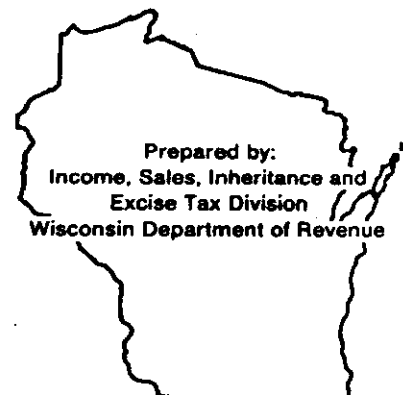


WISCONSIN TAX BULLETIN

April 1990
NUMBER 66

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NEW TAX LAWS TO BE ADDRESSED IN SPECIAL ISSUE

Various tax bills were still pending before the Wisconsin Legislature at the time this Bulletin went to press. If any of these bills become law, a special issue of the *Wisconsin Tax Bulletin* will be published to provide information about the tax law changes. See page 2 for a summary of the drug tax legislation passed by the Legislature and signed by the Governor.

FOUR NEW COUNTIES ADOPT COUNTY TAX

On April 1, 1990, the 1/2% county sales and use tax begins in four new counties: La Crosse, Monroe, Shawano, and Waushara. The counties of Ashland, Barron, Buffalo, Burnett, Columbia, Door, Dunn, Iowa, Jackson, Langlade, Lincoln, Marathon, Marquette, Oneida, Pierce, Polk, Portage, Richland, Rusk, Sawyer, St. Croix, Vilas, Walworth, and Waupaca had previously adopted the county tax. The Tax Report included with *Wisconsin Tax Bulletin* 65 (January 1990) explains how this new county tax applies to retailers and other persons.

On pages 18 and 19 of this Bulletin is a copy of the March 1990 Tax Report which was sent in late March to all retailers who have a seller's permit.

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SPEAKERS BUREAU

The department's Speakers Bureau provides speakers to professional organizations and community groups throughout Wisconsin. If you would like a speaker to address your group, please call the Speakers Bureau at (608) 266-8640.

Subjects that may be discussed include updates on income, corporate and sales tax laws, audit procedures, common taxpayer errors, how tax laws apply to exempt organizations, sales tax problems of contractors, manufacturers, etc.

Note: There is no charge for services provided by the Speakers Bureau.

HIGH SCHOOL STUDENTS LEARN ABOUT WISCONSIN TAXES

Do you have a son or daughter in high school? If so, they may be able to prepare their own Wisconsin income tax return for 1989. In January, 1990, over 1,600 packets were sent to high school teachers for use in instructing students to prepare their Wisconsin income tax returns.

Forms and schedules have been provided for students to prepare their own income tax returns during the class room sessions. This is the first year the Department of Revenue is joining the IRS in providing

materials to schools for teaching students about Wisconsin income taxes.

CERTAIN CLAIMANTS MAY STILL FILE A 1988 FARMLAND PRESERVATION CREDIT CLAIM

The farmland preservation credit law was amended by 1987 Wisconsin Act 399, effective for claims filed for taxable year 1988 and thereafter, to require that a claimant's property taxes for the preceding year on the property for which a claim is made, must be paid in order to qualify for the credit (sec. 71.59(1)(b), Wis. Stats. (1987-88)). Initially this new eligibility requirement was interpreted as applying to all claimants.

Later it was determined that the requirement applied only to claimants using the "current year's law" method of filing. Claimants with a farmland preservation agreement executed prior to May 17, 1988, and who elect to use the "prior year's law" method of filing, are not subject to the new eligibility requirement. A Tax Release appeared in *Wisconsin Tax Bulletin* 63, October 1989, page 17, indicating that a claimant with unpaid 1987 property taxes and with a farmland preservation agreement executed before May 17, 1988, could file a 1988 farmland preservation credit claim, using the law in effect at the time the agreement was executed.

An article also appeared in a Department of Agriculture, Trade, and Consumer Protection publication. That article stated that claimants with an agreement and unpaid 1987 property taxes who did not file a 1988 farmland preservation credit claim because of the initial interpretation could file an amended 1988 tax return to claim the credit under the "prior year's law" method, provided that the amended return was filed by December 31, 1989. However, that article was not published until January 17, 1990.

Since the change in position described above occurred late in 1989, the Department of Revenue will honor 1988 (and 1988F) farm-

land preservation credit claims filed after the statutory due date (January 2, 1990, for calendar year claims) as timely filed claims if:

- a. The claim is filed under the "prior year's law" method,
- b. It is filed by a claimant whose 1987 property taxes were unpaid as of the statutory due date of the 1988 (or 1988F) claim (January 2, 1990, for calendar year claims), and
- c. The claimant has a farmland preservation agreement executed before May 17, 1988.

The extension of time to file these claims will expire 4 years after the statutory due date of the 1988 (or 1988F) claim (for example, the extension will expire on December 31, 1993, for a calendar year 1988 claim).

VOICE RESPONSE SYSTEM TO ANSWER REFUND INQUIRIES

Beginning in April 1990, an automated voice response unit (VRU) will be answering telephone calls to the department's refund inquiry telephone number, (608) 266-8100.

Callers with touch-tone telephones will be prompted to enter their social security number and the dollar amount of the refund claimed on their return. Callers with rotary or push button rotary (pulse) telephones will be automatically transferred to a department employee who will make the necessary entries to the VRU. The VRU will then respond to the inquiry.

Rotary and push button rotary callers may only get assistance during regular business hours while touch-tone callers may get assistance from 6:00 a.m. to 1:00 a.m. seven days a week.

If the VRU does not have enough information from the department's computer income tax history file to respond to the

inquiry, employee intervention is required. Callers phoning during business hours will automatically be transferred to a department employee for assistance. Callers phoning outside business hours will be given a telephone number and hours during which they may call for assistance.

DRUG TAX BECOMES EFFECTIVE MAY 1, 1990

As a result of recent legislation (1989 Wisconsin Act 122), Wisconsin will begin to impose a tax on dealers who acquire or possess marijuana or other controlled substances.

This new "drug tax" takes effect on May 1, 1990. Tax stamps or labels will be sold to dealers who must affix them to their products as proof of payment. There are substantial civil and criminal penalties for possession of marijuana or other controlled substances which do not bear evidence of the tax paid.

The Department of Revenue's Inheritance and Excise Tax Bureau will administer the "drug tax". Inquiries concerning the new "drug tax" should be directed to the Inheritance and Excise Tax Bureau, 4622 University Avenue, Madison, Wisconsin 53702, or telephone (608) 266-6701.

Following are descriptions of the major tax provisions in 1989 Wisconsin Act 122. All of the following provisions become effective May 1, 1990.

1. Tax on Controlled Substances (Create secs. 139.87 and 139.88.)

An occupational tax is imposed on dealers of controlled substances (as defined in sec. 161.04(4) and (5), Wis. Stats.). A "dealer" is any person who, in violation of ch. 161, possesses, manufactures, produces, ships, transports, delivers, imports, sells or transfers to another person: (a) more than 42.5 grams of marijuana, (b) more than 7 grams of any other controlled substance, or (c) if the substance is not sold by weight but in a manufactured dosage form, 150 milligrams of a controlled substance. The tax does not

apply to a person who lawfully possesses marijuana or another controlled substance.

The tax is imposed on dealers at the following rate:

- a. \$3.50 per gram or part of a gram of marijuana, whether pure or impure, measured when in the dealer's possession.
- b. \$200 per gram or part of a gram of other controlled substances, whether pure or impure, measured when in the dealer's possession.
- c. \$400 per 15 milligrams of a controlled substance if the substance is sold in a manufactured dosage form.

2. Proof of Payment (Create sec. 139.89.)

In administering the controlled substances tax, the Department of Revenue is required to create a uniform system of providing, affixing, and displaying stamps, labels, or other evidence that the tax has been paid. No dealer may possess any controlled substance unless the tax has been paid on it, as evidenced by a stamp or other official evidence.

The controlled substance tax is due and payable immediately upon acquisition or possessing the marijuana or controlled substance in Wisconsin, and the department at that time has a lien on all of the taxpayer's property. Late payments are subject to interest at the rate of 1% per month or part of a month. Stamps or other evidence of payment are not transferable to another person.

3. Confidentiality (Create sec. 139.91.)

The Department of Revenue may not reveal facts obtained in administering the controlled substances tax. However, the department may publish statistics that do not reveal the identities of dealers.

Dealers may not be required to provide any identifying information in connection with the purchase of stamps. No information obtained by the department may be used against a dealer in any criminal proceeding unless that information has been independently obtained, except in connection with a

proceeding involving possession of untaxed marijuana or controlled substances or taxes due from the dealer.

4. Examination of Records

(Create sec. 139.92.)

The Department of Revenue may examine or cause to be examined, any books, papers, records, or memoranda that may be relevant in determining the amount of tax that should have been paid, determining whether or not the dealer should have paid taxes, or in collecting the tax. The department may also require the attendance of any person having knowledge or information that may be relevant, compel the production of documents by persons required to attend, take testimony on matters material to the determination, issue subpoenas, and administer oaths and affirmations.

5. Administration of Controlled Substances Tax (Create sec. 139.93.)

The taxes, penalties, and interest imposed under these provisions are to be assessed, collected, and reviewed as are income taxes under ch. 71 of the Wisconsin Statutes.

In cases where the Department of Revenue finds that the collection of the tax is jeopardized by delay, the department is authorized, upon notification to the taxpayer in person or by registered mail to the last known address, to demand immediate payment of the taxes, penalties, and interest due and to proceed under the statutory provisions relating to the collection of income and franchise taxes. If the taxes, penalties, and interest are not immediately paid, the department is permitted to seize any of the taxpayer's assets. Seizure of the assets does not nullify the taxpayer's right to a hearing on the department's determination that the collection would be jeopardized by delay, nor does it nullify the taxpayer's right to post a bond.

Within 5 days after notifying the taxpayer, the department is required to provide the taxpayer in writing with its reasons for proceeding under these provisions. The warrant of the department shall not issue and the department may not proceed further under these provisions if, within 10 days after notice of the intent to proceed is given, the taxpayer furnishes to the department a

bond conditioned upon the payment of the additional tax and interest. The taxpayer has 20 days after the initial notice by the department to appeal to the department the determination that the collection will be jeopardized by delay. Any statement that the department files may be admitted into evidence and is prima facie evidence of the facts it contains. Taxpayers may appeal adverse determinations by the department to the Dane County Circuit Court.

The taxes and penalties assessed by the department are presumed to be valid and correct. The burden is on the taxpayer to show their invalidity or incorrectness. The Department of Revenue may request the Department of Administration to sell all assets which are seized.

No court may issue an injunction to prevent or delay the levying, assessment, or collection of the taxes or penalties.

The duly authorized employees of the department have all necessary police powers to prevent violations.

6. Refunds (Create sec. 139.94.)

Excess taxes are to be refunded with interest at the rate of 0.75% per month.

If the Department of Revenue has sold property to obtain taxes, penalties, and interest assessed and those taxes, penalties, and interest are found not to be due, the department is required to give the former owner the proceeds of the sale when that determination is final.

7. Penalties (Create secs. 139.90 and 139.95.)

Any dealer who possesses marijuana or a controlled substance for which a tax has not been paid, in addition to the tax due, is subject to a penalty equal to the amount of the tax due and a fine of not more than \$10,000 or imprisonment for not more than 5 years, or both. Acquisition of stamps or other evidence that the tax under sec. 139.88, Wis. Stats. has been paid does not create immunity for a dealer from criminal prosecution for possessing controlled substances in violation of ch. 161.

Any person who falsely or fraudulently

makes, alters, or counterfeits any stamp or procures or causes the same to be done or who knowingly utters, publishes, passes, or tenders as true any false, altered, or counterfeit stamp or who affixes a counterfeit stamp to marijuana or a controlled substance or who possesses marijuana or a controlled substance to which a false, altered, or counterfeit stamp is affixed may be fined not more than \$10,000 or imprisoned from one to 10 years or both.

8. Use of Revenue (Create secs. 20.505 (6)(hm) and 139.96.)

All monies received from the tax on controlled substances, including penalties, shall be allocated to the state or local law enforcement agency that made the arrest associated with the revenue.

DEPARTMENT DENIES CLAIMS FOR REFUND BASED ON DAVIS DECISION

On March 12, 1990, the Department of Revenue mailed denial notices to individuals who filed claims for refund of Wisconsin individual income taxes paid on federal retirement income for years prior to 1989. The department acted on the claims at this time to comply with a statutory requirement that the department act on claims for refunds within one year from the time they are received by the department.

The denial is based on the department's position that last year's U.S. Supreme Court decision in *Davis v. Michigan Department of Treasury* does not apply to tax years prior to 1989. Although litigation is pending, to date, no court has ruled against the department's position.

The denial notice mailed to claimants informs them of their appeal rights and includes a simple appeal form and pre-addressed envelope to simplify the appeal process for them.

The department has also notified various interested groups, such as organizations that serve the elderly, of this action.

Taxpayers or others who have questions

about this or related matters are advised to call the department at (608) 266-2772.

A copy of the denial notice sent to claimants appears on page 20 of this Bulletin.

APPLICATION TO ASCERTAIN NET TAX PAID OR PAYABLE

Who May Apply?

A Wisconsin resident may obtain the net Wisconsin income tax, Wisconsin franchise tax, or Wisconsin gift tax reported as paid or payable of another person or corporation as provided by sec. 71.78(2), Wis. Stats. (1987-1988). This information is not available to any nonresident, or to any resident who is making the request for such information for the use or benefit, directly or indirectly, of a nonresident person or firm or a foreign corporation, except to the extent that similar information in the state of residence of such person or firm or the state of incorporation of such foreign corporation is made available to residents of Wisconsin or Wisconsin corporations.

What is Net Tax Reported as Paid or Payable?

"Net tax reported as paid or payable" is the "Net Tax" reported on an individual income tax return (Form 1, 1A, WI-Z, INPR), fiduciary return (Form 2), and corporation franchise or income tax return (Form 4, 5), less any credit for taxes paid to another state. If an amended return has been filed, net tax reported as paid or payable is the "Net Tax," less any credit for taxes paid to another state, reported on the amended individual income tax return (Form 1X) or corporation franchise or income tax return (Form 4X). If an adjustment notice has been issued, net tax reported as paid or payable is the "Net Tax," less any credit for taxes paid to another state, as computed on the adjustment notice. In the cases of amended returns and adjusted returns, the net tax line from the original return is no longer used to determine the net tax reported as paid or payable. (Note: Net tax paid or payable shall be reduced by the

special one-time property tax/rent credit refunded for 1987 and 1988.)

For 1986 and prior years, Wisconsin law provided for a separate minimum tax that was added to net tax reported on an individual income tax return. A requester may not obtain this minimum tax amount reported as paid or payable by an individual. For 1987 and thereafter, Wisconsin law provides an alternative minimum tax which is included in the computation of net tax reported as paid or payable on an individual income tax return. The "net tax" amount disclosed for 1987 and subsequent years will include any alternative minimum tax reported as paid or payable.

How Does A Requester Apply?

A requester must complete Form P-100, "Application To Ascertain Wisconsin Net Income Tax Reported As Paid or Payable." A copy of this application is on page 21. The application may be mailed to the Department of Revenue, Post Office Box 8903, Madison, Wisconsin 53708. The requester may also apply in person at the Department of Revenue office at 4638 University Avenue, Madison.

Form P-100 is separated into three sections. The first section must always be completed by the requester. The second section must be completed by the requester only when he or she does not appear in person at the department's office at 4638 University Avenue, Madison. The third section is completed by the department when the requester appears in person at the Madison office.

A requester may apply in person at the Madison office from 7:45 a.m. to 4:30 p.m. on weekdays. A requester who applies in person must present an acceptable form of identification (e.g., a driver's license). The Custodian of Files in the Department of Revenue will provide the net tax information to a requester who applies in person as soon as practicable after receiving the application. Since the return of the person or corporation subject to disclosure may be located in one of the department's district or branch offices, it is not always possible for the custodian to respond immediately. The custodian will advise the requester if

additional time is required to obtain the net tax information and when that information may be available.

A fee of \$4 must be paid for each return from which the net tax paid or payable is requested. The fee must be paid before the net tax paid or payable is provided or mailed. The fee will be charged even if the net tax paid or payable is zero.

What Information Is Disclosed?

If the requester complies with all provisions of the Wisconsin Statutes, the net income tax, franchise tax, or gift tax reported as paid or payable may be disclosed to the requester. If a return has not been filed by the person or corporation subject to disclosure, the requester will be so advised.

Information will not be disclosed over the telephone. Also, the requester is not permitted to examine the return or receive a photocopy of the return.

Is There Notice to a Taxpayer of the Disclosure?

Within 24 hours of furnishing the net tax reported as paid or payable, the department's Custodian of Files will notify in writing the person or corporation whose return was subject to disclosure. The requester's name, address, and reason given for the request will be provided.

Additional Information

For additional information about the Application To Ascertain Net Income Tax Paid or Payable, contact the Department of Revenue Custodian of Files, Ms. Terri Wilke, at (608)266-2892.

REFUND QUESTIONS

Do you have a question about your income tax or homestead credit refund check? First, wait at least 10 weeks (6 weeks if you filed for a "quick refund") after filing your tax return or homestead claim. Then, call or write to: Wisconsin Department of Revenue, Post Office Box 8903, Madison, Wisconsin 53708, telephone (608) 266-8100.

In your inquiry, be sure to include your name and social security number, the name and social security number of your spouse if you are married, your address, the approximate date you filed your return, and your phone number where you can be reached during the day.

1990 ESTIMATED TAX REQUIREMENTS FOR INDIVIDUALS, ESTATES, AND TRUSTS

Estimated income tax payments are tax deposits made during the year to prepay the income tax and minimum tax that will be due when an income tax return is filed. Every individual, married couple filing jointly, estate, or trust (except trusts subject to tax on unrelated business income) is required to pay 1990 Wisconsin estimated tax if they expect to owe \$200 or more on their 1990 Wisconsin income tax return. Form 1-ES, "1990 Wisconsin Estimated Tax Voucher," is filed with each estimated tax payment.

For calendar year taxpayers, the first estimated tax payment is due on April 16, 1990. Installment payments are also due on June 15, 1990, September 17, 1990, and January 15, 1991. For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year, and the 1st month of the following fiscal year.

Full-year residents, part-year residents, estates, and trusts are subject to the estimated tax requirements for 1990. However, an estate is not required to pay estimated tax during the first two years of its existence.

If an individual, married couple filing jointly, estate, or trust does not make the estimated tax payments when required, or underpays any installment, interest may be assessed.

EXTENSIONS OF TIME TO FILE FOR INDIVIDUALS

Any extension of time granted by the Internal Revenue Service (IRS) for filing a federal return also extends the time for filing the corresponding Wisconsin return, provided a copy of the federal extension is attached to the Wisconsin return at the time it is filed. Taxpayers are allowed the same 10-day grace period to file a return for Wisconsin as for the IRS when a federal extension request is denied. The denial must be attached to the Wisconsin return when filed in order to be recognized.

In lieu of the federal extension, a taxpayer may request from the Wisconsin Department of Revenue a 30-day extension of time to file a Wisconsin return. If a federal extension is requested, it is not necessary to request this separate Wisconsin extension. Neither is it necessary to submit a copy of the federal extension request to Wisconsin at the time the federal request is made.

Reminders

DO NOT submit copies of federal extension requests to the Department of Revenue.

DO NOT request a Wisconsin extension when a federal extension is requested.

Attach a copy of all approved extensions to the corresponding Wisconsin tax return at the time the Wisconsin return is filed.

Use Wisconsin estimated tax vouchers (Form 1-ES) to submit Wisconsin extension payments. Be sure the Form 1-ES is for the proper year.

GIFT TAX REPORTS DUE APRIL 16

A Wisconsin gift tax is imposed upon all gifts by a donor who is a Wisconsin resident (regardless of the donee's residence) and gifts of Wisconsin real estate or tangible personal property located in Wisconsin (regardless of where the donor or donee resides).

1989 Wisconsin gift tax reports must be filed if the total value of taxable gifts given in 1989 by one donor (person giving the gift) to one donee (person receiving the gift) exceeds \$10,000. Gift tax reports of the donee and donor for 1989 must be filed by April 16, 1990. A return does not have to be filed if the value of the gift is \$10,000 or less.

The donor reports gifts made on Wisconsin Form 7. On this form, the donor enters the description and value of the gifts made to each donee.

The donee reports the gifts he or she received on Wisconsin Form 6, and includes the description and value of the gifts received from one donor. If the donee received gifts from more than one donor during that year, the donee must file a separate report of gifts received from each donor.

The gift tax due is figured on Wisconsin Form 6. In determining the 1989 gift tax due, an annual exemption of \$10,000 is allowed for all gifts made during a calendar year by one donor to one donee. Gifts to a spouse are completely exempt from Wisconsin gift tax. A lifetime personal exemption of \$50,000 is allowed for gifts to lineal issue (children, grandchildren), lineal ancestors (parents, grandparents), the wife or widow of a son, the husband or widower of a daughter, an adopted or mutually acknowledged child, and a mutually acknowledged parent. There is no lifetime exemption allowed to other donees.

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

WE ARE FREQUENTLY ASKED . . .

Question: If I make a gift of property to my spouse, will she owe a Wisconsin gift tax?

Answer: No. A gift made to your spouse is an exempt transfer of property not subject to Wisconsin gift tax.

Question: What is the maximum amount of gifts I can make before I have to file a Wisconsin gift tax return?

Answer: You may make a gift of any amount to a spouse and not have to file a gift tax return. Also, you may make a gift up to \$10,000 to each donee before you are required to file a gift tax return. (Note: Exempt transfers are not included for purposes of determining the \$10,000 limit.)

Question: Will there always be a Wisconsin gift tax?

Answer: No. The Wisconsin gift tax will be eliminated, effective for gifts made on or after January 1, 1992.

Question: Is money I receive as a gift taxable for income tax purposes?

Answer: No. Amounts received as a gift are not taxable for Wisconsin income tax purposes.

WISCONSIN TAX BULLETIN INCLUDES INDEX

Once each year the *Wisconsin Tax Bulletin* includes an index of articles, tax releases, and other attachments that have appeared in past Bulletins. The index can be found on pages 22 to 49 of this Bulletin.

DO YOU HAVE SUGGESTIONS FOR 1990 TAX FORMS?

Do you have suggestions for improving the Wisconsin tax forms and instructions? Send your suggestions to the Wisconsin Department of Revenue, Director of Technical Services, Post Office Box 8933, Madison, Wisconsin 53708. Please be specific and send your suggestions in early. The department appreciates hearing from you.

APPLETON ACCOUNTANT SENTENCED FOR VIOLATION OF STATE TAX LAWS

Income Taxes

An Appleton accountant has been ordered to serve jail time for violations of Wisconsin state tax laws. Erwin J. Oenes, 728 Fernmeadow Drive, Appleton, was sentenced in Outagamie County Circuit Court, Branch 1, Appleton, on 5 counts of failing to comply with state income tax and withholding tax laws for 1985 and 1986. Circuit Judge James Bayorgian placed Oenes on probation and ordered him to serve 4 years on each count concurrently. Under the conditions of probation, Oenes must serve 90 days in jail, make restitution of taxes, penalties, and interest in excess of \$8,000, and file his state tax returns on time during the probationary period. The jail term must commence before April 30, 1990. Oenes will have Huber Law privileges.

Excise Taxes

On November 10, 1989, Jerry D. Martin, 4129 Lake Thompson Road, Rhinelander was found guilty of operating amusement devices without a permit. Martin was fined a total of \$360 and two poker machines which he operated were forfeited.

On October 13, 1989, Barts, Inc., d/b/a "The Roose," a tavern located in the Town of Beaver Dam, was fined a total of \$180 for failing to have a licensed bartender on duty while open for business.

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 March 15, 1990. Part D lists new rules and amendments which were adopted in 1990. Part E lists new rules adopted in 1990 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
- 9.67 Cigarette tax credit-R&R
- 9.68 Ownership and name changes-NR

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

- 7.01 Purchases and invoices-A

- 7.23 Activities of brewers, bottlers and wholesalers-A
- 14.03 Household income-A
- 14.06 Marriage, separation, or divorce during claim year-A

C. Rules at Legislative Standing Committee

- 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
- 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
- 11.05 Government units-A
- 11.09 Medicines-A
- 11.12 Farming, agriculture, horticulture and floriculture-A
- 11.19 Printed material exemptions-A
- 11.40 Exemption of machines and processing equipment-A
- 11.51 Grocers' guidelist-A
- 11.535 Operators of a swap meet, flea market, craft fair or similar event-NR
- 11.61 Veterinarians and their suppliers-A

D. Rules Adopted During Period of January 1, 1990 through March 15, 1990 (effective date is given in parentheses)

- 1.13 Power of attorney-A (3/1/90)
- 2.01 Residence-A (3/1/90)

- 2.05 Information returns, forms 8 for corporations-R&R (3/1/90)
- 2.07 Income tax returns of liquidated or dissolved corporations-R (3/1/90)
- 2.081 Indexed income tax rate schedule-R (3/1/90)
- 2.085 Claim for refund on behalf of a deceased taxpayer-A (3/1/90)
- 2.105 Notice by taxpayer of federal audit adjustments and amended returns-A (3/1/90)
- 2.11 Credit for sales and use tax paid on fuel and electricity-A (3/1/90)
- 2.12 Amended income and franchise tax returns-A (3/1/90)
- 2.13 Moving expenses-A (3/1/90)
- 2.15 Methods of accounting for corporations-A (3/1/90)
- 2.17 Cash method of accounting for corporations-R (3/1/90)
- 2.18 Accrual method of accounting for corporations-R (3/1/90)
- 2.31 Taxation of personal service income of nonresident professional athletes-A (3/1/90)
- 2.50 Apportionment of net business income of interstate public utilities-A (3/1/90)
- 2.51 Rent received by corporations from Wisconsin real estate-A (3/1/90)
- 2.73 Involuntary conversion by corporations-A (3/1/90)
- 2.74 Gain or loss on disposition of property by corporations; adjustment to basis-R (3/1/90)
- 2.75 Recoveries by corporations-A (3/1/90)
- 2.76 Refunds of taxes to corporations-A (3/1/90)
- 2.80 Improvements of leased real estate, income to corporate lessor-A (3/1/90)
- 2.81 Damages received by corporations-A (3/1/90)
- 2.86 Income to corporations from cancellation of government contracts-A (3/1/90)
- 2.945 Spousal individual retirement contributions-R (3/1/90)
- 2.96 Extension of time to file corporation franchise or income tax returns-A (3/1/90)
- 2.98 Disaster area losses-A (3/1/90)
- 3.24 Corporation taxes, miscellaneous-R (3/1/90)

- 3.55 Donations and contributions - corporations—R (3/1/90)
- 14.01 Administrative provisions-R&R (3/1/90)
- 14.02 Qualification for credit-R&R (3/1/90)
- 14.03 Household income-R&R (3/1/90)
- 14.04 Property taxes accrued-R&R (3/1/90)
- 14.05 Rent constituting property taxes accrued-R&R (3/1/90)
- 14.06 Marriage, separation, or divorce during claim year-NR (3/1/90)

E. Rules Adopted in 1990 But Not Yet Effective

- 11.10 Occasional sales-A
- 11.16 Common or contract carriers-A
- 11.18 Dentists and their suppliers-A
- 11.26 Other taxes in taxable gross receipts and sales price-A
- 11.32 "Gross receipts" and "sales price"-A
- 11.41 Exemption of property consumed or destroyed in manufacturing-A
- 11.57 Public utilities-A
- 11.66 Communications and CATV services-A
- 11.67 Service enterprises-A
- 11.68 Construction contractors-A
- 11.84 Aircraft-A
- 11.85 Boats, vessels and barges-A

F. Emergency Rules

- 11.66 Communications and CATV services (effective 10/1/89)

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

Jerry and Lori Albright (p. 8)
Employee vs. independent contractor

Joyce A. Bennett (p. 9)
Marital property—notification

Laird C. Cleaver (p. 9)
Gain or loss—property transferred by gift

Marilyn L. Jenness (p. 10)
Interest—assessments

Corporation Franchise or Income Taxes

Journal Communications, Inc. (p. 10)
Deductions—accrued expenses

William Wrigley, Jr., Co. (p. 11)
Nexus

Sales/Use Taxes

Irvin Kozlovsky (p. 11)
Water conditioners

INDIVIDUAL INCOME TAXES

Employee vs. independent contractor. *Jerry and Lori Albright and Jerry M. Albright vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 27, 1989). The issue in this case is whether the taxpayer, a highly-skilled woodcraftsman, who had nearly complete independence as to his working hours and manner of completing his work, who had the right to quit work on any project at will, who conducted his trade out of his own shop, using his own tools and equipment, and whose almost exclusive source of income was a company that commissioned him continuously to build articles, that paid him by the hour on a regular 40-hour week basis, that treated his commission income as wages, that withheld from his pay amounts for social security, federal and state income taxes, and vacation pay, that

issued him W-2 certificates, that paid unemployment compensation taxes, that provided him with health and life insurance benefits, that provided him with materials that he needed to complete the projects, that reimbursed him for travel expenses, that bore the immediate financial risk of any unacceptable or unsatisfactory work done by the taxpayer, and that had the right to discharge him at will, was an employee or an independent contractor of the commissioning company.

The issue in this case arises in the context of whether the taxpayer should have been allowed to deduct in full unreimbursed expenses he incurred in connection with his trade. The taxpayer had reported these expenses as business expenses, deductible in full from his gross income. For 1984 and 1985, the department reclassified these deductions by requiring that they be reported as Schedule A expenses which made them subject to the limitation on itemized deductions. For 1986, the same sort of reclassification meant that none of the expenses were deductible.

The company's explanation for the outward treatment of the taxpayer as an employee was that artists, such as the taxpayer, are "strange cats," whose devotion to their work precludes them from properly concerning themselves with prosaic things like paperwork. Such artists must necessarily turn to a patron to keep their business affairs in order. Thus, here the simplest way of handling the taxpayer's business affairs was to treat him as an employee.

The Commission accepted the explanation that it was convenient for both the taxpayer and the company to treat the taxpayer as an employee. It ruled that while relevant, factors such as the W-2's and the company's deductions for unemployment compensation, suggesting the taxpayer was an employee, are not in themselves conclusive in this case. Here these factors must be weighed along side of other relevant factors. In determining whether an employer-employee relationship exists, the crucial question is one of the degree of control the putative employer exercises. This determination turns on a weighing of numerous, common-law factors, and on analysis of these factors, the Commission concluded that the

taxpayer was an employee.

The taxpayer has not appealed this decision.



Marital property—notification. *Joyce A. Bennett vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 15, 1989). The issue in this case is whether Thomas E. Bennett's notification on October 13, 1987, was timely and proper notification to Joyce A. Bennett of the amount and nature of his marital property income before the due date, including extensions, for filing his return for the taxable year in which the income was earned, under sec. 71.11(2m), Wis. Stats. (1985-86).

Joyce A. Bennett ("taxpayer") and Thomas E. Bennett were married to each other for all of 1986 and were full-year Wisconsin residents. The taxpayer filed for and received extensions to file her federal return for 1986, first to August 15, 1987, and a later extension to October 15, 1987, and these extensions equally applied for Wisconsin income tax purposes. Mr. Bennett filed for and received extensions to file his federal return for 1986 to October 15, 1987, and these extensions equally applied for Wisconsin income tax purposes.

The taxpayer's 1986 marital property information was sent by letter of July 24, 1987, to Mr. Bennett by certified mail, return receipt requested, and received on July 28, 1987. Mr. Bennett's 1986 marital property information was hand delivered to the taxpayer at 8:50 a.m., October 13, 1987, by a deputy sheriff of the Outagamie County sheriff's office.

The taxpayer timely filed her 1986 Wisconsin income tax return on or about September 14, 1987, reporting 100% of "her" wage and interest income rather than in amounts reported to Mr. Bennett as 1/2 marital; she also reported "her" itemized deductions.

Mr. Bennett notified Mrs. Bennett on or before the extended due date of his 1986 Wisconsin income tax return of "his" business and interest income, rental loss, and

itemized deductions.

The department issued an assessment in the alternative for 1986, since there was a disagreement between the taxpayer and her spouse as to which party is liable for tax on unreported marital income.

The Commission concluded that the "due date" referred to in the second sentence of sec. 71.11(2m), Wis. Stats. (1985-86), renumbered sec. 71.10(6)(b), Wis. Stats. (1987-88), refers to the return of the taxpayer who is to make notification of marital property income to his or her spouse, that notifications by both the taxpayer and Thomas E. Bennett of their respective marital property incomes were timely and adequate under said section, and that the taxpayer is required to pay tax and interest on her share of Thomas E. Bennett's 1986 marital property income, as shown on the October 13, 1987, notification. The Commission ordered that the department's action be modified so as to adjust its assessment of the taxpayer in the alternative to reflect one-half of the marital property income of the taxpayer and Thomas E. Bennett, with applicable credits and deductions as provided by law.

The taxpayer has not appealed this decision.



Gain or loss—property transferred by gift. *Laird C. Cleaver vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, August 24, 1989). Laird C. Cleaver appeals from a Circuit Court judgment affirming the decision of the Wisconsin Tax Appeals Commission which affirmed the Department of Revenue's denial of his income tax refund claim. His claim arises out of an alleged overpayment of income tax on the gain he realized when he made a "net gift" to the Laird C. Cleaver issue trust. See *Wisconsin Tax Bulletin* 59, page 7, for a review of this case.

The Court of Appeals determined that whether the taxpayer is entitled to his claimed refund requires construction of sec. 71.02(2)(a), (b)3, and (e), Wis. Stats. (1977),

in relation to sec. 1026 of the Deficit Reduction Act of 1984. The application of a statute to a factual situation is a question of law.

The Court concluded that sec. 71.02(2)(a), (b)3, and (e), Wis. Stats. (1977), is ambiguous and does not answer the inquiry of whether sec. 1026 of the Deficit Reduction Act of 1984 was an "amendment" to the Internal Revenue Code within the meaning of sec. 71.02(2)(b)3, Wis. Stats. (1977). The Court, thus, resorted to the legislative history and found that there are conflicting indications as to the legislative intent as to the meaning of sec. 71.02(2)(a), (b)3, and (e), Wis. Stats. (1977).

The Court of Appeals resolved the conflict as to the legislative intent by concluding that the Legislature did not intend "internal revenue code," for the taxable year 1977, to include acts of Congress enacted after December 31, 1976, whose substantive effect was to amend the Code. The legislative history of the federalization of the Wisconsin income tax law establishes that the Legislature sought the advice of the Attorney General as to whether it could incorporate by reference future amendments by the Congress of the Internal Revenue Code. The care which the Legislature has taken to avoid incorporating by reference future enactments of Congress convinced the Court that the Legislature intended that sec. 71.02(2)(a), (b)3, and (e), Wis. Stats. (1977), does not incorporate by reference future acts of Congress whose substantive effect is to amend the Internal Revenue Code. Because sec. 1026 of the Deficit Reduction Act had the substantive effect of amending the federal definition of gross income under sec. 61(a) of the Internal Revenue Code, it was made inapplicable to Wisconsin by sec. 71.02(2)(b)3, Wis. Stats. (1977).

The Court of Appeals concluded that taxpayer is not entitled to the claimed refund.

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



Interest—assessments. *Marilyn L. Jenness vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, November 14, 1989). The issue is whether allegedly misleading instructions in the department's 1984 income tax instruction booklet constitute grounds to excuse the taxpayer from interest on taxes that the taxpayer conceded were due.

The taxpayer's argument is that the 1984 instructions failed to alert her and her husband, who prepared their returns, to the existence of her additional tax liability for minimum tax. She agrees the tax was proper and has paid it, but says the instructions did not identify certain capital gains she obtained as a "tax preference" item, and neither she nor her husband associated that terminology with the capital gains. As a result, they didn't do the minimum tax calculation that was required and that caused the additional tax.

The Commission concluded that sec. 71.82(1)(a), Wis. Stats., provides, "In assessing taxes interest shall be added to such taxes..." The word "shall" leaves no room for any waiver of interest. Apparently, even if a taxpayer were abducted by terrorists and held in captivity for years, with no one to look after his financial affairs, interest would still be assessable against him under the statute. It seems absolute, and even the department would be powerless to waive it. There is no authority permitting a waiver of the interest. Thus, here interest must be charged even if the instructions were inartfully written or incomplete.

The taxpayer has not appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be cited as precedent. It is provided for informational purposes only.



CORPORATION FRANCHISE OR INCOME TAXES

Deductions—accrued expenses. *Journal Communications, Inc. f/k/a The Journal*

Company vs. Wisconsin Department of Revenue (Wisconsin Tax Appeals Commission, November 28, 1988). The only issue in this case is the deductibility of the accrued performance bonus expense claimed by the taxpayer on its 1982 and 1983 Wisconsin franchise tax returns.

On June 2, 1981, the board of directors of the Journal Company adopted the Journal Employees' Performance Bonus Plan (hereinafter referred to as the "Plan"). On July 1, 1981, the Plan was officially announced to employees of the company.

In April 1983, the performance bonus awards for 1982 were announced and awarded. Of the \$240,000 accrued for 1982 performance bonus awards, \$234,220 was awarded to employees, but \$23,780 of these awards were never paid out and were forfeited because of union objections. In March 1984, the performance bonus awards for 1983 were announced and delivered. The amount accrued for 1983 was \$641,920, but the amount actually awarded and paid out to employees was \$649,300.

The taxpayer's calendar year tax returns for 1982 and 1983 claimed and deducted accrued expenses for The Journal Employee's Bonus Plan of \$240,000 and \$641,920, respectively. The department disallowed the taxpayer's performance bonus award accruals of \$240,000 for 1982 and \$641,920 for 1983. Of the 1982 awards made in April of 1983, \$210,440 was paid in 1983, and the department allowed a deduction of \$210,440 for 1983, thus, reducing the bonus award adjustment for 1983 from \$641,920 to \$431,480.

The taxpayer contended its liability for making the 1982 and 1983 bonus payments accrued on the last day of 1982 and 1983 respectively, and, therefore, the deductions were properly taken in those years as opposed to the years in which the payments were actually paid.

The department maintained that the payments did not accrue until they were actually paid and, accordingly, the 1982 bonus plan, paid in 1983, should have been deductible in 1983, and the 1983 bonus plan, paid in 1984, should have been deductible in 1984.

Pursuant to paragraph 11 of the Journal Employees' Performance Bonus Plan, the taxpayer's liability for paying the bonuses did not become fixed and determinable until the awards had been "made," since the Board of Directors had reserved the right to discontinue the plan prior to that time. Performance bonus awards were "made" at the time the recipients were chosen and their names and the amounts of their awards were announced. The 1982 bonus awards were not actually made until 1983 and the 1983 bonus awards were not actually made until 1984.

The Commission concluded that for the taxpayer's 1982 and 1983 performance bonus payments to be deductible in the taxable years to which they relate, the events which determine the fact of liability must have occurred in those years, and that the liability for making the 1982 and 1983 bonus payments had not accrued by the end of fiscal years 1982 and 1983, respectively. Therefore, the awards were not deductible as accrued expenses for the years in which they were deducted, but were deductible as paid expenses in the years in which the awards were actually made.

The taxpayer has not appealed this decision.



Nexus. *William Wrigley, Jr., Co. vs. Wisconsin Department of Revenue and Wisconsin Department of Revenue vs. William Wrigley, Jr., Co.* (Court of Appeals, District IV, December 7, 1989). The department appeals from a judgment reversing a decision of the Commission, which upheld a franchise tax assessment against the tax-

payer, an Illinois manufacturer of chewing gum which markets its products in Wisconsin and other states. The department assessed taxes and delinquent interest for the years 1973 through 1978, and the taxpayer appealed to the Commission on grounds that the assessment was prohibited by federal law. The Commission upheld the assessment, but ruled that the department had applied an improper rate of interest. On review, the Circuit Court reversed and the department appealed. See WTB 50, 55, and 59 for summaries of prior decisions in this case.

The issues are:

A. Whether the assessment is barred by the provisions of 15 U.S.C. sec. 381, which allow state taxation of income from interstate commerce only if the company's business activity within the state exceeds the "solicitation of (sales) orders."

B. If not, whether the assessed taxes were "delinquent" within the meaning of sec. 71.10(9), Stats. (1985-86), so as to justify application of an 18% (1.5% per month) interest rate on the balance due. The Circuit Court, voiding the assessment, did not reach the question of the proper interest rate. An ancillary issue concerns the scope of the Appeals Court's review — whether it owes any deference to the Commission's interpretation of a federal law.

The Court of Appeals concluded that while it owed no deference to the Commission in this instance, the Commission nonetheless correctly determined that the assessment was not barred by federal law. It also concluded that the department applied the correct rate of interest and, therefore, reversed the judgment of the Circuit Court and remanded with directions to enter an

order affirming the Commission's decision on the validity of the assessment and reversing its determination on the appropriate rate of interest to be applied to the assessment.

The taxpayer appealed this decision to the Wisconsin Supreme Court. The taxpayer's petition for review was granted.



SALES/USE TAXES

Water conditioners. *Irvin Kozlovsky, d/b/a Culligan Water Conditioning of Waupaca vs. Wisconsin Department of Revenue* (Circuit Court of Dane County, November 7, 1989). The issue in this review is whether the monthly fee the taxpayer receives from his customers is subject to sales tax because it constitutes the gross receipt from the leasing or renting of tangible personal property. See *Wisconsin Tax Bulletin* 51, page 8, for a review of this case.

The Court affirmed the Commission decision that the true objective of the taxpayer's customers is to obtain properly and efficiently functioning water softening equipment, not, as the taxpayer argued, to obtain his personal services. The Court concluded that the Commission's decision must be affirmed, and that the gross receipts the taxpayer receives from his customers for the leasing or rental of water softening equipment are subject to sales tax.

The taxpayer has not appealed this decision.



TAX RELEASES

("Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those given herein, the answers may not apply. 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. Taxability of Interest From Proprietary Zero - Coupon Certificates (p. 12)
2. Taxation of Compensation for Well Contamination (p. 12)
3. Treatment of Incentive Stock Options for Alternative Minimum Tax Purposes (p. 13)

Sales/Use Taxes

1. Meals and Lodging Provided by Nursing Homes (p. 14)
2. Mechanical and Electronic Voice Messaging Services (p. 14)

All Taxes

1. Withholding of Delinquent State Taxes From Lottery Prizes (p. 15)

INDIVIDUAL INCOME TAXES

1. Taxability of Interest From Proprietary Zero-Coupon Certificates

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

Background: Various brokerage firms market a type of security called "proprietary zero-coupon certificates," which are certificates of ownership of U.S. Treasury obligation cash flows. These proprietary certificates are marketed under various brand names (for examples, see Answer 2 below). Proprietary zero-coupon certificates differ from physical U.S. Treasury zero-coupon obligations in that in proprietary zero-coupon certificates, a U.S. Treasury note or bond is purchased by a brokerage firm, which then "strips" the note or bond and issues certificates against the coupon and principal cash flows. The investor purchases the right to receive an interest or principal payment from the Treasury issue. The investor does not purchase the actual Treasury obligation.

Question 1: Is interest from proprietary zero-coupon certificates taxable by Wisconsin?

Answer 1: No. The interest received through proprietary zero-coupon certificates attributable to interest from federal obligations is exempt from Wisconsin taxation under sec. 71.05(6)(b)1, Wis. Stats. (1987-88). That section provides that the amount of any

interest which by federal law is exempt from state taxation may be subtracted from adjusted gross income to the extent included in federal taxable income. Under 31 U.S.C. § 3124(a), stocks and obligations of the U.S. Government are exempt from taxation by a state. The tax-exempt status of interest from U.S. Government obligations flows through the proprietary zero-coupon certificate.

Question 2: What are some examples of "brand names" under which brokerage firms market proprietary zero-coupon certificates?

Answer 2: Treasury obligation based proprietary zero-coupon products are known by such brand names and acronyms as CATs, TIGRs, Cougars, ETRs, LIONS, STARS, ZEBRAS, etc.

□

2. Taxation of Compensation for Well Contamination

Statutes: Sections 71.03(2)(g), Wis. Stats. (1983-84) and 71.01(6), Wis. Stats. (1987-88)

Background: Under sec. 144.027, Wis. Stats. (1987-88), the Department of Natural Resources may award to any claimant 80% of eligible costs not to exceed \$12,000 to replace a contaminated well or contaminated private water supply.

Question 1: Are payments received under sec. 144.027, Wis. Stats. (1987-88), taxable for federal income tax purposes?

Answer 1: Yes. Federal law provides that all income is taxable unless a specific exemption applies. Because no exemption applies to these payments, the payments must be included in federal adjusted gross income.

Note: The payments under sec. 144.027, Wis. Stats. (1987-88), should not be confused with Private Sewage System Replacement or Rehabilitation Program payments which are issued under sec. 144.245, Wis. Stats. (1987), and which may be exempt from federal taxation under sec. 126 of the Internal Revenue Code.

Question 2: Are payments received under sec. 144.027, Wis. Stats. (1987-88), taxable for Wisconsin income tax purposes?

Answer 2: For 1985 and prior taxable years, sec. 71.03(2)(g), Wis. Stats. (1983-84), provided that all amounts received in accordance with sec. 144.027 were exempt from Wisconsin taxation. For taxable years 1986 and thereafter, this exemption was repealed. Therefore, because such payments are included in federal adjusted gross income, the starting point for determining Wisconsin taxable income, and no exemption or modification exists with regard to these payments, they are taxable for Wisconsin income tax purposes for taxable years 1986 and thereafter.

□

3. Treatment of Incentive Stock Options for Alternative Minimum Tax Purposes

Statutes: Section 71.08(1)(bm), Wis. Stats., as created by 1989 Wisconsin Act 31

Note: This Tax Release applies only with respect to taxable years beginning on or after January 1, 1989.

Background: Under sec. 71.08, Wis. Stats. (1987-88), a taxpayer is liable for Wisconsin alternative minimum tax if the taxpayer's minimum tax is greater than the taxpayer's regular income tax. The amount of Wisconsin alternative minimum taxable income is computed by starting with the taxpayer's federal alternative minimum taxable income and making certain Wisconsin modifications to that amount.

In computing federal alternative minimum taxable income, a taxpayer is required to add to taxable income any income excluded under sec. 421, IRC, with regard to the transfer of stock acquired pursuant to the exercise of an incentive stock option. In the year of disposition of stock, federal alternative minimum taxable income is reduced to account for the difference in basis of the stock as a result of the adjustment made to federal alternative minimum taxable income in the year of exercise.

Section 71.08(1)(bm), Wis. Stats. as created by 1989 Wisconsin Act 31, provides that for stock acquired after December 31, 1987, there may be subtracted from federal alternative minimum taxable income 20% of the amount included in federal alternative minimum taxable income as an incentive stock option adjustment (referred to as subd. 1). If the provisions of subd. 1. apply, a 20% reduction must also be made to any basis adjustment required for federal alternative minimum tax purposes in the year of disposition of the stock (referred to as subd. 2.). These provisions are effective for taxable years beginning on or after January 1, 1989.

Section 71.08(4), Wis. Stats. (1987-88), provides that federal alternative minimum taxable income may be reduced for purposes of computing Wisconsin alternative minimum taxable income to prevent the inclusion of any amounts, with certain exceptions, that do not reflect a benefit in respect to the tax imposed under sec. 71.02 (imposition of Wisconsin regular income tax).

Facts and Question 1: Taxpayer A, a resident of Wisconsin, exercised an incentive stock option in taxable year 1988. Taxpayer A included the necessary adjustment as a result of exercising the incentive stock option in 1988 federal alternative minimum taxable income. As a result of including the necessary adjustment in federal alternative minimum taxable income, the adjustment was also included in Wisconsin alternative minimum taxable income.

In 1989, Taxpayer A disposes of the stock and makes the required basis adjustment which decreases his 1989 federal alternative minimum taxable income.

Is Taxpayer A required to reduce the basis adjustment included in 1989 federal alternative minimum taxable income by 20% when computing 1989 Wisconsin alternative minimum taxable income?

Answer 1: No. Taxpayer A was not allowed to take the 20% reduction under subd. 1. in computing 1988 Wisconsin alternative minimum taxable income because that provision was not yet effective. Subd. 2. applies only if the stock was subject to subd. 1. Because the stock disposed of in 1989 was not subject to the provisions of subd. 1., subd. 2. does not apply.

Facts and Question 2: Taxpayer B was a nonresident of Wisconsin in 1989. In 1989, Taxpayer B exercised an incentive stock option and included in 1989 federal alternative minimum taxable income the adjustment required as a result of the exercise. Taxpayer B was not required to file a 1989 Wisconsin income tax return.

In 1990, Taxpayer B becomes a Wisconsin resident and disposes of the stock acquired pursuant to the exercise of the incentive stock option. Taxpayer B makes the required basis adjustment when computing her 1990 federal alternative minimum taxable income.

Is Taxpayer B required to reduce the basis adjustment included in 1990 federal alternative minimum taxable income by 20% when computing 1990 Wisconsin alternative minimum taxable income?

Answer 2: No. Because Taxpayer B was not subject to Wisconsin taxation in 1989, the provisions of subd. 1. did not apply. Because the stock disposed of in 1990 was not subject to the provisions of subd. 1., subd. 2. does not apply.

Facts and Question 3: Taxpayer C was a nonresident of Wisconsin in 1989. However, Taxpayer C was required to file a Wisconsin income tax return. In computing 1989 Wisconsin alternative minimum taxable income, Taxpayer B subtracted from federal alternative minimum taxable income 100% of the adjustment required pursuant to the exercise of an incentive stock option. The subtraction was made under sec. 71.08(4), Wis. Stats. (1987-88). Taxpayer C did not receive a benefit for Wisconsin from the exclusion of income pursuant to the exercise of an incentive stock option because such income is intangible income which follows the residence of the taxpayer and is not taxable by Wisconsin with regard to a nonresident.

In 1990, Taxpayer C becomes a resident of Wisconsin and disposes of the stock acquired pursuant to the exercise of the incentive stock option. Taxpayer C makes the required basis adjustment when computing his 1990 federal alternative minimum taxable income.

Is Taxpayer C required to reduce the basis adjustment included in 1990 federal alternative minimum taxable income by 20% when computing 1990 Wisconsin alternative minimum taxable income?

Answer 3: No. Taxpayer C excluded from 1989 Wisconsin alternative minimum taxable income 100% of the incentive stock option adjustment, using the provisions of sec. 71.08(4), Wis. Stats. (1987-88). Therefore, subd. 1. did not apply. Because the stock disposed

of in 1990 was not subject to the provisions of subd. 1., subd. 2. does not apply.

Facts and Question 4: In 1989, Taxpayer D, a resident of Wisconsin, exercised an incentive stock option and included in federal alternative minimum taxable income the required adjustment as a result of the exercise of the incentive stock option. The adjustment was also included in Wisconsin alternative minimum taxable income but was reduced by 20% as provided by subd. 1. However, even if Taxpayer D had not made the 20% reduction, she would not have owed a Wisconsin alternative minimum tax.

In 1990, Taxpayer D disposes of the stock acquired pursuant to the exercise of the incentive stock option. Taxpayer D makes the required basis adjustment when computing her 1990 federal alternative minimum taxable income.

Is Taxpayer D required to reduce the basis adjustment included in 1990 federal alternative minimum taxable income by 20% when computing her 1990 Wisconsin alternative minimum taxable income?

Answer 4: No. Taxpayer D received no tax benefit from subd. 1. in the year of exercise. Since Taxpayer D did not receive any tax benefit from the 20% deduction under subd. 1., the 20% addition under subd. 2. does not apply when the stock is sold. Note that if Taxpayer D had received a partial tax benefit from subd. 1. in the year of exercise, subd. 2 would apply proportionately in the year of disposition of the stock.



SALES/USE TAXES

1. Meals and Lodging Provided by Nursing Homes

Statutes: Sections 77.52(2)(a)1 and 77.54(20)(c)4, Wis. Stats. (1987-88)

Wis. Adm. Code: Section Tax 11.87, September 1984 Register

Facts and Question: The January 29, 1982, Wisconsin Tax Appeals Commission decision in *Rause Enterprises, et. al.*, held that a fast food restaurant operator can purchase disposable plastic eating utensils, napkins, straws, and disposable place mats without tax for resale.

May a nursing home operator (that is not exempt as a nonprofit organization under sec. 77.54(9a)(f), Wis. Stats. (1987-88)) purchase these same items without tax for resale?

Answer: Yes. A nursing home may issue a resale certificate to its supplier(s) for purchases of paper and plastic disposable items which are transferred to customers (including residents and visi-

tors) in conjunction with providing meals, food, food products, and beverages to its customers.

Nursing homes are retailers of the following three items: lodging, meals, and health care services. Sales of lodging are not taxable under sec. 77.52(2)(a)1, Wis. Stats. (1987-88); sales of meals are exempt under sec. 77.54(20)(c)4, Wis. Stats. (1987-88); and health care services are not included in the list of taxable services in sec. 77.52(2)(a), Wis. Stats (1987-88).

Caution: This treatment only applies to restaurant or food service type items which are actually transferred to the customers in conjunction with the sale of meals, food, food products, and beverages. It does not apply to items transferred in conjunction with free meals or beverages (e.g., hotel styrofoam cups for free coffee) or for items consumed by the nursing home in providing nontaxable health care services (e.g., disposable diapers).



2. Mechanical and Electronic Voice Messaging Services

Statutes: Secs. 77.52(2)(a)4, Wis. Stats. (1987-1988), and 77.52(2)(a)5, Wis. Stats., as created by 1989 Wis. Act. 31, effective October 1, 1989.

Wis. Adm. Code: Rule Tax 11.66, July 1987 Register

Facts and Question: An EVX Office Message System computer is located in the office of a service provider, and customers gain access to the computer by using any touch-tone telephone. The service provider describes the business as voice messaging. The service is available 24 hours a day and a customer deposits or retrieves telephone messages by using a national 800 number or local access. Customers using the taxpayer's 800 number are required to pay by the minute for the use of the company's circuits.

This voice messaging service may be used as (a) a message center, (b) a call forwarding service, or (c) an answering service. Messages are stored in the computer and the service allows the customer to send or retrieve messages, reply to a message directly, save selected messages, cancel messages no longer needed, redirect or reroute messages to other users, or broadcast group messages with group distribution codes.

Is this mechanical or electronic voice messaging and telephone answering service taxable as a telecommunications service under secs. 77.52(2)(a)4, Wis. Stats. (1987-1988), and 77.52(2)(a)5, Wis. Stats. as created by 1989 Wis. Act 31, effective October 1, 1989?

Answer: Yes. This mechanical or electronic voice messaging and telephone answering service is subject to sales and use tax as a telecommunication service.

Note: This tax release represents a change in department position and becomes effective May 1, 1990.

Note: Nonmechanical and nonelectronic telephone answering services continue to be nontaxable as stated in section Tax 11.66(1)(c), Wis. Adm. Code.



ALL TAXES

1. Withholding of Delinquent State Taxes From Lottery Prizes

Statutes: Section 565.30(5), Wis. Stats. (1987-88)

Background: Section 565.30(5), Wis. Stats. (1987-88), provides that the Executive Director of the Lottery Board shall report the name, address, and social security number of each winner of a lottery prize equal to or greater than \$1,000 to the Department of Revenue to determine whether the payee of the prize is delinquent in the payment of state taxes, court ordered child support, and debts owed to other state agencies. Upon certification by the Department of Revenue or upon court order, the Executive Director shall withhold the certified amount for remittance to the appropriate agency or person.

In a Tax Release titled "Taxation of Lottery Winnings," WTB 61, page 16, it stated that a lottery prize could be shared among several people and that each person sharing in the lottery prize was considered a winner. However, for purposes of withholding Wisconsin income taxes, the \$2,000 limit under s. 71.67(4), Wis. Stats. (1987-88), applied to the total lottery prize and not each winner's share of the lottery prize.

Question 1: For purposes of sec. 565.30(5), Wis. Stats. (1987-88), does the \$1,000 limit apply to the total lottery prize or each winner's share of the lottery prize?

Answer 1: The \$1,000 limit, for purposes of determining whether a payee is delinquent in the payment of Wisconsin taxes, applies to the total lottery prize and not each winner's share of the lottery prize.

Example: Taxpayers A, B, and C agree to share any proceeds from a Wisconsin lottery ticket, prior to the determination that the ticket is a winner. The lottery prize of the ticket is \$1,500. The provisions of sec. 565.30(5), Wis. Stats. (1987-88), apply because the total prize is over \$1,000. This is true even though each winner's share of the prize (\$500) is less than \$1,000. If the payee has notified the Lottery Board that there are several person's sharing in the prize, the records for taxpayers A, B, and C will be examined to determine if they owe delinquent Wisconsin taxes.

Question 2: If a taxpayer is delinquent in payment of Wisconsin income taxes and shares equally in a lottery prize with 2 other

persons, can the entire lottery prize be certified by the Department of Revenue and applied against the taxpayer's delinquent Wisconsin income taxes?

Answer 2: No. The Department of Revenue may only certify for application against delinquent Wisconsin income taxes, the delinquent taxpayer's share of a lottery prize.

Example: Taxpayers A, B, and C agree to share any proceeds from a Wisconsin lottery ticket, prior to the determination that the ticket is a winner. The lottery prize of the ticket is \$10,000. Taxpayer A has delinquent state income taxes of \$10,000. The department may only certify \$3,333.33 of the \$10,000 lottery prize, Taxpayer A's share, for application against Taxpayer A's delinquent Wisconsin income taxes.



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.

W9002001, October 25, 1989

Type Tax: Sales/Use

Statutes: Sections 77.51(4)(a) and (13) and 77.52(2)(a)20, Wis. Stats. (1987-88)

Issue: Landscaping services; turf grass advisory services

This letter responds to your request for a private letter ruling regarding the sales and use tax status of turf grass advisory services provided by Company A.

Facts

The Company A headquarters outside Wisconsin sells golf related publications, films, books, and other merchandise. Company A regional offices, one of which is located in Wisconsin, provide turf grass advisory services for a fee. It is this turf grass advisory service which is the subject of this request.

A Company A staff agronomist visits a golf course for a full or half day and prepares a report to the course management, recommending ways to improve the course.

The turf advisory reports provided to member clubs are a management consultant type of report. The report includes recommendations for the application of insecticides, fungicides, aerification of fairways, overseeding of grass seed, weed control, etc. The report recommends certain actions to be taken by the golf course superintendent. Whether the golf course superintendent actually does take action is strictly up to the superintendent or the golf course's greens committee.

The Company A services are provided to member clubs only. No advertising of services occurs other than circulation of a brochure occasionally to member clubs. The membership application brochure states "The fee is established to cover costs only."

The brochure further states "The Company A is a company devoted solely to golf course turf, its playing conditions, and its management."

No tangible personal property is provided to the golf course nor are any physical services provided to the golf course. Company A provides no servicing of tangible personal property. No written designs for shrubbery or tree placement are included in the reports.

The recommended actions to be taken will be carried out by golf course employees, not by outside landscape architects or any other person.

The turf advisory fee is a partial reimbursement of expenses since it does not entirely cover the total expenses of this valuable nonprofit service provided to golf courses. Over the past several years, the Company A expenses have exceeded income.

Request

Company A requests a ruling that its turf grass advisory service is not a landscaping or lawn maintenance service subject to Wisconsin sales and use tax under sec. 77.52(2)(a)20, Wis. Stats.

Ruling

Company A's turf grass advisory service is a landscaping or lawn maintenance counseling service subject to Wisconsin sales and use tax.

Analysis

Section 77.52(2)(a)20, Wis. Stats. (1987-88), imposes a retail sales tax upon all persons selling, performing, or furnishing;

"landscaping and lawn maintenance services including landscape planning and counseling, lawn and garden services such as planting, mowing, spraying and fertilizing and shrub and tree services."

The imposition language is very broad, encompassing "... all persons selling, performing or furnishing landscaping and lawn maintenance services ... including ... counseling ..." (Emphases added)

You have characterized your service as being similar to management consultants or CPA's who provide written reports recommending actions. That parallel may be accurate, however, landscape counseling services have been selected for taxation while other management consulting or accounting services have not.

"Counseling" implies professional guidance or advice given as a result of consultations.

There is no requirement in either the common meaning of counseling or the state statutes that taxation is contingent upon the transfer of tangible personal property or the performance of physical work.

Section 77.51(13)(a), Wis. Stats., states that "retailer" includes "every seller who makes any sale of ... taxable services." Company A is selling its landscape counseling services and is, thus, a retailer under this section of the statutes.

Under sec. 77.51(4)(a), Wis. Stats., "gross receipts" include the total amount of the sale without any deduction for the cost of materials used, labor or service cost, losses or any other expense.

You have indicated that the type of service you provide is not listed in the taxable examples in our June 1982 *Tax Report*. Examples in the *Tax Report* or other articles are given as illustrations rather than limitations. The department has no authority to limit broad statutory language with published articles.



W9003002, October 26, 1989

Type Tax: Sales/Use

Statutes: Sections 77.51(14)(intro.) and (j) and 77.52(1) and (13), Wis. Stats. (1987-88)

Issue: Sale of vehicles for leasing

This is in response to your request for a Private Letter Ruling concerning the sales and use tax status of the sale of vehicles held for lease.

Facts

Taxpayer, a regular corporation with a fiscal year end of February 28, is in the business of leasing trucks and buses to others.

As part of a plan to wind down its affairs and sell off its trucks, taxpayer would like to sell its leased trucks to another company who would continue in the business of leasing these trucks to the present leased parties. Taxpayer intends to sell 1/3 of these trucks to the new lessor on February 28, 1990, and the balance of these trucks on March 1, 1990. Taxpayer intends to surrender its sales tax permit within ten days after the first sale.

The new lessor/buyer of the trucks holds a valid sales tax permit from the Wisconsin Department of Revenue (WDR).

Request/Question

Do these sales of the trucks to the new lessor/buyer qualify under the WDR exemption provisions from sales/use tax?

Ruling

Taxpayer's sale, to a buyer, of the trucks and buses leased by the taxpayer to others, where the buyer will continue to lease out the

trucks and buses, would be an exempt sale for resale, providing the taxpayer takes a properly completed resale certificate in good faith from the buyer.

Analysis

The leasing of trucks and buses is deemed a continuing sale in this state by the lessor under sec. 77.51(14)(j), Wis. Stats (1987-88).

The buyer will continue to lease out the trucks and buses; thus, itself becoming a lessor.

Section 77.52(1), Wis. Stats. (1987-88), imposes a sales tax on gross receipts of retail sales. Since the buyer is going to resell (i.e., lease out) the trucks and buses, the sale to the buyer is not a retail sale under sec. 77.51(14)(intro.), Wis. Stats. (1987-88), and, thus, is not subject to sales tax.

Under sec. 77.52(13), Wis. Stats., it shall be presumed that all receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property or services is not a taxable sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property or service is purchased for resale. The resale certificate must be taken in good faith per sec. 77.52(14), Wis. Stats (1987-88).

