be requested.

## INFORMATION OR INQUIRIES?

**Madison - Main Office**  
Area Code (608)

Beverage, Motor Fuel,  
Cigarette, Tobacco Products ... 266-6701

Corporation Franchise/Income ..	266-3645
Estimated Taxes .....	266-9940
Fiduciary, Inheritance, Gift .....	266-1231
Homestead Credit .....	266-8641
Individual Income .....	266-2486
Property Tax Deferral Loan .....	266-1983
Sales, Use, Withholding .....	266-2776
Audit of Returns: Corporation,	
Individual, Homestead, Sales ..	266-2772
Appeals .....	266-0185
Refunds .....	266-8100
Delinquent Taxes .....	266-7879
Copies of Returns:	
Homestead, Individual .....	266-2890
All Others .....	266-0678
Forms Request:	
Taxpayers .....	266-1961
Practitioners .....	267-2025

### District Offices

Appleton .....	(414) 832-2727
Eau Claire .....	(715) 836-2811
Milwaukee .....	(414) 227-4000

## DEPARTMENT PUBLICATIONS AVAILABLE

The department publishes a wide variety of publications that are available to taxpayers upon request. The following is a list of publications regarding taxes administered by the Income, Sales, Inheritance, and Excise Tax Division of the department. To order any of these publications, write or call: Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708 (telephone (608) 266-1961).

Number	Title
102	Wisconsin Tax Treatment of Tax-Option Corporations and Their Shareholders
103	Reporting Capital Gains & Losses for Wisconsin by Individuals, Estates & Trusts
104	Wisconsin Taxation of Military Personnel
108	How Your Retirement Benefits Are Taxed
109	Tax Information for Married Persons Filing Separate Returns and Persons Divorced

111	How to Get a Private Letter Ruling From Wisconsin Department of Revenue
112	Wisconsin's Individual Estimated Tax and Corporation Estimated Tax Programs
113	Federal and Wisconsin Income Tax Reporting Under the Marital Property Act
200	Sales and Use Tax Information for Electrical Contractors
201	Wisconsin State and County Sales and Use Tax Information
202	Sales and Use Tax Information: Motor Vehicle Sales, Leases and Repairs
203	Sales and Use Tax Information for Manufacturers
204	Sales and Use Tax Information for Colleges, Universities & Vocational Schools
206	Sales Tax Exemption for Non-profit Organizations
302	Wisconsin Alcohol Laws for Retailers Including Laws Relating to Underage Persons (This publication is only available from Department of Administration, Document Sales on a subscription basis)
500	Tax Guide for Political Organizations and Candidates
501	Field Audit of Wisconsin Tax Returns
503	Wisconsin Farmland Preservation Credit
504	Directory for Wisconsin Department of Revenue
505	A Taxpayer's Appeal Rights of an Office Audit Adjustment
506	Taxpayer's Appeal Rights of Field Audit Adjustments
507	How to Appeal to the Wisconsin Tax Appeals Commission
508	Wisconsin Tax Requirements Relating to Nonresident Entertainers
W-166	Withholding Tax Guide

## WE ARE FREQUENTLY ASKED...

**Question:** If I have no sales during a reporting period, must I file a sales tax return?

**Answer:** Yes. You must file a sales and use tax return for each reporting period even though you had no sales during that period.

**Question:** What happens if I do not file my sales and use tax return by the due date?

**Answer:** If you do not file your sales tax return by the due date, you are not eligible for the retailer's discount and will be sent either a request to file or a notice of estimated tax due. A notice of estimated tax due is sent to those taxpayers with a past history of not filing timely returns. The estimated taxes are subject to collection by the department.

**Question:** How do organizations report and pay sales tax on bingo receipts?

**Answer:** Generally, organizations holding bingo games are required to hold a seller's permit and report sales tax on the bingo receipts on their Wisconsin sales and use tax return. For more information, call (608) 266-2190.

**Question:** What must I do for sales tax purposes if I sell or discontinue my business?

**Answer:** Notify the department in writing of the date you sold or discontinued your business and include a current address where you can be contacted. Include your seller's permit with your letter.

## THREE YEAR PRISON TERM FOR HOMESTEAD FRAUD

### Homestead Credit

A Green Bay man has been ordered to serve 3 years in prison for violations of the Wisconsin homestead credit tax law. Michael G. Baker, who formerly resided at 414 Fifth Street, Green Bay, was sentenced in Brown County Circuit Court, Branch 5, Green Bay, after he was convicted on 4 counts of filing false Wisconsin homestead credit claims during 1985. Judge Peter J. Naze sentenced Baker to 3 years in prison on each count to be served concurrently.

## Withholding Taxes

A former Kenosha businessman has been ordered to serve 3 years probation for violations of Wisconsin state withholding tax laws. Larry A. Christopherson, former president and treasurer of Nardi Electric Company, Inc., Kenosha, was sentenced in Kenosha County Circuit Court, Branch 5, after he pled guilty to 5 counts of failing to deposit taxes withheld from wages of employees. Judge Robert V. Baker sentenced Christopherson to 6 months in jail on each count, to be served consecutively, stayed execution of the sentence, and placed Christopherson on probation for 3 years. Under the conditions of probation Christopherson must make restitution of state taxes in excess of \$36,000.

## Excise Taxes

River City Distributing Company, Inc., 29 West Sherman Avenue, Watertown, entered a "no contest" plea on October 16, 1989, to charges of illegally furnishing various items to tavern licensees. The wholesaler was found guilty and fined a total of \$350. Beer wholesalers are restricted in what they may provide to beer retailers under Wisconsin law, which addresses commercial bribery.

Papagaio, Inc., d/b/a "Sonny's" on Broadway, 515 North Broadway, Milwaukee, was fined \$500 plus costs on October 9, 1989, for possessing refilled liquor bottles. The corporation pleaded guilty to the charge. Sixty-three bottles of liquor held as evidence were destroyed.

## 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 December 15, 1989. Part D lists new rules and amendments which were adopted in 1989. Part E lists rules adopted but not

yet effective. Part F 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
- 4.54 Security requirements-NR
- 4.55 Ownership and name changes-NR
- 7.01 Purchases and invoices-A
- 7.23 Activities of brewers, bottlers and wholesalers-A
- 8.01 Tax liability-NR
- 8.02 Revenue stamps—occupational tax-R&R
- 8.03 Affixing stamps-R
- 8.04 Refunds-R&R
- 8.05 Special tax on intoxicating liquor-R
- 8.06 Mixture of specially taxed and regularly taxed intoxicating liquors-R
- 8.11 Reports-A
- 8.12 Samples-NR
- 8.21 Purchases by the retailer-A
- 8.22 Purchases made outside of state-A
- 8.23 Sales to non-licensees-NR
- 8.31 Sales out of Wisconsin-A
- 8.51 Labels-R
- 8.61 Advertising-A
- 8.66 Merchandise on collateral-A
- 8.71 Bitters-R
- 8.76 Salesperson-R&R
- 8.81 Transfer of retail liquor stocks-A
- 8.87 Intoxicating liquor tied-house prohibitions-A
- 9.67 Cigarette tax credit-R&R
- 9.68 Ownership and name changes-NR
- 14.03 Household income-A
- 14.06 Marriage, separation, or divorce during claim year-A

### B. Rules at Revisor of Statutes Office for Publication of Hearing Notice

- 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
- 2.03 Corporation returns-A
- 2.04 Information returns and wage statements-R&R
- 2.06 Information returns required of partnerships and persons other than corporations-R
- 2.08 Returns of persons other than corporations-A
- 2.10 Copies of federal returns, statements, schedules, documents, etc., to be filed with Wisconsin returns-A
- 2.30 Property located outside Wisconsin - depreciation and sale-A
- 2.69 Income from Wisconsin business-R
- 2.89 Penalty for underpayment of estimated tax-R
- 2.955 Credit for income taxes paid to other states-A
- 3.03 Dividends received, deductibility of-R&R
- 3.08 Retirement and profit-sharing payments by corporations-A
- 3.085 Retirement plan distributions-A
- 3.096 Interest paid on money borrowed to purchase exempt government securities-A
- 3.10 Salesmen's and officers' commissions, travel and entertainment expense of corporations-R
- 3.12 Losses on account of wash sales by corporations-R&R
- 3.37 Depletion of timber by corporations-A
- 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper, or other metals except iron-A
- 3.47 Legal expenses and fines-corporations-R
- 3.54 Miscellaneous expenses not deductible-corporations-R&R
- 3.81 Offset of occupational taxes paid against normal franchise or income taxes-A
- 3.91 Petition for redetermination-A
- 3.92 Informal conference-A
- 3.93 Closing stipulations-A
- 3.94 Claims for refund-A
- 11.05 Government units-A
- 11.09 Medicines-A



- |   |  |   |
|---|--|---|
| 11.12 Farming, agriculture, horticulture and floriculture-A   | 2.45 Apportionment in special cases-A (8/1/89)   | dividends from municipal, state and federal obligations received by individuals and fiduciaries-A (9/28/89) |
| 11.19 Printed material exemptions-A   | 2.50 Apportionment of net business income of interstate public utilities-A (8/1/89)                              | 3.098 Railroad retirement supplemental annuities-A (8/1/89)   |
| 11.40 Exemption of machines and processing equipment-A  | 2.505 Apportionment of net business income of interstate professional sport clubs-A (8/1/89)                     | 3.14 Losses from bad debts by corporations-A (8/1/89)   |
| 11.51 Grocers' guidelist-A  | 2.53 Stock dividends and stock rights received by corporations-A (8/1/89)  | 3.17 Corporation losses, miscellaneous-A (8/1/89)   |
| 11.535 Operators of a swap meet, flea market, craft fair or similar event -NR   | 2.56 Insurance proceeds received by corporations-A (8/1/89)  | 3.35 Depletion, basis for allowance to corporations-A (8/1/89)  |
| 11.57 Public utilities-A  | 2.57 Annuity payments received by corporations-A (8/1/89)  | 3.36 Depletion of timber by corporations-A (8/1/89)   |
| 11.61 Veterinarians and their suppliers-A   | 2.60 Dividends on stock sold "short" by corporations-A (8/1/89)  | 3.43 Amortization of trademark or trade name expenditures-A (8/1/89)  |
| 11.66 Communications and CATV services-A  | 2.61 Building and loan dividends on installment shares received by corporations -R (8/1/89)                      | 3.44 Organization and financing expenses-corporations-A (8/1/89)  |
| <b>C. Rules at Legislative Standing Committee</b>   |  |   |
| 11.10 Occasional sales-A  | 2.63 Dividends accrued on stock-A (8/1/89)   | 3.45 Bond premium, discount and expense-corporations-A (8/1/89)   |
| 11.16 Common or contract carriers-A   | 2.65 Interest received by corporations-A (8/1/89)  | 3.48 Research or experimental expenditures-A (8/1/89)   |
| 11.18 Dentists and their suppliers-A  | 2.70 Gain or loss on capital assets of corporations; basis of determination-A (8/1/89)                           | 3.52 Automobile expenses-corporations-R&R (8/1/89)  |
| 11.26 Other taxes in taxable gross receipts and sales price-A   | 2.72 Exchanges of property by corporations generally-A (8/1/89)  | 3.82 Evasion of tax through affiliated interests-A (8/1/89)   |
| 11.32 "Gross receipts" and "sales price"-A  | 2.721 Exchanges of property held for productive use or investment by corporations-A (8/1/89)                     | 3.83 Domestic international sales corporations (DISCs)-A (8/1/89)   |
| 11.41 Exemption of property consumed or destroyed in manufacturing-A  | 2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations-A (8/1/89) | 11.10 Occasional sales-A (5/1/89)   |
| 11.57 Public utilities-A  | 2.88 Interest rates-A (8/1/89)   | <b>E. Rules Adopted But Not Yet Effective</b>   |
| 11.67 Service enterprises-A   | 2.90 Withholding; wages-A (8/1/89)   | 1.13 Power of attorney-A  |
| 11.68 Construction contractors-A  | 2.91 Withholding; fiscal year taxpayers-A (8/1/89)   | 2.01 Residence-A  |
| 11.84 Aircraft-A  | 2.92 Withholding tax exemptions-A (8/1/89)   | 2.05 Information returns, forms 8 for corporations-R&R  |
| 11.85 Boats, vessels and barges-A   | 2.93 Withholding from wages of a deceased employe and from death benefit payments-A (8/1/89)                     | 2.07 Income tax returns of liquidated or dissolved corporations-R   |
| <b>D. Rules Adopted in 1989 (effective date is given in parentheses)</b>  |  |   |
| 1.001 Definition-A (8/1/89)   | 2.956 Historic structure and rehabilitation of nondepreciable historic property credits-NR (8/1/89)              | 2.081 Indexed income tax rate schedule-R  |
| 2.14 Aggregate of personal exemptions-A (8/1/89)  | 3.01 Rents paid by corporations-A (8/1/89)   | 2.085 Claim for refund on behalf of a deceased taxpayer-A   |
| 2.16 Change in method of accounting for corporations-A (8/1/89)   | 3.05 Profit-sharing distributions by corporations-A (8/1/89)   | 2.105 Notice by taxpayer of federal audit adjustments and amended returns-A                                 |
| 2.19 Installment method of accounting for corporations-A (8/1/89)   | 3.07 Bonuses and retroactive wage adjustments paid by corporation-A (8/1/89)                                     | 2.11 Credit for sales and use tax paid on fuel and electricity-A  |
| 2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies-A (8/1/89) | 3.09 Exempt compensation of military personnel-A (8/1/89)  | 2.12 Amended income and franchise tax returns-A   |
| 2.21 Accounting for incorporated contractors-A (8/1/89)   | 3.095 Income tax status of interest and  | 2.13 Moving expenses-A  |
| 2.22 Accounting for incorporated dealers in securities-R&R (8/1/89)   |  | 2.15 Methods of accounting for corporations-A   |
| 2.24 Accounting for incorporated retail merchants-A (8/1/89)  |  | 2.17 Cash method of accounting for corporations-R   |
| 2.25 Corporation accounting generally-A (8/1/89)  |  | 2.18 Accrual method of accounting for corporations-R  |
| 2.26 "Last in, first out" method of inventorying for corporations-A (8/1/89)  |  |   |

- 2.31 Taxation of personal service income of nonresident professional athletes-A
- 2.50 Apportionment of net business income of interstate public utilities-A
- 2.51 Rent received by corporations from Wisconsin real estate-A
- 2.73 Involuntary conversion by corporations-A
- 2.74 Gain or loss on disposition of property by corporations; adjustment to basis-R
- 2.75 Recoveries by corporations-A
- 2.76 Refunds of taxes to corporations-A
- 2.80 Improvements of leased real estate, income to corporate lessor-A
- 2.81 Damages received by corporations-A
- 2.86 Income to corporations from cancellation of government contracts-A
- 2.945 Spousal individual retirement contributions-R
- 2.96 Extension of time to file corporation franchise or income tax returns-A
- 2.98 Disaster area losses-A
- 3.24 Corporation taxes, miscellaneous-R
- 3.55 Donations and contributions - corporations-R
- 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
- 14.06 Marriage, separation, or divorce during claim year-NR

## F. Emergency Rules

- 11.66 Telecommunication and CATV services (effective 10/1/89; expires 2/26/90)

## 1989 TAX TREATMENT FOR VARIOUS INDIVIDUAL INCOME TAX PROVISIONS

Provision	Federal Tax Treatment	Wisconsin Tax Treatment
Active duty military pay	Taxable	Same as federal
Capital gains and losses:		
Net long-term capital gains	Taxable	40% taxable
Net capital losses	Up to \$3,000 may be used to offset ordinary income (\$1,500 if MFS)	Up to \$500 may be used to offset ordinary income
Child and dependent care expense	Tax credit	None
Child under age 14	Tax may be computed at parent's tax rate	Tax computed at single rate
Disability income	Credit may be allowed	Exclusion up to \$5,200
Farm losses	Deductible unless passive loss limitations apply	Federal passive loss limits apply. Also Wisconsin limit based on nonfarm income with carryover of unused losses
Farmland preservation credit received	Treated as a recovery of property tax	100% taxable
Foreign taxes paid on interest/dividends	Credit	None
Interest from federal obligations	Taxable	Exempt
Itemized deductions:		
Casualty and theft loss	\$100 floor and loss must exceed 10% AGI	Nondeductible; no credit allowed
Consumer interest	20% deductible	Credit may be allowed
Investment interest	Limited itemized deduction	Credit may be allowed
Medical deduction	Reduced by 7.5% of AGI	Credit may be allowed
Miscellaneous itemized deductions	Most are reduced by 2% of AGI	Credit may be allowed
Moving expenses	Itemized deduction	Credit may be allowed
Property taxes on home	Itemized deduction	Credit may be allowed
Taxes paid to other states	Itemized deduction	Credit may be allowed
Unreimbursed employee business expenses (away from home/outside salesperson)	Limited miscellaneous itemized deduction	Credit may be allowed
Wisconsin income tax	Itemized deduction	Nondeductible; no credit allowed
Lump-sum distribution from qualified retirement plan	Generally 5-year averaging available	No averaging available; capital gain exclusion allowed on 75% of capital gain portion; balance fully taxable
Net operating loss	Deductible computed pursuant to IRC	Deductible federal NOL added back; NOL computed pursuant to state statutes
Pension and annuities starting after July 1, 1986	3-year recovery rule eliminated	3-year recovery rule eliminated for pensions and annuities starting after December 31, 1986
Personal exemptions	\$2,000 for taxpayer, spouse, and each dependent	Credit may be allowed for dependents
Persons age 65 or over	Increased standard deduction	Credit may be allowed
Prizes and awards:		
Including charitable, scientific, etc.	Generally taxable	Same as federal
Railroad retirement board benefits	May be taxable	Nontaxable
Rent paid for home	None	Credit may be allowed
Retirement income from:		
Wisconsin state and local retirement systems	May be taxable	Generally same as federal; exempt for persons who were members of Wisconsin State Teachers or certain Milwaukee retirement systems as of December 31, 1963, with limited exceptions.
Federal Retirement Systems	May be taxable	Generally same as federal; exempt for persons who were members of the retirement system as of December 31, 1963, with limited exceptions.
Scholarships and grants:		
Degree candidates	Exclusion limited to tuition and related expenses	Same as federal
Nondegree candidates	No exclusion	Same as federal
Social security benefits	May be taxable	Same as federal
State and municipal bond interest income	Exempt	Generally taxable; limited exceptions
State income tax refunds	May be taxable	Nontaxable
Unemployment compensation (insurance)	100% taxable	All, a portion, or none may be taxable

## ISI&E DIVISION OFFERS TAXPAYER ASSISTANCE

During the filing season of January through April 16, 1990, 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 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
*La Crosse	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
		(414) 524-3970 (after 2/3/90)	

### Offices Providing Assistance on Mondays Only (unless otherwise noted)

Baraboo	1007 Washington	(608)356-8973	7:45-4:30
Beaver Dam	211 S. Spring St.	(414)887-8108	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
Grafton	220 Oak St.	(414)377-6700	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	1926 Hall Ave.	(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	101 N. Wilson Ave.	(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	1418 Tower Ave.	(715)392-7985	8:00-4:30
Tomah	819 Superior Ave.	(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	710 Third St.	(715)842-8665	7:45-4:30
West Bend	120 N. Main St.	(414)338-4730	7:45-4:30
Wisconsin Rapids	1681 2nd Ave., S.	(715)421-0500	7:45-4:30

(a) Monday through Wednesday

\* Open during noon hour

## REPORT ON LITIGATION

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

*The last paragraph of each WTAC decision in which the department's determination has been reversed will indicate one of the following: (1) "the department appealed," (2) "the department has not appealed but has filed a notice of 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

Keith Breyer (p. 12)

Corporate liquidations—section 333

Stephen Kalish (p. 12)

Farm loss limitations

### Homestead Credit

Andrew Tomaszewski (p. 12)

Property taxes accrued—joint ownership

### Corporation Franchise or Income Taxes

Consolidated Freightways

Corporation (p. 13)

Apportionment—motor carriers

Freedom Savings & Loan

Association (p. 13)

Filing requirements—franchise or income tax return

L & W Construction Company, Inc. (p. 14)

Manufacturer's sales tax credit

### Sales/Use Taxes

Arndt Enterprises, Inc. (p. 14)

Farming—ginseng raising

Dairyland Harvestore, Inc. and Badgerland

Harvestore Systems, Inc. (p. 15)

Refunds and remedies of taxpayers—claims for refunds

Thomas D. Kenton (p. 16)  
Close-out sales

Joseph Sanfellippo (p. 16)  
Leases and rentals—taxi cabs

## INDIVIDUAL INCOME TAXES

**Corporate liquidations—section 333.** *Keith Breyer vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 27, 1989). The issue in this case is whether taxpayer-shareholder's failure to file with the department his written election to invoke certain tax benefits, available to shareholders in corporate liquidations, disqualified the taxpayer from obtaining those benefits.

The taxpayer was a shareholder in Kiemar Corporation. On October 5, 1984, Kiemar adopted a plan of liquidation, and on October 10, 1984, the taxpayer filed Form 964 with the IRS electing to have the gains on liquidation taxed under IRC sec. 333, a provision that affords a shareholder preferential federal tax treatment of such gains. At that time, a parallel provision under Wisconsin law gave shareholders favorable state tax treatment of liquidation gains if the shareholder, among other things, filed the election with department within 30 days after the adoption of the plan of liquidation (sec. 71.333(3), Wis. Stats.). In this case, the taxpayer didn't file any election with the department, and consequently the department denied the beneficial treatment the taxpayer later sought upon filing his returns.

The taxpayer made a motion for summary judgment, on the proposition that the department had no authority to, in effect, impose a tax penalty simply because of the failure to comply with statutory procedure. According to the taxpayer, because his federal adjusted gross income was reported correctly and because Wisconsin cannot make any adjustments (other than certain statutory modifications) to federal adjusted gross income if that income was reported correctly, the department here was precluded from making the adjustments it did.

The department made a motion for summary judgment, based on the argument that the failure to comply with statutory procedure bars the taxpayer from securing the tax benefits that a timely election would have permitted.

The taxpayer argued that his failure to file the election is of no consequence, because the department has no statutory authority to adjust the taxpayer's federal adjusted gross income except as specifically allowed as modifications under Wisconsin law. Because, the taxpayer reasoned, the adjustments made were not specifically authorized anywhere and because Wisconsin must start with the taxpayer's federal adjusted gross income if it is correct for federal purposes, the adjustments here were improper.

The Commission held that while it is true that Wisconsin adjusted gross income was defined by sec. 71.02(2)(i), Wis. Stats., as "federal adjusted gross income with the modifications prescribed in s. 71.05(1) and (4)," and that those modifications do not include any modifications relating to the failure to file an election of the sort involved here, the statute doesn't stand alone. It stands with the election provisions of sec. 71.333, Wis. Stats., and must be construed with reference to that section. The Commission concluded that sec. 71.333, Wis. Stats., controls the apparent conflict and, therefore, the taxpayer's failure to file the election meant that the department could adjust his federal adjusted gross income even though federally correct.

The taxpayer has appealed this decision to the Circuit Court.

□

**Farm loss limitations.** *Stephen Kalish vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 27, 1989). The issue in this case is whether the taxpayer's losses, arising out of 2 limited partnership interests he held in thoroughbred breeding ventures, were subject to the farming loss limitation provisions of sec. 71.05(1)(a)26, Wis. Stats.

In 1986, the taxpayer owned interests in 2 limited partnerships. The first limited partnership was itself a general partner in a general partnership engaged in the business of thoroughbred breeding. The second limited partnership was directly engaged in the business of thoroughbred breeding. The taxpayer was not actively involved in the operations of either venture — his only involvement was his investments.

On his 1986 return, the taxpayer deducted \$44,814 of losses from these operations against his other income, which he reported as \$803,539. The department disallowed the entire deduction on the grounds that the losses were subject to sec. 71.05(1)(a)26, Wis. Stats., a provision limiting the deductibility of farming losses. Here, if applicable, the statute would serve to disallow all the taxpayer's losses because of his large nonfarm income.

The Commission held that the statute makes no distinction between those taxpayers who are not personally performing farming activities and those taxpayers who do and that, therefore, the taxpayer is subject to the statute's loss limitations. The Commission concluded that because the statute limits farming losses of whatever kind or character, active or passive alike, that it applies here as a limitation on or, more precisely in this case, a preclusion of the taxpayer's losses.

The taxpayer has not appealed this decision.

□

## HOMESTEAD CREDIT

**Property taxes accrued—joint ownership.** *Andrew Tomaszewski vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 30, 1989). The only issue in this case is the amount of property taxes the claimant should be allowed in computing his homestead credit for the years 1985, 1986, and 1987. It is the claimant's position that he should be allowed 100% of the property taxes paid as property taxes. It is the department's posi-

tion that he should be allowed 50% of the property taxes as property taxes, but that the remaining 50% of the property taxes should be treated as rent on the property.

For each of the years 1985, 1986, and 1987, the claimant lived in a homestead he owned in joint tenancy with his wife, Anna Tomaszewski. For each of those years, Andrew and Anna Tomaszewski maintained separate residences, although they were not legally separated or divorced. The claimant paid all the real estate taxes on his homestead.

The department adjusted the claimant's 1985 through 1987 homestead credit claims by allowing him one-half of the property taxes on the homestead in full as property taxes and allowing him the other one-half of the property taxes as rent, since he was a one-half owner of the property, but paid all the property taxes.

The Commission ruled that under the provisions of sec. 71.09(7)(a)7, Wis. Stats. (1985-86), and sec. Tax 14.02(5)(b), Wis. Adm. Code, a homestead credit claimant, whose spouse maintains a separate residence, may only claim for homestead credit purposes that portion of the real estate taxes he paid on his homestead that reflects his actual ownership interest, even though his spouse held a joint tenancy interest in the property. Therefore, the department acted properly in adjusting the claimant's homestead credit claims for the years 1985-87 by allowing him 50% of the real estate taxes as "property taxes accrued" and the other 50% as rent.

The claimant has not appealed this decision.



## CORPORATION FRANCHISE OR INCOME TAXES

**Apportionment—motor carriers.** *Consolidated Freightways Corporation of Delaware vs. Wisconsin Department of Revenue* (Circuit Court of Dane County, August 31, 1989). This matter is before the Circuit Court on petition for administrative

review under Chapter 227, Wis. Stats. The taxpayer, Consolidated Freightways Corporation of Delaware (CF) seeks to overturn a January 17, 1986, determination of the Wisconsin Tax Appeals Commission, which upheld the department's August 30, 1979, assessment of additional franchise tax and interest for calendar years 1974 through 1977. What is disputed is the method by which CF's income is apportioned. See Wisconsin Tax Bulletin 46, page 13, for a review of this case.

CF's first claim alleged that the department's two factor rule apportioning income based on originating revenues taxes income from activities in other states. For this proposition, CF relied on sec. 71.07(2), Wis. Stats., which requires that CF "... be taxed only on such income as is derived from business transacted and property located within the state ..."

CF, in its second argument, claimed that the department's apportionment formula violates federal constitutional requirements. These requirements are (1) that there be a substantial nexus with the state; (2) that the tax be fairly apportioned; (3) that the apportionment be nondiscriminatory; (4) that the apportionment be based on activities in the taxing state. In this case, both parties agreed that there is a sufficient nexus between CF and Wisconsin to permit Wisconsin to jurisdictionally tax CF's income.

CF claimed that the department's formula is unfair because it taxes income earned by activities in other states and its use of an originating revenue factor distorts Wisconsin's share of income.

CF also alleged that the tax discriminates against interstate commerce because companies such as CF typically have longer hauls than Wisconsin companies and, therefore, they are taxed more heavily than Wisconsin companies. CF further claimed that the adoption of sec. Tax 2.47, Wis. Adm. Code, was the result of influence by the Wisconsin Motor Carrier Association. CF further claimed that Wisconsin does not tax according to activities in Wisconsin.

The Court concluded that CF failed to establish that the income apportioned to the state is out of all appropriate proportion to

the business transacted by CF in the state as required by *Container Corp. of America v. Franchise Tax Bd.*, 463 U.S. 159, 180-181 (1983). Therefore, the Court found that the tax is fairly proportioned. As the department pointed out, the tax is apportioned according to the percentage of originating revenues and ton miles and not according to any distinction between in-state and out-of-state trucking companies. As long as the tax is computed at the same rate, regardless of the final destination, and administered evenly, the Supreme Court has refused to find a state tax discriminatory solely because the tax burden might be borne primarily by out-of-state companies. It is not the purpose of the commerce clause to relieve those engaged in interstate commerce from their just share of state tax burden even though it increases the cost of doing business.

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



**Filing requirements—franchise or income tax return.** *Freedom Savings & Loan Association n/k/a Federated Financial Savings & Loan Association vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 14, 1989). The issue in this case is whether the return the taxpayer filed for the period subsequent to September 30, 1985, is for the 1985 tax year or is for the 1986 tax year. If the return is for the 1985 tax year, the return filed is an income tax return in which interest income from federal instruments or obligations would not be subject to an income tax, and the taxpayer would be entitled to the refund claimed. If the return is for the 1986 tax year, the return filed is a franchise tax return, in which interest income from federal instruments and obligations is included in the measure of the franchise tax, and the department's action was proper in denying the taxpayer's claim for refund.

The taxpayer, Freedom Savings & Loan Association, was during the period at issue, the period subsequent to September 30, 1985, a Wisconsin savings and loan asso-

ciation, headquartered and doing business in Wisconsin and taxable as a Wisconsin corporation.

For Wisconsin taxable year 1984, and for prior taxable years, the taxpayer filed its Wisconsin franchise tax returns on a calendar year basis, ending on December 31. For taxable year 1985, the taxpayer filed its Wisconsin franchise tax return on a fiscal year basis showing a taxable year beginning January 1, 1985, and ending September 30, 1985.

On January 31, 1986, the taxpayer was absorbed by Elm Grove Savings & Loan Association ("Elm Grove Savings") pursuant to sec. 215.53, Wis. Stats. Following the absorption, Elm Grove Savings was the surviving association. Contemporaneously with the absorption of the taxpayer by Elm Grove Savings, Elm Grove Savings changed its name to Federated Financial Savings & Loan Association ("Federated Financial"). Freedom Savings & Loan Association's existence was terminated as of the date of its absorption by Elm Grove Savings, January 31, 1986.

On October 15, 1986, the taxpayer filed a final Wisconsin franchise or income tax return for the reporting period subsequent to September 30, 1985.

The Commission concluded that the final tax return the taxpayer filed for the period subsequent to September 30, 1985, is a franchise tax return for the 1986 tax year in which interest income from federal instruments and obligations is included in the measure of the franchise tax, and that the department's action was proper in denying the taxpayer's claim for refund.

The taxpayer has appealed this decision to the Circuit Court.

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**Manufacturer's sales tax credit.** *L & W Construction Company, Inc. v. Wisconsin Department of Revenue* (Court of Appeals, District II, March 22, 1989). The sole issue in this case is whether a corporate taxpayer which is a general partner in a partnership is

entitled to claim the corporate tax credit allowed for the sales and use tax paid by the partnership.

L & W is a corporate general partner in two Wisconsin partnerships. For tax year 1983, the partnerships each paid the cost, plus sales and use tax, of fuel and electricity used in their manufacturing processes. Each partnership deducted the amount of this sales and use tax in calculating partnership income or loss. L & W filed a 1983 corporate income tax return and claimed a tax reduction credit based on the amount of sales and use taxes related to its own manufacturing activities. The Wisconsin Department of Revenue disallowed the amount of the claimed sales tax credit attributable to the partnerships. Both the Wisconsin Tax Appeals Commission and the Circuit Court affirmed this determination.

L & W appealed, arguing that it is entitled to the tax credit under the "aggregate theory" of partnership law. Under the "aggregate theory" of partnership law, L & W argued, it "paid" a portion of the partnerships' sales taxes based on its ownership interest and, therefore, it is entitled to claim this amount as a tax credit under sec. 71.043(2), Wis. Stats., against its income tax liability, pursuant to Wisconsin's Uniform Partnership Act, ch. 178, Wis. Stats.

The Court affirmed the Circuit Court's judgment, concluding that sec. 71.043(2), Wis. Stats., does not permit a corporation to claim an income tax reduction for sales and use tax paid by a partnership in which the corporation is a general partner, but rather that the income tax reduction is only available to corporations that directly pay such sales and use taxes.

The taxpayer has not appealed this decision.

□

## SALES/USE TAXES

**Farming—ginseng raising.** *Arndt Enterprises, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 29, 1989). The issue in this

case is whether the taxpayer's sales and use of ginseng cloth, cable, cable splicers, cable stretchers, and wire were exempt as "machines, including accessories, attachments . . . and parts therefor, used directly in farming" within the meaning of sec. 77.54(3), Wis. Stats.

During the period under review, March 1, 1982, through February 28, 1986, the taxpayer, a Wisconsin corporation, was doing business in the Wisconsin and sold ginseng equipment to ginseng farmers growing ginseng as a commercial crop. The taxpayer is in the business of growing ginseng for commercial sale and selling ginseng supplies, including ginseng cloth, cable, cable stretchers (also known as "jacks"), and cable splicers to ginseng farmers. The taxpayer purchases the same supplies for its own use in growing ginseng. The taxpayer purchased, used, and sold ginseng cloth, cable, cable stretchers, and cable splicers in this state without paying a sales or use tax during the period under review; and purchased materials for the raising of mink.

The most unique aspect of growing ginseng is the need to provide 70-75% shade, either by poly-fabric (ginseng cloth) or wood lath. Ginseng is highly photo-sensitive plant. Production of ginseng seed and root is diminished severely by exposure to sunlight and the plants cannot tolerate such exposure beyond several days. Shading is the most important element of the climate to be regulated when the plant is not grown in the wild. Accordingly, commercial ginseng growing requires the erection of shade regulating devices to simulate the woodland environment.

The taxpayer uses and sells a woven fabric which when placed over the ginseng garden limits sunlight exposure to less than 25% and, optimally, provides 82-85% shading. The cloth, referred to as a "tarp" (i.e., "tarpaulin"), is stretched over the ginseng garden by tying it to adjustable cables which are mounted on cedar posts at a level of about six feet above ground.

A cable stretcher or "jack," is a tool used to tighten the cloth over the garden. It is moved from cable to cable and field to field. "Side" tarps are raised or lowered manually to control the flow of air under the dome tarps,

as well as sunlight, wind, humidity, and dust. The overhead tarp apparatus serves also to protect against washout by diffusing rainfall. It also protects against hail and frost damage. The average equipment expense including jacks, post, cable, and tarp fabric is about \$10,000 per acre.

When erected the tarp mechanism is used to provide shade, reduce air, and ground temperature, limit moisture, and protect against adverse climatological elements. The cable and tarp apparatus is used for no other purpose but ginseng production. The fabric tarp, cables, and cable splicers under sales and use tax assessment become constituent parts of the tarp shade mechanism. The cable stretchers were utilized primarily to construct and later adjust the cable and attached cloth.

Ginseng growers frequently adjust the cable and tarp apparatus—daily or more often. They utilize thermometers and light meters to monitor temperature and sunlight. Ground is kept damp by straw which serves as a mulch. Some growers use irrigation and sprinkler systems and electric fans. Some irrigate through the overhead tarp.

A comparatively minor additional assessment relates to the taxpayer's purchase of wire used primarily in constructing pens for use in mink ranching operations. This wire is also used to construct racks for drying ginseng roots.

The Commission concluded that the ginseng cloth, cables, cable splicers, and cable stretchers used in constructing shade apparatus for ginseng growing, the wire used in the taxpayer's construction of pens for its mink raising, and the wire used in the construction of drying racks for ginseng were not "machines, including accessories, attachments and parts therefor, used directly in farming" within the meaning of sec. 77.54(3), Wis. Stats.

The taxpayer has appealed this decision to the Circuit Court.



**Refunds and remedies of taxpayers—claims for refunds.** *Dairyland Harvestore, Inc. and Badgerland Harvestore Systems, Inc. vs. Wisconsin Department of Revenue* (Court of Appeals, August 17, 1989). *Dairyland Harvestore, Inc.*, and *Badgerland Harvestore Systems, Inc.*, appeal from an order affirming the Wisconsin Tax Appeals Commission's decision that they are not "persons" under sec. 77.59(4), Wis. Stats., entitled to file a claim against the Department of Revenue for refund of sales taxes they paid to a retailer or to claim an offset for such sales taxes against their liability for additional sales taxes. The issues are whether the Commission properly construed sec. 77.59(4), Wis. Stats., both before and after its 1980 amendment, whether the Court should fashion for the taxpayers an equitable remedy under Wis. Const. art. I, sec. 9, and whether the doctrine of equitable recoupment permits the taxpayers to file claims for offsets.

The claimed offsets arose out of refunds on purchases by the taxpayers from A. O. Smith Harvestore Products, Inc. The taxpayers paid Wisconsin sales taxes to A. O. Smith at the statutory rate for each purchase. A. O. Smith in turn paid the taxes to the department, but later made refunds to the taxpayer which reduced the price of the products they had purchased. A. O. Smith did not, however, refund to the taxpayers the sales taxes on the refunded amounts. The refunds to *Dairyland* were for the fiscal years ending January 31, 1977, through 1981, and the refunds to *Badger* were for the years ending January 31, 1979, through 1981.

The Commission concluded that each taxpayer lacked standing under sec. 77.59(4), Wis. Stats., to file a claim for a refund of sales taxes paid and, therefore, lacked standing to claim an offset for sales tax paid. The Commission concluded that the doctrine of equitable recoupment was inapplicable and affirmed the department's denial of the taxpayers' petition for redetermination. The taxpayers petitioned for judicial review under ch. 227, Wis. Stats. The trial court affirmed the Commission.

All parties appear to assume that if the taxpayers had standing to file claims with the department for sales taxes they paid to

A. O. Smith, then they are entitled to offset those sales taxes against additional sales taxes owing for the same taxable years in question. The Court accepted this assumption. However, the taxpayers' contend that under the plain meaning of sec. 77.59(4), Wis. Stats. (1977), before its amendment, they are "persons" who may claim a refund of sales taxes paid.

The Court concluded that:

A. At all relevant times before April 30, 1980, sec. 77.52(1), Wis. Stats. (1977-78), imposed the sales tax on A. O. Smith as the retailer. As the "retailer" A. O. Smith was required to file monthly or quarterly sales tax returns, as well as an "annual information return" detailing its total receipts for sales tax purposes. A. O. Smith was entitled by virtue of sec. 77.52(3), Wis. Stats., to collect the sales taxes from the taxpayers, and it is undisputed that it paid the taxes to the department. In its pre-amendment form, sec. 77.59(4), Wis. Stats. (1977), was unambiguous and rejected the taxpayers' argument that under the doctrine of equitable recoupment, they are entitled to a refund and, therefore, an offset even if they lack standing to file a claim.

B. The 1980 amendment to sec. 77.59(4), Wis. Stats., renders it ambiguous. The relevance of income tax and franchise tax returns to claims for sales tax refunds is obscure at best. The amended statute fails to specify to whom the person filing a claim paid the tax. It fails to differentiate between the person (such as the taxpayers who paid it to the retailer and the retailer who paid it to the department). The statute can be read to permit either person or both to claim a refund for the tax on a single transaction. Since reasonable persons could understand the statute differently, it is ambiguous. The new statute permits a "person" to "file a claim for refund of taxes paid," having deleted the qualifying words "by such person." Consequently, the basis under the old statute for concluding that the "person" entitled to file is the same person who paid the taxes no longer exists. Because the new statute refers to the Wisconsin income tax or franchise tax return, the basis under the old statute for concluding that the "person" entitled to file is the one who filed a sales tax return no longer exists.



Therefore, the Court concluded that the Legislature intended by its amendment to sec. 77.59(4), Wis. Stats., that all persons who have paid an excess sales tax, whether to a retailer or to the department, may file a claim for a refund. The court specifically inferred that the Legislature intended, through its amendment, to permit customers who paid excess sales taxes to retailers to claim tax refunds from the department. Because the taxpayers could have filed claims on and after April 30, 1980, for excess sales taxes they paid to A. O. Smith, they may offset those claims against the department's assessments for additional taxes.

The department appealed this decision to the Wisconsin Supreme Court. The petition for review was denied.



**Close-out sales.** *Thomas D. Kenton vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, May 11, 1989). The issues in this case are:

A. Whether the taxpayer continued to "hold" his seller's permits on the date of a sale within the meaning of sec. 77.51(9)(a), Wis. Stats., (1985-86), and sec. Tax 11.13(3)(b), Wis. Adm. Code, and thus, was ineligible to claim the "occasional sales" exemption from the sales tax.

B. Whether the Wisconsin Department of Revenue is entitled to a summary judgment under sec. 802.08(2), Wis. Stats., since legal delivery to the department of the seller's permits at issue herein is conditional upon the postmark date on the envelope bearing such seller's permits. The taxpayer contended that the legislature amended the intent of sec. 77.51(9)(a), Wis. Stats., by adding sec. 77.51(9)(am), Wis. Stats., effective May 17, 1988.

The department made an assessment of sales and use tax against the taxpayer for the period ending September 25, 1987. The assessment related to the September 25, 1987, disposition of the assets of the taxpayer's laundromat business operated at two locations, one in the Village of Wild Rose and the other in the City of Wautoma.

Attorney Thomas M. Kubasta conducted the closing in which the taxpayer sold his Wautoma, Wisconsin laundry and dry cleaning business. Said closing took place between 5:00 p.m. and 6:00 p.m. on Friday, September 25, 1987. The law clerk for Attorney Kubasta, at his direction, left the offices of Attorney Kubasta at approximately 5:45 p.m. with a properly addressed envelope with sufficient postage containing the seller's permits at issue and mailed the envelope by regular mail at the post office in Wautoma, later executing an affidavit to that effect. The envelope was postmarked September 26, 1987.

The Commission ruled that under the provisions of sec. 77.51(9)(a), Wis. Stats., the taxpayer's sale of business assets was not exempt as an occasional sale since it failed to comply with the applicable requirements. The Commission concluded that the department has shown good and sufficient cause for the granting of its motion for summary judgment pursuant to sec. 802.08(2), Wis. Stats.

The taxpayer has not appealed this decision.



**Leases and rentals—taxi cabs.** *Joseph Sanfellippo vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 27, 1989). The issues in this case are:

A. Whether lease payments made by lessee-cab drivers to the lessor-taxpayer, for use of the cabs, were taxable receipts earned from leasing the cabs at retail; and

B. Whether the department was equitably estopped from collecting any sales tax from the taxpayer by its not having advised the taxpayer of the taxability of the lease payments or collaterally estopped by a court ruling that the taxpayer and the drivers had employer-employee relationships.

The years involved here are 1981 through 1984. In those years, the taxpayer owned one or two cabs. During most of the period, the taxpayer leased the cabs to a number of

different lessee-drivers, who paid between \$100-125 per week in rent. The leases were oral. The drivers were responsible for paying for gas used on their runs and for some routine maintenance. Dispatching of the cabs was done by a separate radio service company. The taxpayer paid that company a monthly fee for its dispatching services. The taxpayer had no right of control and exercised no control over the drivers. He took no share of the drivers' meter fares.

In 1974, the taxpayer was audited by the Department of Industry, Labor and Human Relations (DILHR), which concluded that the relationship between the taxpayer and the drivers he then had was that of employer-employees, for unemployment compensation purposes at least. That ruling was affirmed in Dane County Circuit Court in 1975. The relationships between the taxpayer and his drivers at the time of the court decision were the same as those in effect in the years involved here.

At no time prior to its audit of the taxpayer did the department specifically notify the taxpayer of its contention or position that lease payments of the kind paid here were gross receipts subject to sales tax, and the taxpayer never knew that the department considered such transactions to be taxable. However, the department did publish and distribute general materials on the subject of the taxability of lease payments in general.

The taxpayer argues that the lease payments were not taxable, because the transactions between the drivers and him were not retail transactions, and that even if the transactions were taxable, the department was estopped from collecting the tax, because another arm of the state, DILHR, ruled that taxpayer and the drivers had employer-employee relationships with each other, and that ruling was affirmed as indicated above.

The ruling, the taxpayer reasoned, is important because in finding an employer-employee relationship, the ruling now precludes a sales tax. It is conceptually impossible, the taxpayer contended, for the drivers, as employees of the taxpayer, to be both employees and simultaneously stand in a lessee relationship with the taxpayer-employer—



particularly where the leased items were used by the drivers in the course of taxpayer's business. The taxpayer also claimed that because the department took no steps to notify him of the taxability of such transactions, the department is estopped from making him pay.

The department argued the taxability issue is controlled by the Commission's holding in *Peterson v. Wisconsin Department of Revenue*, 203-026 Wisconsin Tax Reporter (WTAC 1989), wherein it held, in similar circumstances, cab leases to be taxable retail transactions. The department also argued that it is not estopped from collecting the tax; it had no duty to notify taxpayer and isn't collaterally estopped by the DILHR case.

The Commission held that the lease payments are taxable retail receipts. The transactions were retail transactions because, among other things, the drivers — not the fare-paying consumers — were the ultimate users of the property and provided only services, not property, to the fare-payers.

The Commission also held that even if it accepted as binding the court's decision that the taxpayer and the drivers had employment relationships, it still could not say that those relationships legally exclude lease relationships with respect to the cabs. The Commission ruled that an employee can be his employer's lessee of property used in the course of the employer's business, and

accordingly, the department is not estopped by the court ruling establishing an employment relationship.

Finally, the Commission ruled that the department is not estopped by its "failure" to notify the taxpayer of the taxability of the lease payments, that to impose such a duty to notify the taxpayers would be to impose an impossible burden, and that the existence of published statutory law constitutes notice to the state's taxpayers.

The taxpayer has appealed this decision to the Circuit Court. □

## 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. Distributions From Keogh and Deferred Compensation Plans (p. 17)
2. Farmers' Drought Credit and Its Effect on 1989 Federal and Wisconsin Income Tax Returns (p. 18)
3. Property Taxes/Rent Allowable for School Property Tax Credit Computation (p. 20)
4. Small Business Stock (p. 21)
5. Taxable Status of Interest Income Received from Certain Securities (p. 22)
6. Taxation of Dependents With Unearned Income (p. 22)
7. Wisconsin Tax Treatment of Lump-Sum Distributions (p. 23)

### Homestead Credit

1. Homestead Credit - Ownership of Homestead (p. 24)

### Corporation Franchise or Income Taxes

1. Difference Between Wisconsin Basis and Federal Basis of Assets Disposed of in Taxable Transactions (p. 25)

### Sales/Use Taxes

1. Cost-Sharing of Telecommunications Equipment and Services (p. 26)
2. Electricity Used in Industrial Waste Treatment Facility (p. 26)
3. Leased Automobiles Used by Employees (p. 26)
4. License, Maintenance, and Enhancement of Computer Software (p. 27)
5. Sale of Waste Removal Services and Transfer of Tangible Personal Property (p. 28)
6. Supplies Used in Delivering Newspapers (p. 28)
7. "Transport" Natural Gas and Transportation Charges (p. 29)
8. When Is a Sale in Wisconsin for Purposes of Imposing Wisconsin Sales Tax (p. 31)

## INDIVIDUAL INCOME TAXES

### 1. Distributions From Keogh and Deferred Compensation Plans

Statutes: Section 71.05(6)(b)1, Wis. Stats. (1987-88)

Background: In a Tax Release titled "Distributions from IRAs Which Invest in U.S. Government Securities," WTB 61, page 13, it stated that amounts withdrawn from an IRA which are attributable to interest from U.S. Government securities may be excluded from Wisconsin taxable income under sec. 71.05(6)(b)1, Wis. Stats. (1987-88), pursuant to 31 USCS § 3124.

Question 1: When amounts are withdrawn from a Keogh or deferred compensation plan which invests in securities issued by the U.S. Government, will a portion of the amount withdrawn constitute interest from U.S. Government securities which is exempt from Wisconsin income tax?

**Answer 1:** Yes. The portion of the amount withdrawn from a Keogh plan or deferred compensation plan attributable to interest from U.S. Government securities may be excluded from Wisconsin taxable income under sec. 71.05(6)(b)1, Wis. Stats. (1987-88), pursuant to 31 USCS § 3124, provided the plan is a "qualified retirement plan."

**Question 2:** Is the formula for determining what portion of a Keogh plan or deferred compensation plan distribution is considered U.S. Government interest the same as provided for IRAs in WTB 61?

**Answer 2:** Yes. The formula and examples provided on pages 13 and 14 of WTB 61 explaining how to determine what portion of an IRA distribution is U.S. Government interest may be used to determine what portion of a Keogh plan or deferred compensation plan distribution is considered U.S. Government interest.



## 2. Farmers' Drought Credit and Its Effect on 1989 Federal and Wisconsin Income Tax Returns

**Statutes:** Sections 71.01(6), 71.05(6)(b)5, and 71.07(2fd) and (9), Wis. Stats. (1987-88)

**Note:** This Tax Release applies only with respect to taxable year 1989. The information regarding the federal treatment of the farmers' drought credit is based on a letter from the IRS district office in Milwaukee.

**Background:** Section 71.07(2fd), Wis. Stats. (1987-88), provides a refundable credit to owners of Wisconsin farmland equal to 10% of 1988 farm property taxes accrued, subject to certain requirements. The maximum credit is \$1,000 and may be claimed on the taxpayer's 1988 Wisconsin income tax return. Most taxpayers will receive the credit in their 1989 taxable year.

Section 111 of the Internal Revenue Code and Treasury Reg. § 1.111-1, provide that the recovery of an amount a taxpayer deducted or claimed as a credit in a prior year must be included in taxable income to the extent the taxpayer received a tax benefit from the prior year's deduction or credit.

If the recovery and the deductible expense or credit occur in the same taxable year, the recovery reduces the deduction or credit and is not included in income. If the recovery is attributable to more than one taxable year, the recovery first reduces the deduction or credit not previously claimed. Any remaining recovery is included in income to the extent the taxpayer received a tax benefit from a prior year's deduction or credit.

Wisconsin follows the provisions of sec. 111, IRC under sec. 71.01(6), Wis. Stats. (1987-88).

Section 71.05(6)(b)5, Wis. Stats. (1987-88), provides that any amounts included in federal adjusted gross income which are recoveries of federal itemized deductions for which no tax benefit was received for Wisconsin tax purposes may be subtracted from federal adjusted gross income in computing Wisconsin adjusted gross income.

**Question 1:** If a taxpayer claimed the farmers' drought credit on his or her 1988 Wisconsin income tax return, is the amount of the credit considered a recovery and governed by sec. 111, IRC, for federal and Wisconsin income tax purposes.

**Answer 1:** Yes. The farmers' drought credit is considered a recovery of farm property taxes in taxable year 1989 governed by sec. 111, IRC, for federal and Wisconsin income tax purposes.

## FEDERAL TAX TREATMENT

**Question 2:** How is the amount of the 1988 farmers' drought credit received in 1989 reported on a taxpayer's 1989 federal income tax return.

**Answer 2:** The answer depends on when the deduction for property taxes used in computing the farmers' drought credit was claimed by the taxpayer. There are 3 possibilities:

1. If the property taxes used in computing the farmers' drought credit were deducted in taxable year 1988, the amount of the farmers' drought credit is included in 1989 federal taxable income to the extent the taxpayer received a federal tax benefit from the 1988 deduction.

**Example 1:** A calendar year taxpayer paid 1988 property taxes accrued of \$8,000 during 1988. Of the \$8,000 of property taxes, 90% (\$7,200) was deducted on 1988 federal Schedule F as farm property taxes. The remaining \$800 of property taxes relating to the personal residence was deducted on 1988 federal Schedule A. The taxpayer received a federal tax benefit from the deductions of property taxes on 1988 federal Schedules A and F. The taxpayer claimed a farmers' drought credit of \$800 (10% of \$8,000) on his or her 1988 Wisconsin income tax return.

The entire amount of farmers' drought credit of \$800 must be reported as income on the taxpayer's 1989 federal income tax return. Of the \$800, 90% (\$720) is reported as income on federal Schedule F and 10% (\$80) is reported as "other income" on line 22 of 1989 federal Form 1040.

**Example 2:** Assume the same facts as in Example 1, except that the taxpayer claimed the standard deduction rather than itemized deductions on his or her 1988 federal income tax return.

Because the taxpayer deducted only 90% of property taxes paid (\$7,200) in computing federal income, only 90% of the farmers' drought credit (\$720) must be reported as income on the taxpayer's 1989 federal income tax return. The \$720 of

farmers' drought credit is reported as income on federal Schedule F.

2. If the property taxes used in computing the farmers' drought credit are deducted in taxable year 1989, the amount of farmers' drought credit reduces the amount of property taxes paid in 1989 for purposes of determining the deduction allowable on the taxpayer's 1989 federal income tax return.

**Example 3:** A calendar year taxpayer paid 1988 property taxes accrued of \$10,000 during 1989. Of the \$10,000 of property taxes, 90% (\$9,000) are farm property taxes deductible on Schedule F. The remaining \$1,000 of property taxes relate to the personal residence and are deductible on federal Schedule A. The taxpayer claimed a farmers' drought credit of \$1,000 (10% of \$10,000) on his or her 1988 Wisconsin income tax return.

The taxpayer may only deduct \$8,100 of 1988 farm property taxes on 1989 federal Schedule F (\$9,000 farm property taxes less \$900 farmers' drought credit) and \$900 of 1988 property taxes relating to the personal residence on 1989 federal Schedule A (\$1,000 property taxes less \$100 farmers' drought credit).

**Example 4:** Assume the same facts as in Example 3 except that the taxpayer claims the standard deduction rather than itemized deductions on his or her 1989 federal income tax return.

The taxpayer may deduct \$8,100 of 1988 farm property taxes on 1989 federal Schedule F (\$9,000 farm property taxes less \$900 farmers' drought credit). No reduction of the standard deduction for the remaining \$100 of farmers' drought credit is necessary.

3. If the property taxes used in computing the farmers' drought credit are partially deductible in taxable years 1988 and 1989, the farmers' drought credit first reduces the deduction available for 1988 property taxes paid in 1989. The remainder of the farmers' drought credit is reported as income on the taxpayer's 1989 federal income tax return to the extent the taxpayer received a federal tax benefit from the 1988 property tax deductions.

**Example 5:** A calendar year taxpayer had 1988 property taxes accrued of \$6,000. The taxpayer paid \$4,000 of the 1988 property taxes in 1988 and the remaining 1988 property taxes (\$2,000) in 1989. The taxpayer deducted 90% of property taxes paid in 1988 (\$3,600) on 1988 federal Schedule F. The remaining \$400 (10% of \$4,000) of 1988 property taxes paid relating to the personal residence were deducted on 1988 federal Schedule A. The taxpayer received a federal tax benefit from the 1988 property tax deductions.

The taxpayer claimed a farmers' drought credit of \$600 (10% of \$6,000) on his or her 1988 Wisconsin income tax return.

On the 1989 federal income tax return, the taxpayer is allowed a total property tax deduction of \$1,400 (\$2,000 1988 property taxes paid in 1989 less \$600 farmers' drought credit). Of the \$1,400 of property taxes, the taxpayer may deduct 90% (\$1,260) on 1989 federal Schedule F and 10% (\$140) on 1989 federal Schedule A. None of the farmers' drought credit is reported as income on the 1989 federal income tax return.

**Example 6:** Assume the same facts as in Example 5 except that the taxpayer paid \$5,500 of 1988 property taxes in 1988 and the remaining \$500 of 1988 property taxes in 1989.

On the 1989 federal income tax return, no deduction is allowed for 1988 property taxes on federal Schedule A or F because the farmers' drought credit first reduces 1988 property taxes not yet deducted (\$500). The remaining farmers' drought credit (\$100) must be reported as income on the 1989 federal income tax return. Of the \$100 of income, \$90 is reported on federal Schedule F and the remaining \$10 is reported as "other income" on line 22 of 1989 federal Form 1040.

## WISCONSIN TAX TREATMENT

**Question 3:** What effect does the farmers' drought credit have on a taxpayer's 1989 Wisconsin income tax return?

**Answer 3:** The answer depends on how the farmers' drought credit is reported on the taxpayer's 1989 federal income tax return. Based on the 3 possibilities of reporting for federal purposes given in Answer 2, the following would apply for Wisconsin income tax purposes:

1. If the taxpayer reported the farmers' drought credit as income on his or her 1989 federal income tax return and received a Wisconsin tax benefit from the 1988 property taxes, no modification is necessary for Wisconsin.

The taxpayer does not receive a Wisconsin tax benefit from property taxes deducted on federal Schedule A. However, if those same taxes are used to compute the school property tax credit on the taxpayer's 1988 Wisconsin income tax return and the credit reduces the taxpayer's Wisconsin tax liability, the taxpayer is considered to receive a Wisconsin tax benefit from the 1988 property taxes relating to the personal residence.

If the taxpayer did not receive a tax benefit from the school property tax credit on his or her 1988 Wisconsin income tax return, the taxpayer may claim a subtraction modification from federal adjusted gross income on his or her 1989 Wisconsin income tax return for the portion of farmers' drought credit included in federal income that relates to the 1988 property taxes itemized on federal Schedule A.

**Example 7:** Assume the same facts as in Example 1 and that the property taxes claimed as a deduction on federal Schedule A (10% of \$8,000 or \$800) were also used to claim the school

property tax credit on the taxpayer's 1988 Wisconsin income tax return.

Assuming the taxpayer received a tax benefit from the 1988 Wisconsin school property tax credit, the farmers' drought credit is also taxable for Wisconsin. Therefore, no subtraction modification from federal adjusted gross income may be claimed.

If the taxpayer had not received a tax benefit from the 1988 school property tax credit for Wisconsin income tax purposes, the taxpayer may claim a subtraction modification of \$80 (10% of the farmers' drought credit), which is that portion of the farmers' drought credit relating to 1988 property taxes on the personal residence which were claimed as an itemized deduction on federal Schedule A.

**Example 8:** Assume the same facts as Example 2 and that the taxpayer used the \$800 of property taxes on the personal residence to compute the school property tax credit on his or her 1988 Wisconsin income tax return and received a Wisconsin tax benefit from the credit.

The farmers' drought credit relating to property taxes on the personal residence (\$80 which was not taxable for federal) is not added to federal adjusted gross income in computing Wisconsin adjusted gross income. Even though the taxpayer received a Wisconsin tax benefit from the 1988 school property tax credit, there is no provision in Wisconsin income tax law to require the \$80 addition modification.

2. If the taxpayer is required to reduce property tax deductions on 1989 federal Schedules A and F for federal income tax purposes, the same adjustments apply for Wisconsin. The property taxes allowed as a deduction on federal Schedule A may be used to compute the 1989 Wisconsin school property tax credit.

**Example 9:** Assume the same facts as in Example 3. The farmers' drought credit also reduces the property taxes that may be claimed as a deduction on 1989 federal Schedule F for Wisconsin income tax purposes. Therefore, no modification to federal adjusted gross income is necessary.

The same amount of property taxes on the personal residence, as reduced by the farmers' drought credit, claimed on federal Schedule A (\$100) may be used to compute the school property tax credit on the taxpayer's 1989 Wisconsin income tax return.

**Example 10:** Assume the same facts as in Example 4. The farmers' drought credit also reduces the property taxes that may be claimed on 1989 federal Schedule F for Wisconsin income tax purposes. Therefore, no modification to federal adjusted gross income is necessary.

The property taxes used to compute the school property tax credit on the 1989 Wisconsin income tax return must be

reduced by the farmers' drought credit even though for federal purposes no adjustment is necessary because the taxpayer claims the standard deduction for 1989. The amount which may be used to compute the school property tax credit is \$900 (\$1,000 property taxes less \$100 farmers' drought credit = \$900).

3. If the taxpayer paid 1988 property taxes accrued in 1988 and 1989 and the taxpayer reduces his or her 1989 property tax deduction by the farmers' drought credit and includes a portion of the farmers' drought credit in income, the same reductions of property taxes apply for Wisconsin as for federal. Also, the portion of farmers' drought credit includable in 1989 federal adjusted gross income is also includable in Wisconsin adjusted gross income, provided the taxpayer received a tax benefit from the school property tax credit on his or her 1988 Wisconsin income tax return.

**Example 11:** Assume the same facts as in Example 5. The farmers' drought credit also reduces the property taxes that may be claimed as a deduction on 1989 federal Schedule F for Wisconsin income tax purposes (\$1,260). Therefore, no modification to federal adjusted gross income is necessary.

The same amount of property taxes as deductible on federal Schedule A (\$140) may be used to compute the school property tax credit on the taxpayer's 1989 Wisconsin income tax return.

**Example 12:** Assume the same facts as Example 6 and that the taxpayer received a Wisconsin tax benefit from the school property tax credit allowed on his or her 1988 Wisconsin income tax return. The same reduction of property taxes applies for Wisconsin purposes as for federal purposes. Therefore, the taxpayer may not use any of the 1988 property taxes paid in 1989 to compute the school property tax credit on his or her 1989 Wisconsin income tax return. The remaining \$100 of farmers' drought credit includable in federal income is also taxable for Wisconsin income tax purposes and no modification is necessary.

If the taxpayer had not received a tax benefit from the school property tax credit allowed on his or her 1988 Wisconsin income tax return, the taxpayer could subtract \$10 from federal adjusted gross income. That \$10 is that portion of the farmers' drought credit included in federal adjusted gross income that reflects property taxes on the personal residence (10% of \$100 or \$10).

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### 3. Property Taxes/Rent Allowable for School Property Tax Credit Computation

**Statutes:** Section 71.07(9)(a)3. and 4., Wis. Stats. (1987-88)

**Facts and Question 1:** A woman receives a life estate in a home pursuant to a trust set up by her deceased husband. She uses this home as her principal dwelling. May she claim a school property tax credit under sec. 71.07(9), Wis. Stats. (1987-88), based on the entire amount of property taxes she pays on this home?

**Answer 1:** Yes, subject to the dollar limitations under sec. 71.07(9)(b), Wis. Stats. (1987-88), (\$2,000 for 1988). A life estate is not merely a right to occupy property; it is a freehold estate. A life tenant is an owner of the property for the duration of his or her life. Since the woman is in possession of a life estate interest she is considered to be the owner and is, therefore, entitled to claim the property taxes which she pays in computing the homeowner's school property tax credit.

**Facts and Question 2:** A husband and wife own a home in joint tenancy, tenancy in common, or as marital property. The wife lives in the home all year, while the husband maintains a separate home elsewhere. The wife pays all the property taxes using her wages. May the wife claim a homeowner's school property tax credit based on the taxes for her ownership share of the homestead and a renter's school property tax credit based on the taxes for her husband's ownership share of the property, which she pays?

**Answer 2:** Yes. Under sec. 71.07(9)(a)3., Wis. Stats. (1987-88), the definition of property taxes as it pertains to the school property tax credit provides that if the principal dwelling is owned by 2 or more persons or entities, property taxes is that part of the property taxes paid that reflects the ownership percentage of the claimant. Therefore, the wife may claim the percentage of property taxes she pays which reflects her ownership interest (generally 50%, unless designated otherwise) in the computation of the homeowner's school property tax credit.

Since the wife pays all the taxes for her principal dwelling and can claim only her ownership share for computing the homeowner's school property tax credit, the balance of those taxes is considered to be rent just as it is for homestead credit purposes. She may claim the balance as rent in the computation of the renter's school property tax credit under sec. 71.07(9)(a)4., Wis. Stats. (1987-88), whereby 25% of the rent constitutes property taxes if heat is not included, or 20% if heat is included.



#### 4. Small Business Stock

**Statutes:** Sections 71.01(10) and 71.05(6)(b)6, Wis. Stats. (1987-88)

**Background:** Net capital gains on small business stock are excludable from Wisconsin adjusted gross income provided the taxpayer acquired the stock on or after January 1, 1986, did not acquire the stock by gift, and submits with his or her Wisconsin tax return a copy of the certification issued by the corporation.

"Small business stock" means an equity security that the taxpayer has held for at least 5 years and that is issued by a corporation that, on the December 31 before acquisition by the taxpayer, or, for a corporation which was incorporated during the calendar year in which the stock is issued, as of the date of the acquisition of the stock, fulfills all of the following requirements and so certifies to the taxpayer upon acquisitions:

- Has at least 50% of its property and at least 50% of its payroll in Wisconsin.
- Has no more than 500 employees (200 employees for stock acquired prior to the 1988 taxable year) covered by Wisconsin unemployment insurance, including employees of any corporation that owns more than 50% of the stock of the issuing corporation.
- Derives no more than 25% of its gross receipts from rents, interest, dividends, and sales of intangible investment assets combined, unless the corporation derives less than \$3,000 of that income and has not been incorporated for more than 2 calendar years.
- Has not issued stock that is listed on the New York Stock Exchange, the American Stock Exchange, or the National Association of Securities Dealers automated quotation system.
- Has not liquidated its assets in whole or in part for tax purposes only in order to fulfill the above requirements and then reorganized.

For stock acquired after January 1, 1986, but before August 31, 1987 it is also required that the corporation may not have conducted a trade or business in any form for a period exceeding 5 years and for the required under item c, above, the sales of any assets had to be used in determining the percentage of gross receipts. In addition, the corporation had to meet all of the requirements on the December 31 before acquisition of stock by the taxpayer.

**Facts:** On March 15, 1987, SBS, Inc. sold 100 shares of its stock to John Smith and certified to Mr. Smith that the stock in SBS, Inc. qualified as "small business stock". On January 10, 1989 Mr. Smith sold 50 shares of his SBS, Inc. stock to Mary Jones.

**Question:** If Mary Jones holds her 50 shares of SBS, Inc. for at least 5 years, can she exclude from her Wisconsin adjusted gross income the amount of any net capital gains realized from her sale of SBS, Inc. stock?

**Answer:** No. The stock only qualifies as small business stock if it is acquired by the taxpayer from the issuing corporation. Since Ms. Jones purchased the stock from Mr. Smith, the exclusion is not available to Ms. Jones. The certification issued by SBS, Inc. is not transferable. Assuming Mr. Smith holds his remaining 50 shares of SBS, Inc. stock the required 5 years, he would be able to exclude from his Wisconsin adjusted gross income the amount of any net capital gain realized from his sale of this stock.



## 5. Taxable Status of Interest Income Received From Certain Securities

Non  
taxable      Taxable

Statutes: Section 71.05(6)(a)1 and (b)1, Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 3.095, April 1988 Register

Background: Section 71.05(6)(a)1, Wis. Stats. (1987-88), provides that interest income which is taxable for Wisconsin purposes, but which is not included in federal adjusted gross income, must be added to federal adjusted gross income in computing Wisconsin taxable income. Therefore, if interest from the securities listed below as taxable was not included in federal adjusted gross income, such interest must be added to federal adjusted gross income in computing Wisconsin taxable income.

Section 71.05(6)(b)1, Wis. Stats. (1987-88), provides that the amount of interest or dividend income which is by federal law exempt from taxation by Wisconsin may be subtracted from federal adjusted gross income in computing Wisconsin taxable income. Therefore, if interest from the securities listed below as nontaxable was included in federal adjusted gross income, such interest may be subtracted from federal adjusted gross income in computing Wisconsin taxable income.

For Wisconsin individual income tax purposes, the taxable status of interest from the following securities is as indicated below:

	Non taxable	Taxable
a. Armed Services Housing Mortgage Insurance debentures (12 USC § 1748b(f))	X	
b. Asian Development Bank bonds (22 USC § 290i-9)		X
c. College Construction Loan Insurance Association obligations (20 USC § 1132)		X
d. Commodity Credit Corporation bonds (15 USC § 713a-5)	X	
e. Farm Credit System Financial Assistance Corporation notes, bonds, and debentures (12 USC § 2278b-10(b))	X	
f. Federal Assets Financing Trust participation certificates (12 USC § 1717(c))		X
g. Federal Deposit Insurance Corporation bonds (12 USC § 1825)	X	
h. Federal Financing Bank bonds (12 USC § 2288)		X
i. Federal Home Loan Mortgage Corporation obligations (12 USC § 1455)		X
j. Federal Land Bank Association bonds, notes, and debentures (12 USC § 2055)	X	

k. Federal Savings and Loan Insurance Corporation bonds (12 USC § 1725(e))	X	
l. Financial Assistance Corporation bonds, notes, and debentures (12 USC § 2278b)	X	
m. Financing Corporation obligations (12 USC § 1441)	X	
n. General Insurance Fund debentures issued to acquire housing projects (12 USC § 1747g(g))	X	
o. General Insurance Fund debentures issued under the War Housing Insurance Law (12 USC § 1739(d))	X	
p. Guam Bonds (48 USC § 1423a)	X	
q. Industrial Development bonds of East Samoa (48 USC § 1670)	X	
r. Puerto Rico Water Resource Authority Series B debentures (48 USC § 745)	X	
s. Rural Telephone debentures (7 USC § 947(a))		X
t. Small Business Administration notes (15 USC § 633)		X
u. Virgin Islands general obligation bonds (48 USC § 1574(b)(ii)(A))	X	
v. Virgin Islands Public Improvement bonds (48 USC § 1574(b)(ii))	X	



## 6. Taxation of Dependents With Unearned Income

Statutes: Section 71.02(2)(a)3, Wis. Stats., as amended by sec. 1808 of 1989 Wisconsin Act 31. Initial applicability: Section 3202(48)(bm) of 1989 Wisconsin Act 31 establishes its treatment first applies to taxable years beginning on or after January 1, 1989.

Background: For federal tax purposes, certain unearned income of children under age 14 is taxed at the parent's highest marginal tax rate. For tax years beginning after 1988, a child under age 14 is treated as having no gross income and is not required to file a federal income tax return if:

- 1) The child has gross income only from interest and dividends,
- 2) The child's gross income from interest and dividends is more than \$500 and less than \$5,000,
- 3) No estimated tax payments were made in the child's name and the child was not subject to backup withholding, and
- 4) The child's parent elects to include the gross income of the child in excess of \$1,000 in his or her income for the tax year. (Section 1(i)(7), Internal Revenue Code)

The parent makes the election to report the child's interest and dividends on federal Form 8814.

For Wisconsin tax purposes, sec. 71.03(2)(a)3, Wis. Stats., as amended by sec. 1808 of 1989 Wisconsin Act 31, provides that a person who can be claimed as a dependent on another taxpayer's return must file a Wisconsin income tax return if his or her unearned income is \$500 or more.

**Question 1:** For federal tax purposes, the parents elect on Form 8814 to report a child's interest and dividend income on their federal income tax return. Thus, the child is not required to file a federal income tax return. Is the child required to file a Wisconsin income tax return?

**Answer 1:** Yes. The child must file a Wisconsin income tax return even though the parents elect to include the child's income on their federal income tax return. There is no provision in Wisconsin law which provides an exception to the filing requirement for dependents with unearned income of \$500 or more.

**Question 2:** When the parents elect for federal tax purposes to include the child's interest and dividend income on their federal income tax return, is the child's interest and dividend income also included on the parents' Wisconsin income tax return?

**Answer 2:** No. The child's interest and dividend income should not be included on the parents' Wisconsin income tax return but rather such income must be reported on the child's Wisconsin income tax return. Including the child's income on the parents' Wisconsin income tax return would result in the same income being taxed to both the parents and the child. Even though the parents have elected to include the child's income on their federal income tax return, this election is not available for Wisconsin.

**Note:** The federal return that the parents file with the Internal Revenue Service would include the child's interest and dividend income. The federal return that is attached to the parents' Wisconsin income tax return would not include the child's interest and dividend income.



## 7. Wisconsin Tax Treatment of Lump-Sum Distributions

**Statutes:** Section 71.05(6)(a)4, (b)(intro.), and 9, Wis. Stats. (1987-88)

### FEDERAL LAW

A lump-sum distribution is the distribution to a person of his or her entire balance in a qualified pension, profit sharing, stock bonus, or annuity plan. The amount qualifies as a lump-sum distribution only if the employee participated in the plan for at least 5 taxable years before the taxable year of the distribution, unless the distribution

was paid because the employee died. The distribution must occur because of attaining age 59½, sustaining permanent disability, separating from service, or dying (sec. 402, Internal Revenue Code (IRC)).

The Tax Reform Act of 1986 (P.L. 99-514) made several changes to the federal tax treatment of lump-sum distributions. Ten-year averaging was repealed and replaced with 5-year averaging and capital gain treatment for the portion of a lump-sum distribution that applies to pre-1974 coverage was repealed.

However, several elections continue to be available to certain taxpayers:

1. A taxpayer may elect to use 5-year averaging on federal Form 4972 for lump-sum distributions made after the individual reaches age 59 1/2 (sec. 402(e)(1)(B), IRC).
2. A taxpayer who reached age 50 before 1986 may elect either 5-year or 10-year averaging on federal Form 4972 (sec. 1122(h)(5) of the Tax Reform Act of 1986).
3. A taxpayer may elect long-term capital gain treatment for the portion of the lump-sum distribution attributable to pre-1974 participation based on a phase-out percentage (sec. 1122(h)(4) of the Tax Reform Act of 1986). The percentage is: 95% in 1988; 75% in 1989; 50% in 1990; and 25% in 1991. In 1992 and thereafter, this long-term capital gain treatment will not be available. (This capital gain is reported on federal Schedule D. The balance of the distribution is reported as ordinary income on federal Form 1040 or on Form 4972 if the taxpayer reached age 50 before 1986 and elects either 5-year or 10-year averaging.)
4. A taxpayer who reached age 50 before 1986 may elect to retain the capital gain character of the portion of the distribution attributable to pre-1974 participation (sec. 1122(h)(4) of the Tax Reform Act of 1986). No phase-out applies. The entire amount attributable to pre-1974 participation is treated as long-term capital gain. (This capital gain is reported on Part II of federal Form 4972 and is taxed at a 20% rate. This taxpayer treats the balance of the distribution as ordinary income and may elect either 5-year or 10-year averaging for the balance.)

The above elections can be made for only one distribution received by a taxpayer in respect to an employee. Individuals who receive a lump-sum distribution as a beneficiary of a deceased employee can make the above elections if the participant in the plan met the age requirements.

### WISCONSIN LAW

Section 71.05(6)(a)4, Wis. Stats. (1987-88), provides for an addition to federal adjusted gross income for "The amount of any lump-sum distribution taxable under section 402(e)(1) of the internal revenue code . . . ." Section 402(e)(1), IRC, provides for the imposition of a separate tax on lump-sum distributions.

Section 71.05(6)(b)9, Wis. Stats. (1987-88), provides a subtraction for 60% of the capital gain for assets held more than one year to the extent the capital gain is included in federal adjusted gross income.

**Question 1:** What portion of an eligible taxpayer's lump-sum distribution from a qualified pension, profit sharing, stock bonus, or annuity plan is added to his or her federal adjusted gross income to arrive at Wisconsin adjusted gross income?

**Answer 1:** The portion of a lump-sum distribution from a qualified plan which is reported on federal Form 4972 is subject to the separate federal tax on lump-sum distributions and is not included in federal adjusted gross income. Therefore, amounts reported on federal Form 4972 (either as ordinary income for 5-year or 10-year averaging or as capital gain) must be added to federal adjusted gross income to arrive at Wisconsin adjusted gross income (sec. 71.05(6)(a)4, Wis. Stats. (1987-88)).

Any portion of a lump-sum distribution which is reported as ordinary income on federal Form 1040 or as long-term capital gain on federal Schedule D is included in federal adjusted gross income. Because the starting point for computing Wisconsin adjusted gross income is federal adjusted gross income, an addition is not required for the portion of a lump-sum distribution which is included in federal adjusted gross income.

**Question 2:** Does the capital gain portion of a lump-sum distribution attributed to pre-1974 participation in a plan, which is identified as capital gain on Form 1099-R, qualify for the Wisconsin capital gain exclusion?

**Answer 2:** Yes, but only the amount of long-term capital gain which, for federal tax purposes, is included in federal adjusted gross income qualifies for the Wisconsin 60% capital gain exclusion. The only federal lump-sum distribution election that results in the capital gain being included in federal adjusted gross income is the election to report the capital gain portion of the lump-sum distribution on federal Schedule D, subject to the phase-out. Thus, the year and the percentage of the capital gain portion of a lump-sum distribution which qualifies for the Wisconsin capital gain exclusion is as follows:

1988	95%
1989	75%
1990	50%
1991	25%

The capital gain portion of a lump-sum distribution received after December 31, 1991, will not qualify for the Wisconsin capital gain exclusion.

**Question 3:** May an eligible taxpayer who elects federally to report the capital gain portion of the lump-sum distribution at a 20% tax rate on Form 4972 claim a capital gain exclusion for Wisconsin?

**Answer 3:** No. The taxpayer's election to report 100% of the capital gain portion of a lump-sum distribution at a 20% tax rate on Form

4972 does not qualify for a Wisconsin capital gain exclusion. However, the taxpayer may make a different election for Wisconsin tax purposes. A taxpayer who reports the capital gain portion of a lump-sum distribution on federal Form 4972 can elect for Wisconsin purposes to report the capital gain portion on Schedule D, subject to the phase-out (see Answer 2). The amount reported on Schedule D qualifies for the Wisconsin capital gain exclusion. The remaining portion of the lump-sum distribution (total taxable portion less amount reported on Schedule D) is taxed as ordinary income for Wisconsin.



## HOMESTEAD CREDIT

### 1. Homestead Credit — Ownership of Homestead

**Statutes:** Section 71.52 (3) and (7), Wis. Stats. (1987-88)

**Facts and Question:** Section 71.52 (3), Wis. Stats. (1987-88), refers to a homestead as a dwelling, whether rented or owned, and sec. 71.52 (7), Wis. Stats. (1987-88), refers to property taxes accrued as taxes levied on a homestead owned by the claimant or a member of the household. What constitutes "ownership" for purposes of the homestead credit?

**Answer:** Generally, if a claimant has a recorded legal title to a homestead (his or her name is on a deed or other legal document recorded at the register of deeds), the claimant is considered to be an owner of that homestead. However, there are situations in which an "equitable ownership interest" is recognized in lieu of a recorded legal title. One such situation is where property passes to an heir by virtue of death, either through a will or by laws of intestacy if a person dies without a will. Each case must be considered on an individual basis, as each case will likely include some facts unique to that case. Sufficient facts pertaining to a claimant's ownership interest must be obtained and documented before a determination can be made. Some examples of an allowed equitable ownership interest are as follows:

**Example 1:** Mrs. A and her two adult children, John and Mary, reside in a homestead titled solely to Mrs. A. Mrs. A dies and her will leaves the homestead to John and Mary. Legal title vests in the personal representative of Mrs. A's estate upon her death and the appointment of the personal representative. John and Mary continue to reside in the homestead after Mrs. A's death but do not have the title changed. There are no other claims against the property and the will is not contested. Based on these facts, for homestead credit purposes John and Mary are considered to have an equitable ownership interest (one-half each) in the property, effective on the date of Mrs. A's death, and each of them is eligible to claim a homestead credit based on their one-half share of the property taxes.

**Example 2:** Assume the same facts as Example 1, except Mrs. A did not have a will and legal title vests in her estate. John and Mary are



her only heirs and there are no other claims against the ownership of the homestead. Again, for homestead credit purposes, John and Mary are considered to have an equitable ownership interest in the property as of the date of Mrs. A's death, and each of them is eligible to claim a homestead credit based on their one-half share of the property taxes, even though legal title vests in Mrs. A's estate.

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## CORPORATION FRANCHISE OR INCOME TAXES

### 1. Difference Between Wisconsin Basis and Federal Basis of Assets Disposed of in Taxable Transactions

**Statutes:** Section 71.26(2)(a) and 71.26(3)(y), Wis. Stats. (1987-88); section 3203(47)(za), 1987 Wis. Act 27.

**Background:** Effective for the Wisconsin 1987 taxable year (which is taxable years ending July 31, 1987, through June 30, 1988) and thereafter, 1987 Wisconsin Act 27 provides that a corporation must determine its Wisconsin net income under the Internal Revenue Code (IRC), with certain exceptions. Specifically, section 71.26(2)(a), Wis. Stats. (1987-88), provides in part that net income of a corporation means the gross income as computed under the IRC, as modified for Wisconsin, minus deductions computed under the IRC, as modified for Wisconsin, plus or minus, as appropriate, an amount equal to the difference between the federal basis and Wisconsin basis of any asset sold, exchanged, abandoned, or otherwise disposed of in a taxable transaction during the taxable year.

**Question 1:** When will there be a difference in the Wisconsin basis and federal basis of an asset?

**Answer 1:** There are many situations which may result in a basis difference. The most common involves a different depreciation or amortization method being used for Wisconsin tax purposes than for federal tax purposes. Section 71.26(3)(y), Wis. Stats. (1987-88), provides that depreciation or amortization shall be determined under the IRC. This is effective for assets placed into service on or after January 1, 1987 (s. 3203(47)(za), 1987 Wis. Act 27). Section 71.26(3)(y), Wis. Stats. (1987-88), also provides that, for assets placed in service prior to January 1, 1987, the depreciation or amortization method allowed by Wisconsin at the time the asset was placed in service must be continued until the disposal of the asset.

For assets placed in service prior to January 1, 1987, Wisconsin law provided that a deduction under the Accelerated Cost Recovery System (ACRS) was not allowed for certain assets. These assets included utility property placed in service during the 1981 taxable year or thereafter and assets located outside of Wisconsin placed in service on or after January 1, 1983.

Other reasons for basis differences include the 1986 and prior Wisconsin tax treatment of waste treatment facilities, forest croplands, renewable energy resource systems, research or experimental expenditures, trademark or trade name expenditures, ordered charge downs or write-offs, intangible drilling costs, assets subject to depletion, and corporate liquidations. See the Tax Release titled "Taxpayer Elections For Wisconsin Income and Franchise Taxes," in WTB 48 (October 1986), for a discussion of most of these items.

**Question 2:** How is a basis difference to be reported on a Wisconsin tax return? Is it simply an addition or subtraction to federal net income or must the capital gains and/or losses from the federal return be reclassified?

**Answer 2:** Section 71.26(2)(a), Wis. Stats. (1987-88), provides that the basis difference shall be added or subtracted, as appropriate, in arriving at Wisconsin net income. Therefore, if the Wisconsin basis of an asset is less than the federal basis, the difference is reported as an addition to federal income. If the Wisconsin basis is larger than the federal basis, the difference is reported as a subtraction from federal income. The basis difference doesn't change the nature of the capital gain or loss in arriving at federal income.

**Example 1:** In 1988, Corporation P sells the stock of a subsidiary, Corporation S, for \$10 million. Its federal basis in the subsidiary is \$5 million, but its Wisconsin basis is \$29 million. Corporation P had other income (less expenses) of \$45 million for both federal and Wisconsin purposes.

Corporation P's Wisconsin income is determined as follows:

Federal income less expenses	\$ 45,000,000
Federal capital gain	5,000,000
Total federal income	\$ 50,000,000
Subtract basis difference	(24,000,000)
Wisconsin income	\$ 26,000,000

**Example 2:** Assume that in Example 1, Corporation P's federal basis in the subsidiary is \$12 million and its Wisconsin basis is \$5 million. Corporation P's Wisconsin income is determined as follows:

Federal income less expenses	\$ 45,000,000
Federal capital loss (deductible to extent of capital gain)	-0-
Federal taxable income	\$ 45,000,000
Add basis difference	7,000,000
Wisconsin income	\$ 52,000,000

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## SALES/USE TAXES

### 1. Cost-Sharing of Telecommunications Equipment and Services

**Statutes:** Sections 77.51(1), (10), (12), (13), and (14) and 77.52 (2)(a)4, Wis. Stats. (1987-88)

**Wis. Adm. Code:** Sections Tax 11.32(1) and (2), October 1986 Register and Tax 11.66, July 1987 Register

**Facts and Question:** Company ABC (ABC) a wholly-owned subsidiary of Company XYZ (XYZ), was established to centralize the management of the separate voice and data communications of XYZ and its affiliates and to coordinate their telecommunication needs.

The goals of ABC were first, to control XYZ's internal telecommunication expense and provide cost effective communication services to various XYZ business groups. Further savings could result from pooling XYZ communication expenses and negotiating contracts for significant volume discounts on equipment and facilities. Secondly, ABC was to provide XYZ and its affiliates enhanced network services giving ABC the flexibility to support new business group applications.

ABC centrally controls the ordering and billing functions for the XYZ family of companies to insure efficient use of purchased telecommunications. ABC also monitors communication expenses and makes appropriate adjustments to maximize use of existing telecommunications services.

ABC does not offer telecommunication services to nonaffiliated companies or the general public. ABC is not a registered telephone company or communications service provider under any state's public utility law.

ABC purchases services and equipment from traditional telecommunications providers and vendors on a tax paid basis. It then seeks reimbursement for its costs from XYZ and its affiliates that use the services.

In its operations, ABC incurs three types of costs: facilities costs, equipment related expenses, and overhead costs. Facilities costs are the amounts paid for telephone services purchased from telephone companies (including taxes). Equipment related expenses are maintenance, depreciation, and interest expenses for communications equipment, payments for use of the equipment, and software to run the network. Overhead costs are expenses associated with bill paying, placing orders, coordination of network, personnel, planning, and other administrative functions.

The facilities costs and equipment related expenses account for approximately 85% of the costs allocated by ABC to XYZ and its affiliates. The objective of the allocation of costs to XYZ and its affiliates is for ABC to break even. No profit is intended. Any

excess charges are redistributed to XYZ and its affiliates in the form of future cost reductions.

Is Company ABC a retailer of telecommunications services whose gross receipts are subject to Wisconsin sales and use tax?

**Answer:** Yes. Company ABC is a retailer of telecommunication services, the gross receipts of which, are subject to Wisconsin sales tax. ABC is not the consumer of telecommunication services and is not merely engaged in a cost-sharing arrangement with its parents and affiliates since ABC's charge includes more than the sharing of telecommunication costs. Only 85% of ABC's charge to XYZ and its affiliates goes to cover costs of actual equipment or services purchased and reallocated. ABC's overhead costs are also covered by the charge. In addition, ABC is also purchasing equipment to enhance the telecommunication services it provides.

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### 2. Electricity Used in Industrial Waste Treatment Facility

**Statutes:** Section 77.54(2) and (26), Wis. Stats. (1987-88)

**Wis. Adm. Code:** Section Tax 11.11, September 1984 Register

**Background:** Section 77.54(26), Wis. Stats. (1987-88), and sec. Tax 11.11(4), Wis. Adm. Code, provide that when an industrial waste treatment facility qualifies for the property tax exemption under sec. 70.11(21)(a), Wis. Stats. (1987-88), the gross receipts from the sale, use, or other consumption of tangible personal property which become a component part of the waste treatment facility are exempt from Wisconsin sales and use tax. The sales and use tax exemption also applies to replacement parts, chemicals, and supplies used or consumed in operating the waste treatment facility.

**Question:** May electricity used in operating an industrial waste treatment facility be purchased exempt from Wisconsin sales and use tax as a supply under sec. 77.54(26), Wis. Stats. (1987-88)?

**Answer:** No. The sale of electricity to an industrial waste treatment facility is not exempt from Wisconsin sales and use tax under sec. 77.54(26), Wis. Stats. (1987-88).

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### 3. Leased Automobiles Used by Employees

**Statutes:** Sections 77.51(4)(a) and (c)5, (13)(k) and (14)(intro.) and (j) and 77.58(6), Wis. Stats. (1987-88)

**Wis. Adm. Code:** Sections Tax 11.29(3) and (5), July 1977 Register and Tax 11.79(1), September 1984 Register

**Background:** The Tax Release titled "Payment for Personal Use of Automobile Provided by Employer," WTB 61, p. 20, provided that the use of an employer-provided automobile for personal purposes by an employee in exchange for payment is considered a lease or rental of a motor vehicle and is subject to Wisconsin sales tax.

Section 77.51(4)(c)5, Wis. Stats. (1987-88), provides that if a lessor of tangible personal property paid a Wisconsin sales tax on the acquisition of property used solely for leasing purposes, the lessor may claim a credit against the tax due on rental receipts from the property involved.

**Facts and Question 1:** Company B leases automobiles from a leasing company and pays Wisconsin sales tax to the leasing company on the lease payments. The automobiles leased are used by Company B employees for business and personal purposes. The value of the personal use of the automobile by the employee is reported as income on the employee's W-2 form. Is the value of the personal use of the automobile by the employee subject to Wisconsin sales tax?

**Answer 1:** No. Company B did not receive any gross receipts either in money or otherwise from the employee. Company B used tangible personal property (an automobile) to provide a benefit to its employees. Thus, the transaction is not subject to Wisconsin sales tax. However, if the employee had paid Company B for the personal use mileage, Company B would have received gross receipts that are subject to Wisconsin sales tax.

**Facts and Question 2:** Assume the same facts as in Question 1, except that the employee paid Company B for the personal use mileage. May Company B claim a credit for sales tax paid under sec. 77.51(4)(c)5, Wis. Stats. (1987-88)?

**Answer 2:** No. In order to claim the credit for sales tax paid, the property must be used solely for leasing purposes. Because Company B uses the automobiles for other purposes in addition to "leasing" them to its employees for personal purposes (i.e., employees use the automobiles for business purposes), no credit for sales tax paid may be claimed under sec. 77.51(4)(c)5, Wis. Stats. (1987-88).



#### 4. License, Maintenance, and Enhancement of Computer Software

**Statutes:** Sections 77.51(14)(h) and (j) and (20) and 77.52(1) and (2)(a)10, Wis. Stats. (1987-88)

**Wis. Adm. Code:** Section Tax 11.71, February 1986 Register

**Background:** Section Tax 11.71(2)(b), Wis. Adm. Code, provides that gross receipts from the retail sale, lease, rental, or license to use prewritten programs, including the maintenance and enhancement

of these programs, regardless of how it is transferred to the purchaser, is subject to Wisconsin sales and use tax. Prewritten programs are defined in sec. Tax 11.71(1)(k), Wis. Adm. Code, as programs prepared, held, or existing for general use normally for more than one customer, including programs developed for in-house use or custom program use which are subsequently held or offered for sale or lease. They are often referred to as "canned programs."

**Facts and Question:** Company ABC licenses software for mainframe computers.

Prior to licensing mainframe software, ABC has 3 individuals visit the potential client. First, a salesman makes an on-site presentation of the system using slides. Second, a technician installs the software on the client's computer and verifies that it will operate properly. Third, a product educator trains the client's evaluation team on how to use the software. The client is allowed to use the software for 30 days prior to making its decision to purchase software from ABC.

ABC ships a distribution magnetic tape containing the system to the potential client. The client's personnel unload the tape and establish libraries for the system's modules, documentation, and other pertinent information. The ABC technician visits the client and verifies that the installation is correct by executing a number of sample tests distributed with the system. The ABC technician then verifies that the system works properly and is executing in conjunction with the client's programs.

ABC also provides the following additional training materials that are priced separately: self-help guides, slide based training, training videos.

The complexity of the product is such that in order to use it effectively, a client must purchase the Maintenance and Enhancement (M&E) ABC offers. A client subscribing to M&E receives phone and other support as well as new updates of the software that will run with new updates of other vendors' software.

ABC software products are for testing and debugging other software. They assist programmers in isolating problems in their programs rapidly. ABC does not modify its software in order to run under any of several pre-specified compatible environments. ABC does not modify its software where a computer environment is not compatible with the software, as it requires making a practically new product. Modification is made only when a new market presents itself. TESTBUG, one of ABC's software products will support testing and debugging of COBOL programs, without modification, on any computer running the same operating systems.

The cost of ABC products range from \$19,000 to \$75,000, depending on options selected. The average price is about \$40,000.

Is the software ABC sells or licenses subject to Wisconsin sales and use tax. Is the charge for the maintenance and enhancement of the licensed software subject to Wisconsin sales or use tax?

Answer: The software sold or licensed in pre-existing form by ABC is characterized as "canned software" and is subject to Wisconsin sales and use tax. The annual charge for maintenance and enhancement of licensed canned software is also subject to Wisconsin sales and use tax.

□

## 5. Sale of Waste Removal Services and Transfer of Tangible Personal Property

Statutes: Sections 77.51(5) and 77.52(2)(a), Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 11.05(3)(i), October 1987 Register

Background: Section 77.52(2)(a), Wis. Stats. (1987-88), imposes a Wisconsin sales tax on the sale of certain services listed. Waste removal services are not included in the taxable services listed. Section Tax 11.05(3)(i), Wis. Adm. Code, provides that gross receipts of governmental units from special assessments and fees for garbage or trash removal is not subject to Wisconsin sales tax. However, sales of bags or receptacles for garbage or trash are subject to Wisconsin sales tax.

Facts and Question 1: A city government provides that if city residents want their yard waste removed by the city, the yard waste must be put in a specific type of plastic bag. A resident must buy the plastic bags at City Hall or certain retail stores. The charge by the city to the resident for each bag is 75¢. This 75¢ charge is for the cost of the bag (18¢), the cost of the waste removal (40¢), and the cost of the disposal site and "working" the waste to the point of decomposition (17¢).

Is the 75¢ charge by the city to the resident for the plastic bag subject to Wisconsin sales tax?

Answer 1: No. Under sec. Tax 11.05(3)(i), Wis. Adm. Code, the sale of waste removal services is not subject to Wisconsin sales tax. The primary reason the 75¢ is paid is to obtain waste removal service. The transfer of the plastic bag is incidental to the selling of the waste removal service, even though the bag is necessary to providing that service.

Facts and Question 2: A city government provides that all glass, aluminum, and plastic waste will be recycled. To accomplish this, city residents must separate their trash and put it in specially color coded bags which are sold by the city. The cost is 25¢ per bag. The receipts from the sale of bags will be held in a special account to cover future landfill closure costs. Residents pay a separate fee for trash removal on their utility bills.

Are the sales of the plastic bags subject to Wisconsin sales tax?

Answer 2: Yes. The sale of the plastic bags is separate from collecting a fee for trash removal services. The Wisconsin Statutes

provide that sales of tangible personal property are subject to Wisconsin sales tax, unless otherwise exempt.

Facts and Question 3: A city government provides that city residents, who wish to have their trash removed, must affix a special sticker to their trash bags or receptacles. The stickers are sold by the city at several retail stores. The stickers replace the charge to residents for trash removal on city utility bills.

Is the sale of the stickers subject to Wisconsin sales tax?

Answer 3: No. The sale of stickers is actually a fee for garbage or trash removal and is not subject to Wisconsin sales tax under sec. Tax 11.05(3)(i), Wis. Adm. Code. The transfer of the sticker is incidental to the sale of the trash removal service.

□

## 6. Supplies Used in Delivering Newspapers

Statutes: Sections 77.51(14)(k) and 77.54(6)(b), Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 11.15, September 1984 Register

Background: Section 77.54(6)(b), Wis. Stats. (1987-88), provides that the gross receipts from the sale, storage, use, or other consumption of containers, labels, sacks, cans, boxes, drums, bags, or other packaging materials used in packing, packaging, or shipping tangible personal property are not subject to Wisconsin sales and use tax if the items are used by the purchaser to transfer merchandise to customers. The common and approved meaning of "merchandise" is commodities or goods that are bought and sold in business. Section Tax 11.15(1)(b), Wis. Adm. Code, further provides that packaging materials include property used inside a package to shape, form, preserve, stabilize, or protect the contents.

Section 77.51(14)(k), Wis. Stats. (1987-88), provides that a sale includes the sale of tangible personal property to a purchaser even though the property is transferred by the purchaser to some other person without valuable consideration.

Facts and Question 1: Company ABC produces and prints a weekly newspaper. Each newspaper is wrapped around a plastic tube and inserted into a plastic bag before delivering. The plastic tube keeps the newspaper from being folded or wrinkled during and after delivery. Where permitted, Company ABC installs hooks free of charge on a customer's premises that the plastic bags can be hung on when delivered to keep the newspapers from being damaged. Company ABC charges \$15 annually to subscribe to the newspaper.

Are the plastic bags, plastic tubes, and hooks purchased by Company ABC subject to Wisconsin sales or use tax?

**Answer:** The plastic bags are exempt from Wisconsin sales and use tax since they are containers used to transfer tangible personal property from ABC Company to their customers. The plastic tubes are exempt from Wisconsin sales and use tax since they are packaging materials used to protect or stabilize the newspapers being delivered. The hooks Company ABC installs are not exempt from Wisconsin sales or use tax as they are not packaging materials. Therefore, Company A is subject to Wisconsin sales or use tax on its purchase or use of the hooks.

**Facts and Question 2:** Assume the same facts as in Facts and Question 1 except that Company ABC does not charge for the newspaper. Are the plastic bags, plastics tubes, and hooks purchased by Company ABC subject to Wisconsin sales or use tax?

**Answer 2:** Yes. Each of the items purchased is subject to Wisconsin sales or use tax because giving the newspaper away free is not the "transfer of merchandise." Since the newspaper is not bought by a customer or sold by Company ABC, it is not merchandise and, therefore, the exemption under sec. 77.54(6)(b), Wis. Stats. (1987-88), does not apply.



## 7. "Transport" Natural Gas and Transportation Charges

**Statutes:** Sections 77.51(4)(a)3 and (4)(b)5, 77.51(14r), 77.51(15)(a)3 and (15)(b)3, and 77.51(20), Wis. Stats. (1987-88)

**Wis. Adm. Code:** Section Tax 11.94(1)(a) and (c) and (2)(a), July 1987 Register

### A. Terms

1. **Producer.** The person who extracts natural gas from the ground generally in Texas, Oklahoma, and Louisiana, but also other locations.

2. **Broker/Marketer.** The Broker/Marketer purchases natural gas from the Producer and resells to the End User or the Local Utilities. Broker/Marketer may or may not have nexus in Wisconsin.

3. **Interstate Pipeline.** The Interstate Pipeline company owns and operates the pipeline which brings the natural gas from the out-of-state gas fields to Local Utilities (the city gate) in Wisconsin. Most Interstate Pipelines operate as contract carriers, transporting property owned by others for a fee.

4. **Local Utility or LDC (local distribution carrier).** These terms are interchangeable. The Local Utility (LDC) owns and operates the local distribution network, takes natural gas from the Interstate Pipeline at the city gate and delivers or meters the gas to the End User.

5. **End User.** The End User is the actual consumer of the natural gas. In most cases the End User is heating a very large area or more commonly burns a large volume of natural gas in a manufacturing, fabricating, or other production facility (e.g., a foundry or heat treating plant).

6. **Transport gas.** Prior to 1985, end users purchased natural gas only from the Local Utilities. Beginning in 1985, this situation is changed. End Users now may shop around for the best price and may purchase gas directly from the Producer, from a Broker/Marketer, or from the LDC. Gas acquired in this manner is referred to as transport gas.

7. **Commodity.** The commodity is the natural gas.

8. **City gate.** The city gate is the point when the Interstate Pipeline is connected to the Local Utilities pipeline.

9. **At the meter.** The meter is the point where the End User takes natural gas from the LDC. The meter, of course, records the End User's usage.

10. **Transportation Agent.** The Interstate Pipeline and the LDC are transporters of the commodity. As contract carriers they are deemed the "transportation agent" of the person who hires them to provide the transportation and/or metering service.

11. **Purchasing Agent.** A Purchasing Agent is a person who operates as a true agent for sales and use tax purposes in purchasing natural gas and transportation services on behalf of the End User. The burden of proving a person is a purchasing agent rather than the retailer of the gas is with the person making the claim. Anyone claiming purchasing agent status is urged to contact the Department of Revenue (c/o Administration Technical Services, Post Office Box 8933, Madison, WI 53708) for a determination. It is presumed that all persons who do not have this determination are the retailers of any gas they provide.

12. **Nexus.** Nexus, as used in this Tax Release, means that the person having "nexus" is engaged in business in Wisconsin for sales or use tax purposes, as described in Section Tax 11.97, Wis. Adm. Code.

### B. Statutes

1. Under sec. 77.51(4)(a)3 and (15)(a)3, Wis. Stats. (1987-88), gross receipts and sales price include "... The cost of transportation of the property prior to its sale ..." Therefore such transportation charges are subject to Wisconsin sales or use tax.

2. Under sec. 77.51(4)(b)5 and (15)(b)3, Wis. Stats. (1987-88), gross receipts and sales price do not include "Transportation charges separately stated, if the transportation occurs after the sale of the property ..." Therefore such transportation charges are not subject to sales or use tax.

3. Under sec. 77.54(14r), Wis. Stats. (1987-88), "A sale or purchase involving transfer of ownership of property shall be deemed to have been completed at the time and place when and where possession is transferred by the seller or his agent to the purchaser or his agent . . . ." The term "agent" as used in this statute includes both the "transportation agent" and "purchasing agent" as defined in Part A of this Tax Release.

Note: This statutory definition of when and where the sale occurs is independent of title for insurance purposes and as defined under the Uniform Commercial Code. Thus, when and where the sale occurs, depends on whether the pipeline and/or the LDC acts as the "transportation agent" of the buyer or the seller.

4. Section 77.51(20), Wis. Stats. (1987-88), includes natural gas in the definition of "tangible personal property."

### C. Facts and Questions

**Facts and Question 1:** The End User has its own transport gas expert on its staff and contracts directly with the Producer, the Interstate Pipeline, and the LDC for the purchase of, and the transportation and metering of, the commodity. The Producer does not have nexus in Wisconsin.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 1:** The commodity is subject to sales or use tax. Since the Producer does not have nexus, the End User reports use tax on its cost of the commodity.

Since the End User procured the services of the Interstate Pipeline and the LDC, they are "transportation agents" of the End User (purchaser). The sale of the natural gas occurs when the Producer puts the gas into the Interstate Pipeline at the gas field. The subsequent transportation charges by the Interstate Pipeline and the LDC are not subject to sales or use tax.

**Facts and Question 2:** The End User purchases natural gas from a Broker/Marketer who does not have nexus in Wisconsin and who is not registered to collect the Wisconsin sales or use tax. The Broker/Marketer arranges with the Interstate Pipeline to deliver the gas to the city gate. The Interstate Pipeline will bill the End User directly for its transportation charges. The End User arranges with the LDC for the local transportation and metering.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 2:** The commodity is subject to sales or use tax. Since the Broker/Marketer does not have nexus and does not voluntarily collect the use tax in Wisconsin, the End User must report use tax on its cost of the commodity.

Since the Broker/Marketer (the seller of the commodity) also procured the services of the Interstate Pipeline, the Interstate

Pipeline is the "transportation agent" of the Broker/Marketer. The sale occurs when the Interstate Pipeline transfers the gas to the LDC at the city gate. The transportation charges of the Interstate Pipeline are subject to tax. The charges for the local transportation/metering occur after the sale and thus are not subject to tax. Since the Broker/Marketer does not have nexus in Wisconsin, the End User must report use tax on the cost of transportation by the Interstate Pipeline.

**Facts and Question 3:** Assume the same facts as Facts and Question 2 except the Broker/Marketer does have nexus in Wisconsin.

How do the tax consequences differ from Answer 2?

**Answer 3:** The Broker/Marketer's gross receipts from the sale of natural gas are subject to sales or use tax. The gross receipts of the Interstate Pipeline are not subject to sales tax because the Interstate Pipeline is not selling tangible personal property but rather performing a nontaxable transportation service on property owned by others. However, under sec. 77.51(15)(a)3 the End User must report and pay use tax on the cost of the Interstate Pipeline's transportation charge because the sale occurs after the pipeline transportation service.

**Facts and Question 4:** The LDC purchases natural gas from the Producer which it resells to the End User. The LDC has the gas delivered to the city gate under its existing contract with the Interstate Pipeline.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 4:** The LDC is the seller (retailer) of the natural gas. The sale of the gas occurs when the End User takes possession at the meter. All charges to the End User for transporting the gas to the meter are subject to sales or use tax. The LDC has nexus in Wisconsin, so the LDC's entire charge (including the cost of the commodity, the Interstate Pipeline charge and its own transportation/metering charge) is subject to sales tax.

**Facts and Question 5:** A "purchasing agent" (for example, the LDC or the Broker/Marketer) acts on behalf of the End User. The purchasing agent arranges for the purchase of the commodity from the Producer as well as the subsequent transportation via the Interstate Pipeline and the LDC. The Producer does not have nexus in Wisconsin.

Are the commodity and transportation charges subject to Wisconsin sales or use tax?

**Answer 5:** The commodity is subject to sales or use tax. The "purchasing agent" is acting on behalf of and in the place of the End User and is not the seller or retailer of the natural gas. The Producer is the seller (retailer) of the natural gas and since the Producer does not have nexus in Wisconsin the End User reports use tax on its cost of the commodity.

Since the "purchasing agent," acting on behalf of the End User

arranged for the transportation, the Interstate Pipeline is the "transportation agent" of the End User (buyer). The sale occurs when the Producer puts the gas into the Interstate Pipeline. Thus, transportation via Interstate Pipeline and LDC occur after the sale and are not subject to sales or use tax.



## 8. When Is a Sale in Wisconsin for Purposes of Imposing Wisconsin Sales Tax

**Statutes:** Sections 77.52(14)(intro.) and (k) and (14r), 77.52(1) and 77.54(1), Wis. Stats. (1987-88)

**Wis. Adm. Code:** Section Tax 11.94, July 1987 Register

**Background:** The Commerce Clause of the United States Constitution provides that states are prohibited from imposing, by any form of taxation, any direct or immediate burden on interstate or foreign commerce. As a result, Wisconsin sales tax may only be imposed on sales where transfer of possession occurs in Wisconsin. Therefore, under sec. 77.54(1), Wis. Stats. (1987-88), sales of tangible personal property or taxable services delivered outside Wisconsin by a seller or a seller's agent are exempt from Wisconsin sales tax as such taxation would be a violation of the Commerce Clause of the U.S. Constitution.

**Question:** When is a sale subject to Wisconsin sales tax?

**Answer:** A sale is subject to Wisconsin sales tax when the transfer of possession of tangible personal property from a seller or the seller's agent to a purchaser or purchaser's agent takes place in Wisconsin. Under sec. 77.51(14r), Wis. Stats. (1987-88), it is provided that a common carrier or the United States Postal Service is considered to be an agent of the seller regardless of the f.o.b. point and regardless of who pays the freight or postage.

Section 77.51(14)(k), Wis. Stats. (1987-88), further provides that a taxable sale of tangible personal property to a purchaser occurs in Wisconsin even though the property may be consumed by some other person to whom the purchaser transfers the property without valuable consideration (e.g., gifts).

The following examples illustrate when a sale is subject to Wisconsin sales tax and when it is not.

**Example 1:** John, who lives in Florida, goes into an art gallery in Wisconsin and purchases a painting for \$1,000 for his office in Florida. John leaves the gallery with the painting after paying for it and returns to Florida with the painting.

The sale of \$1,000 is subject to Wisconsin sales tax because John, the purchaser, took possession of the painting in Wisconsin.

**Example 2:** Assume the same facts as Example 1 except that rather than taking the painting with him back to Florida, he has it shipped

by a common carrier (e.g., UPS) to Florida. The seller arranged for the common carrier to pick it up at the gallery and added a shipping charge of \$10 to the price John paid for the painting.

The total sale of \$1,010 is not subject to Wisconsin sales tax because possession of the painting is transferred by the seller's agent to John in Florida.

**Example 3:** Mary goes to a store in Wisconsin and buys a pair of candlesticks with a price of \$100. She arranges with the store to have the candlesticks mailed to her niece in New York who is getting married. The store adds the \$10 charge for mailing to the price of the candlesticks. Mary pays for the candlesticks and the cost of mailing the gift for a total of \$110.

The sale is not subject to Wisconsin sales tax because possession of the candlesticks is transferred in New York when the candlesticks are delivered by the U.S. Postal Service (the seller's agent) to Mary's niece.

**Example 4:** Assume the same facts as in Example 3 except that the store does not mail the candlesticks to New York. Instead, Mary takes them from the store to the nearest post office and mails the candlesticks to New York at a cost of \$10.

The sale of the candlesticks (\$100) is subject to Wisconsin sales tax because possession transfers at the time the store gives Mary the candlesticks in Wisconsin. Because Mary arranged for the mailing of the candlesticks, the U.S. postal service is no longer an agent of the seller (store). The \$10 charge for mailing is not subject to Wisconsin sales tax because transportation, by itself, is a nontaxable service if it occurs after the sale.

**Example 5:** Sue lives in Illinois. She goes to a Wisconsin appliance store and purchases a big screen television for \$1,400. Sue arranges with the appliance store to have the television shipped to her home in Illinois at an additional cost of \$30.

The sale of \$1,430 is not subject to Wisconsin sales tax because possession of the TV is transferred from the seller's agent to Sue in Illinois.

**Example 6:** Assume the same facts as in Example 5 except that Sue, for \$30, contracts with a private delivery company to pick up the TV in Wisconsin at the appliance store and deliver the TV to Illinois.

The sale of \$1,400 is subject to Wisconsin sales tax because possession of the TV is transferred by the appliance store to Sue in Wisconsin at the time the private delivery company picks up the TV. The delivery company is an agent of Sue (the purchaser). The \$30 charge for delivery is not subject to Wisconsin sales tax as it is a nontaxable service being provided.

**Example 7:** Assume the same facts as in Example 5 except that Sue rents a truck to move the TV to Illinois.

The sale of the TV is subject to Wisconsin sales tax because

possession of the TV is transferred by the store to Sue in Wisconsin. The \$30 charge for renting the truck is also subject to Wisconsin sales tax because the rental or lease of tangible personal property is subject to Wisconsin sales tax.

**Example 8:** Tom goes into a Wisconsin clothing store and tries on various pieces of clothing. Tom buys the clothing for \$100 and arranges with the store to have it shipped to his home in Minnesota for an additional \$5.

The sale of the clothing and charge for shipping (\$105) is not subject to Wisconsin sales tax because possession of the clothing is transferred from the seller's agent to Tom in Minnesota.

**Example 9:** Assume the same facts as in Example 8 except that Tom has the clothing shipped to his mother's home in Wisconsin.

The sale of clothing and charge for shipping (\$105) is subject to Wisconsin sales tax because possession is transferred from the seller's agent to Tom's mother at his mother's home in Wisconsin.



## PRIVATE LETTER RULINGS

*"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.*

*The number assigned to each ruling is interpreted as follows: The first two digits are the year issued, the next two digits are the week issued, and the last three digits are the number in the series of rulings issued that year. "Issued" means when the ruling is available to be published (80 days after being mailed to the requestor). The date following the 7-digit number is the date the ruling was mailed to the requestor.*

*Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to get a Private Letter Ruling From the Department of Revenue," contains additional information about private letter rulings.*

W8937006, June 27, 1989

**Type Tax:** Homestead Credit

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

**Issue:** Owner of homestead where property is held by an estate

This letter responds to your request for a private letter ruling regarding the amount of homestead credit to which you are entitled for 1987 and 1988.

Information provided in your letter, in two follow-up letters, and in a telephone conversation indicates the following:

Your father died on September 22, 1986, and his will bequeathed all his assets, including his residence in Wisconsin, equally to his two children, namely you and your brother. You and your brother had resided in the residence prior to your father's death and continued to reside there through part of 1988 when it was sold by the estate. Since the estate had insufficient cash and personal property to pay liabilities, you and your brother paid numerous bills, including real estate taxes on the residence in 1987 and 1988. Both you and your brother were over age 18 as of December 31, 1987, so in that respect you qualified to claim a homestead credit.

On January 8, 1987, you and your brother paid the 1986 real estate taxes of \$1,968.28 on the residence at Wisconsin, with your personal funds. Your brother purchased a cashier's check and you reimbursed him for your one-half share of the taxes.

The 1987 property taxes were \$1,919.31. Partial payments of these taxes were made on January 25, 1988, (\$639.77) and on March 25, 1988, (\$319.89), and the balance of \$972.45 was paid with the proceeds from the sale of the residence, at the closing.

You moved from the residence to your present dwelling in the latter part of March 1988. The property was sold by the estate on April 21, 1988, and in addition to the remaining 1987 property taxes, the pro rata share of 1988 property taxes were credited on the closing statement. The remaining proceeds from the sale were transferred to the estate to pay outstanding funeral, medical, and miscellaneous expenses, and the balance of approximately \$32,000 was distributed to you and your brother.

Both you and your brother filed 1987 individual income tax returns. You filed a 1987 Wisconsin homestead credit claim in December 1988 and submitted a copy of the ruling request with it. You do not know whether your brother filed a claim or not. Prior to filing your 1987 claim, you were informed by a Wisconsin Department of Revenue employee that the taxes which you paid must be considered "rent" for purposes of determining your allowable homestead credit.

You have also filed a 1988 Wisconsin homestead credit claim, based solely on the rent you paid for your homestead for 1988.

You feel you are entitled to claim a homestead credit based on the amount of property taxes paid as though you were a one-half owner of the property, and you cite the following reasons:

- The real estate taxes which you were advised were allowable as rent were not "arm's length rent" as required by statute.



- You and your brother paid, directly or indirectly, all of the real estate taxes.
- The source of the real estate tax payments is immaterial, and you paid the taxes to protect your interest in the home.
- A beneficiary of an estate pays real estate taxes as surely as a vendee under a land contract or where a lender pays the taxes from an escrow account.
- An estate is merely a custodian for the beneficiary.
- It has been ruled that the heirs are the owners of the property of a decedent; you cited several court decisions.
- One does not need title to be an owner of property; you cited several court cases which allowed a tax deduction for property taxes paid by a beneficial owner of the property.

You submitted copies of your 1987 homestead credit claim, your 1987 Wisconsin Form 1, the 1986 and 1987 property tax bills, the cashier's check for payment of the 1986 property taxes, the last will and testament of your father, domiciliary letters, general inventory, final account and petition, closing statement, and several attachments referencing your statute and court case citations.

You have requested a ruling as to the appropriate amount of "Homestead Credit" for 1987 and 1988 allowable, to yourself and to your brother, under section 71.09 of the Wisconsin Statutes based on the facts you cited.

### Ruling

Your allowable homestead credit for 1987 is \$764.00, based on household income as reported, and property taxes accrued of \$959.66, which is your one-half share of the 1987 real estate taxes of \$1,919.31, representing your one-half share of equitable ownership in the property.

Your allowable homestead credit for 1988 cannot be stated in this ruling, because sufficient information to be able to determine the correct credit has not been provided. Therefore, this ruling will only deal with the allowable proration of property taxes accrued for your former homestead at for the time you lived there in 1988.

Based on your one-half share of equitable ownership in the property, you are allowed for 1988 one-half of the prorata share of the 1988 real estate taxes, prorated from January 1, 1988, to the date you moved from the homestead. The taxes shown on the closing statement, \$1,919.31 (the 1987 taxes are used for the 1988 tax proration), equate to \$5.244 per day, and your one-half share of that amount is \$2.622 per day. Thus, on your 1988 homestead credit claim you may claim property taxes accrued of \$2.622 times the number of days you resided at the residence in 1988.

### Analysis

The issues for which a ruling was sought are 1) whether you may claim property taxes accrued or may claim only rent constituting property taxes accrued as the basis for homestead credit for the Wisconsin residence, and 2) the appropriate amount of homestead credit allowable to you for 1987 and for 1988.

Under sec. 71.52(7), Wis. Stats. (1987-88), formerly sec. 71.09 (7)(a)7., Wis. Stats. (1985-86), "property taxes accrued" for homestead credit purposes means property taxes levied on a homestead owned by the claimant or a member of the household ("household" is the claimant and his or her spouse, per sec. 71.52(4), Wis. Stats. (1987-88)). Section 71.52(7), Wis. Stats., further states that if a homestead is owned by 2 or more persons who are not members of the same household, "property taxes accrued" is that part of the property taxes that reflects the ownership percentage of the claimant.

The determinative factor in this ruling is "ownership." While you never held "record title" to the homestead, you did have "equitable ownership" of a one-half share of the homestead. This is by virtue of the fact that the record title holder died and by will bequeathed the homestead to you and to your brother in equal shares. Furthermore, based on the information you submitted, the will was not contested, you and your brother lived in the homestead and paid a portion of the property taxes in order to protect your interest in it, nobody else claimed any right to the property or objected to your possession of it, and when the property was sold by the estate you and your brother received the balance of the proceeds after paying outstanding debts of the estate. A claimant with equitable ownership is considered the owner of a homestead, as required under the homestead credit statutes.

Under sec. 71.52(7), Wis. Stats. (1987-88), when a homestead is sold during the year, property taxes accrued for the seller are prorated in proportion to the period of time the seller both owned and occupied the homestead during the year to which the claim relates. The seller may use the closing agreement as the basis for computing property taxes accrued, but those taxes are allowable only for the portion of the year the seller both owned and occupied the sold homestead. If a household owns and occupies a homestead for part of the year and rents a homestead for part of the year, it may claim both the proration of the taxes on the owned homestead and rent constituting property taxes accrued for the rented homestead.

Based upon the above analysis, your 1987 homestead credit claim is based on your one-half share of the 1987 property taxes accrued, that is one-half of \$1,919.31, or \$959.66. Your 1988 homestead credit claim is based on your one-half share of the prorated property taxes shown on the closing statement, further prorated for the time you both owned and occupied the homestead in 1988, plus rent constituting property taxes accrued for the 1988 rent you paid for your second homestead in 1988.



W8946007

**Type Tax:** Sales/Use**Statutes:** Section 77.52(2)(a)1, Wis. Stats., (1987-88)**Issue:** Sale of timeshare interests in condominium and campground facilities

This letter responds to your request for private letter ruling regarding the sale of timeshare interests in condominium and campground facilities at the subject facility.

**Facts**

The information provided in your request and letters states that B is the developer for C located in Wisconsin. B is engaged primarily in the business of selling time-share interests in condominium and campground facilities to the general public.

The interests fall into three general categories: first, B conveys whole ownership of vacant lots to individuals wishing to build a vacation home at the development. The sale of these vacant lots is not a part of this ruling request.

**Condominium (Villas and Cabins):** Secondly, B sell time-share estates of one, two, or more weeks in specific condominium units known as either villas or cabins. The purchaser acquires a fee simple ownership interest in a designated unit, or units, for a designated week or weeks within a particular season. With the fee simple title goes an undivided interest in the common elements which consist of parking, land around the condominiums and the common areas (including two outdoor swimming pools) for the convenience of the purchaser. Title does not include any ownership interest in the following recreational facilities: golf course, tennis courts, indoor swimming pool, ski hill, hotel, and undeveloped lands.

The condominium time-share interests are further divided into 3 types as follows:

(a) "Guaranteed use" periods are fixed time periods of one week whereby the time-share owner is granted, by warranty deed, an undivided interest in a unit for a specific week each year. Guaranteed use periods are no longer offered for sale and are not a part of the ruling request.

(b) "Preferred flex" periods are, likewise, undivided interests conveyed by warranty deed, which permit the time-share owner the right to choose a week in one of the units during weeks 21 through 35. (Unit week no. 1 consists of the seven consecutive days commencing on the first Friday in January of each year.)

(c) "Regular flex" periods are identical to preferred flex except that the time-share owner has the right to choose a week in a condominium between weeks 1 through 20 and weeks 36 through 52.

There are 51 weeks available for sale in each unit, while one week remains unsold and is used for maintenance. Although the interests sold in the villas at C are identified to a particular unit, the owners are required to reserve an available unit, in order to permit more flexibility in scheduling.

According to the Cabin and Villa Documents submitted with the ruling request: "Regardless of the use period(s) owned by any flexible use period owner, and regardless of the particular unit with which such use period(s) may be associated, in the purchase agreement deed or otherwise, no person shall have any right whatsoever to occupy a particular unit at any time, except pursuant to a reservation executed by or on behalf of the management firm."

**Campground, Etc.:** The third type of ownership that B sells is an undivided interest as tenant in common with hundreds of other owners in a specific parcel of real estate. That parcel of real estate contains numerous campsites. Those interests are conveyed with an undivided interest in the common areas located within the parcel for the convenience and use of the purchasers. As in the time-share estate condominium sales, these sales do not include any ownership interest in the recreational facilities (apart from a clubhouse and swimming pool located within the campground parcel which are subsequently discussed in this ruling).

**Recreational Facilities:** The recreational facilities, which are not part of commonly owned areas but are available to all purchasers of cabins, villas and campground units at no additional charge, are two tennis courts, cross-country ski and hiking trails, fishing, rowboats, bicycles, a softball diamond, basketball courts, and, within the new hotel and recreation center, a sauna, jacuzzi and exercise room, indoor pool that is 960 square feet in size with a 150 square foot whirlpool. These facilities are not open to the public.

The purchaser of a time-share interest in the campgrounds obtains an ownership interest in a clubhouse, 3,420 square foot outdoor swimming pool, 80 square foot whirlpool, horseshoe pit and shuffleboard court.

The purchaser of a time-share interest in a cabin or villa currently obtains an ownership interest in two out door swimming pools with a third under construction, located at three separate sites within the property, each of which is approximately 817 square feet.

Time-share owners and the general public pay for use of the golf course, golf carts, ski hill, ski and golf rental equipment, horseback riding and for the restaurant, lounge, trading post and gas station. Time-share owners get a 25 percent discount on golf course green fees, golf and ski equipment rental, ski lift tickets and horseback riding.

**Annual Fees for Maintenance, Repairing and Real Estate Taxes:** The owners of time-share interests in the condominiums belong to the C Village Owners Association, and the owners of time-share campground interests belong to the C Campground Owners Association. Each year, each time-share owner is required to pay to the

association maintenance fees used by the association for the maintenance of the property and a pro rata share of the real estate taxes assessed on the property.

The company operates, maintains, and develops the recreational facilities with its own funds and with its user fees. The developer also contracts with the C Village Owners Association and the C Campground Owners Association to perform maintenance on their respective properties.

### Statutes Involved

Section 77.52(2)(a)1. and 2., Wis. Stats., in its entirety currently provides: "(2) for the privilege of selling, performing or furnishing the services described under par. (a) at retail in this state to consumers or users, a tax is imposed upon all persons selling, performing or furnishing the services at the rate of 5% of the gross receipts from the sale, performance or furnishing of the services.

(a) The tax imposed herein applies to the following types of services:

1. The furnishing of rooms or lodging to transients by hotelkeepers, motel operators and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations, including the furnishing of rooms or lodging through the sale of time-share property, as defined in s. 707.02(32), if the use of the rooms or lodging is not fixed at the time of sale as to the starting day or the lodging unit. In this subdivision, "transient" means any person residing for a continuous period of less than one month in a hotel, motel or other furnished accommodations available to the public. In this subdivision, "hotel" or "motel" means a building or group of buildings in which the public may obtain accommodations for a consideration, including, without limitation, such establishments as inns, motels, tourist homes, tourist houses or courts, lodging houses, rooming houses, summer camps, apartment hotels, resort lodges and cabins and any other building or group of buildings in which accommodations are available to the public, except for a continuous period of more than one month and accommodations furnished by any hospitals, sanatoriums, or nursing homes, or by corporations or associations organized and operated exclusively for religious, charitable or educational purposes provided that no part of the net earnings of such corporations and associations inures to the benefit of any private shareholder or individual.

2. The sale of admissions to amusement, athletic, entertainment or recreational events or places, the sale, rental or use of regular bingo cards, extra regular cards, special bingo cards and the sale of bingo supplies to players and the furnishing, for dues, fees or other considerations, the privilege of access to clubs or the privilege of having access to or the use of amusement, entertainment, athletic or recreational devices or facilities, including, in connection with the sale or use of time-share property, as defined in s. 707.02(32), the sale or furnishing of use of recreational facilities on a periodic basis or other recreational rights, including but not limited to membership rights, vacation services and club memberships."

Subdivision 1. was amended by Section 2153m of 1989 Wisconsin Act 31, effective August 9, 1989

### Request

You have requested a ruling that:

1. For the sale of time-share estates described above, the entire amount of the purchase price represents an interest in realty and, therefore, is not subject to sales tax.
2. The annual fee charged to the condominium and campground owners by their respective owners association for real estate taxes, maintenance and repairs are not taxable.
3. Fees charged by the company for the use of its hotel, ski hill, golf course, health club, and other recreational facilities are subject to sales tax.

### Ruling

1. a. Time-share Interest in Condominium Units (Villas and Cabins)

The sale of flexible use time-share interests in the C condominium units (cabins and villas) are not in actuality or in practice, fixed at the time of sale as to the starting day or the lodging unit and, thus, are subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., as amended by 1989 Wis. Act 31, effective August 9, 1989, as access to temporary lodging if the access is for a continuous period of less than one month.

- b. The purchase price of time-share interest in the campground is subject to sales tax as access to recreational facilities under sec. 77.52(2)(a)2, Wis. Stats., effective May 17, 1988. The purchase price of the time-share interest in the cottages is subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., as amended by 1989 Wis. Act 31, effective August 9, 1989, as access to temporary lodging if the access is for a continuous period of less than one month.
2. The annual fee charged by the respective owners associations for real estate taxes, maintenance, and repairs is subject to sales tax, effective as of the date the sale of the basic time-share interest is taxable, as set forth in this ruling.
3. Fees charged by the company for the use of its hotel, ski hill, golf course, health club, and other recreational facilities are subject to sales tax.

### Analysis

1. a. Condominium Units (Villas and Cabins)

The gross receipts from the sale of time-share interests in a condominium unit or group of units where the use of the rooms or lodging is not fixed at the time of sale as to the

starting day of the lodging unit are subject to sales tax. Although a specific unit and week are identified on the deed, this identification is for purposes of registration only and does not give the purchaser of the time-share interest the right to occupy that unit at that identified time. The purchaser of a time-share interest in a C condominium receives an incidental ownership in realty and a right of occupancy of a condominium unit, subject to reservation and availability. This constitutes the furnishing of rooms or lodging which is explicitly taxable under sec. 77.52(2)(a)1, Wis. Stats.

In consideration of the fact that the time-share industry is an emerging industry and in a developmental state to which the application of sales tax has been unclear and in order that the tax be uniformly and consistently applied, the sales tax under sec. 77.52(2)(a)1, Wis. Stats., became effective August 9, 1989, the date the clarifying language of 1989 Wis. Act 31 became effective.

b. Campground and Cottages

The charge for a fee simple undivided 1/5400th interest as tenant-in-common ownership of a multi-unit campground facility to be used on a first come, first serve, subject to availability basis is taxable. The primary purpose of the purchase is considered to be for admission to recreational facilities and, therefore, subject to sales and use tax. In consideration of the fact that the time-share industry is an emerging industry and in a developmental stage to which the application of sales tax has been unclear and in order that the tax be uniformly and consistently applied, the sales tax as it applies to campgrounds under sec. 77.52(2)(a)2, Wis.

Stats., became effective May 17, 1988. On this date sec. 77.52(2)(a)2, Wis. Stats., was clarified by 1987 Wisconsin Act 399 to specifically include access to time-share facilities.

The purchase price of the time-share interest in the cottages is subject to sales tax under sec. 77.52(2)(a)1, Wis. Stats., as amended by 1989 Wis. Act 31, effective August 9, 1989, as access to temporary lodging if the access is for a continuous period of less than one month.

2. The annual fee charged by the owners association for the pro rata share of real estate taxes, maintenance, and repairs is subject to sales and use tax. This fee is fully taxable since it is of the same general character as the basic time-share payment, a required payment having the primary purpose of obtaining temporary lodging or access to recreational facilities. This amount is not deductible from gross receipts per sec. 77.51(4)(a), Wis. Stats. The tax on the fee became effective on August 9, 1989, the same time the tax became effective on the basic time-share purchase price.

3. Hotel and Recreational Facilities

The fees for the use of the hotel for periods less than 30 continuous days are subject to tax under sec. 77.52(2)(a)1, Wis. Stats. The charge for the access to the ski hill, golf course, health club and other recreational facilities is subject to tax under sec. 77.52(2)(a)2, Wis. Stats.

The tax treatment of all items in this section of the ruling request applies to all periods open to adjustment.