



# Wisconsin TAX BULLETIN

## Do Mail Order Buyers Owe Use Tax?

If you shop through the mail, you have probably noticed that many sellers do not charge Wisconsin sales tax. You are not getting a "sales tax bargain." Most likely, you owe use tax.

If you buy items which would otherwise be subject to sales tax, but the seller doesn't collect the tax, you owe Wisconsin use tax. If you are registered for Wisconsin sales or use tax (hold a seller's permit or consumer use tax registration certificate) you should report use tax owed on your sales and use tax returns.

Persons who are not registered for Wisconsin sales or use tax, including corporations, partnerships, and individuals, should report use tax owed on a consumer use tax return, Form UT-5. However, individuals, instead of using Form UT-5, may report use tax on their Wisconsin income tax return. □

## Package WI-X Available for 1992

Package WI-X contains actual size copies of most 1992 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, inheritance and estate tax, motor fuel tax, sales and use tax, and withholding tax forms.

If you have not yet ordered your 1992 Package WI-X, send your request and \$7 per copy to Shipping and Mailing Section, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903. □

## Certain Federal Tax Laws Don't Apply for Wisconsin for 1992

Wisconsin's income tax law for individuals is based on federal income tax law, with some exceptions. However, changes which Congress makes to federal income tax law do not automatically apply for Wisconsin purposes. The Wisconsin Legislature must adopt new federal tax provisions before they may be used for Wisconsin purposes.

For taxable years beginning in 1992, only federal income tax provisions enacted by December 31, 1991, apply for Wisconsin purposes. This means that the tax provisions contained in the federal Unemployment Compensation Amendments of 1992 (Public Law 102-318, enacted July 3, 1992) and Energy Policy Act of 1992 (Public Law 102-486, enacted October 24, 1992) may not be used for Wisconsin purposes for 1992.

In addition to prohibiting the use of federal tax provisions enacted after December 31, 1991, Wisconsin law also prohibits the use of three other federal provisions for taxable years beginning in 1992, even though they were enacted prior to 1992. These

three Internal Revenue Code (IRC) provisions, which may not be used for Wisconsin purposes for taxable years beginning in 1992, are as follows:

- Self-employed health insurance deduction — IRC sec. 162(L), relating to the deduction for 25% of payments for health insurance costs by self-employed individuals.
- Educational assistance benefit exclusion — IRC sec. 127, relating to the exclusion from gross income for up to \$5,250 of educational assistance benefits furnished by an employer under an educational assistance program. (Note: Refer to the article titled "Educational Assistance Payments May Be Taxable Wages" on page 4 of this Bulletin for more information about this difference.)
- Group legal services exclusion — IRC sec. 120, relating to the exclusion from gross income for employer contributions to or the value of legal services provided under a qualified group legal services plan.

Individuals should use Wisconsin Schedule I to report differences between Wisconsin and federal income and deduction items which result from federal tax laws not applying for Wisconsin. See the article titled "Focus on Forms: Using Schedule I" on page 4 of this Bulletin, for an illustration of the applicable portions of the 1992 Schedule I, and see pages 41

## In This Issue

	Page		Page		Page
Do Mail Order Buyers Owe Use Tax? . . . . .	1	Tips to Speed Refund Processing Incomplete Returns Sent Back to Taxpayers . . . . .	6	How to Obtain Wisconsin Tax Forms . . . . .	13
Package WI-X Available for 1992 . . . . .	1	Avoid Errors on Tax Returns . . . . .	7	How to Obtain Copies of Your Tax Returns . . . . .	13
Certain Federal Tax Laws Don't Apply for Wisconsin for 1992 . . . . .	1	Department Offers Taxpayer Assistance . . . . .	8	Forms 1099-G and 1099-INT Mailed to Taxpayers . . . . .	14
Changes in Temporary Recycling Surcharge for Partnerships . . . . .	2	Tax Publications Available . . . . .	9	Withholding Update Sent to Businesses . . . . .	14
Flow-Through of Tax-Exempt Interest — Retirement Plans . . . . .	3	Farm Losses May Be Limited . . . . .	10	Minnesota Filing Requirements for Wisconsin Residents . . . . .	14
Counties Adopt or Extend County Tax . . . . .	3	CPAs and Accountants Contacted for Use Tax . . . . .	10	Criminal Charges for Failure to File . . . . .	15
Information or Inquiries? . . . . .	3	Sales and Use Tax Treatment of Landscaping Services for Utilities . . . . .	10	Administrative Rules in Process Recently Adopted Rules Summarized . . . . .	16
Focus on Forms: Using Schedule I . . . . .	4	Topical and Court Case Index Available . . . . .	10	Report on Litigation . . . . .	18
Annual Bulletin Index . . . . .	4	Need a Speaker? . . . . .	11	Tax Releases . . . . .	21
Educational Assistance Payments May Be Taxable Wages . . . . .	4	Look for the Loon . . . . .	11	Private Letter Rulings . . . . .	39
Extension of Time to File Franchise and Income Tax Returns . . . . .	5	Electronic Filing Improves Service and Reduces Costs . . . . .	11	Schedule I and Instructions . . . . .	41
Reminder: Use Your Label . . . . .	5	Wisconsin Accepts Substitute Federal Forms . . . . .	12	Sales and Use Tax Report . . . . .	45
Reminder: Quick Refunds Available for Individuals . . . . .	6	New IRS Program Aimed at Nonfilers . . . . .	12	Publication 210 . . . . .	49
				Withholding Tax Update . . . . .	51
				Order Blank . . . . .	53

to 44 for a complete copy of Schedule I and the related instructions for more information. ☐

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## Changes in Temporary Recycling Surcharge for Partnerships

The Department's interpretation of which partnerships are subject to the temporary recycling surcharge has changed as follows:

1. The temporary recycling surcharge applies only to partnerships that are engaged in a "trade or business," as defined in section 162 of the Internal Revenue Code (IRC). Partnerships that are organized for investment purposes only and are not engaged in a trade or business are not subject to the temporary recycling surcharge.

2. Syndicates, pools, joint ventures, or similar organizations that have elected not to be treated as partnerships under IRC section 761(a) are not subject to the surcharge.

The treatment described in (1) and (2) above applies for taxable years beginning in 1992 and retroactively for taxable years ending after April 1, 1991. Partnerships which paid a temporary recycling surcharge for prior years but which meet one of the above exceptions in those years may file an amended 1990 Form S or 1991 Form 3S, as appropriate.

For information about how the temporary recycling surcharge applies to partnerships and other taxpayers, see the 1992 Publication 400, *Wisconsin's*

*Temporary Recycling Surcharge*, which may be obtained from any Department of Revenue office. □

## Flow-Through of Tax-Exempt Interest — Retirement Plans

### Background

A July 21, 1988 decision by the Wisconsin Court of Appeals, District IV, in *Capital Preservation Fund Inc. vs. Wisconsin Department of Revenue*, held that interest from direct obligations of the United States Government retains its tax-exempt character when it passes through a mutual fund. As a result, a mutual fund distribution received by a shareholder is exempt from Wisconsin income tax to the extent it is attributable to U.S. government interest that the mutual fund received.

Subsequently, the department determined that this flow-through of tax-exempt interest principle also applies to individual retirement accounts (IRAs), Keogh retirement plans, and deferred compensation plans. Therefore, a distribution from an IRA, Keogh, or deferred compensation plan which is the direct owner of U.S. government securities, or invests in a mutual fund which holds U.S. government securities, is exempt from Wisconsin income tax to the extent the distribution is attributable to interest from those U.S. government securities.

Tax releases explaining the department's position with respect to these plans were previously published in *Wisconsin Tax Bulletin* issues number 61 (July 1989), 65 (January 1990), and 78 (July 1992). Those three tax releases are now being superseded and clarified by a single tax release which appears beginning on page 21 of this Bulletin.

Questions have been asked as to whether the flow-through of tax-exempt interest principle also applies to distributions from qualified employer-provided retirement plans.

### Department of Revenue Position

It is the department's position that tax-exempt interest does not retain its character when it passes through qualified retirement plans. See Question and Answer 9 in the tax release which begins on page 21.

Application of the flow-through principle to qualified employer-provided retirement plans is currently being litigated in Minnesota. Resolution of that case, or litigation in Wisconsin courts, may provide further guidance on this issue.

Information regarding the outcome of the Minnesota litigation will be provided in a future issue of the *Wisconsin Tax Bulletin*. □

## Counties Adopt or Extend County Tax

Effective January 1, 1993, the ½% county sales and use tax was adopted by Price County, and extended by Douglas and La Crosse Counties.

Price County is the first county to take advantage of a law change, enacted as part of 1991 Wisconsin Act 39, which allows counties to adopt the county tax on January 1, April 1, July 1, or October 1, rather than just April 1 as was previously allowed. See *Wisconsin Tax Bulletin* 73 (August 1991), page 23, for a description of this law change.

La Crosse and Douglas Counties previously adopted the county tax, but provisions in the ordinances stated that the county tax would expire December 31, 1992. However, in 1992, La Crosse County and Douglas

County both enacted ordinances so the county tax would not expire on December 31, 1992.

The December 1992 *Sales and Use Tax Report*, a copy of which can be found on pages 45 to 48 of this Bulletin, explains how the county tax applies to retailers and other persons. It includes a listing of the counties that currently have the county tax. □

## Information or Inquiries?

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

Beverage, Cigarette,	
Tobacco Products . . .	266-6701
Corporation Franchise and	
Income . . . . .	266-1143
Estimated Taxes . . . . .	266-9940
Fiduciary, Inheritance,	
Gift, Estate . . . . .	266-2772
Homestead Credit . . . . .	266-8641
Individual Income . . . . .	266-2486
Motor Fuel . . . . .	266-3223
Sales, Use, Withholding .	266-2776
Audit of Returns: Corporation,	
Individual, Homestead	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

## Focus on Forms: Using Schedule I

Individuals should use Schedule I to report certain differences between Wisconsin and federal tax law. Items affecting the computation of federal adjusted gross income should be reported in Part I. For example, the differences in Wisconsin and federal law discussed in the article titled "Certain Federal Tax Laws Don't Apply for Wisconsin for 1992" on page 1 of this Bulletin, should be reported in Part I, on

line 5 of Schedule I (see line 5 insert below). Items affecting the computation of federal itemized deductions and the Wisconsin itemized deduction credit should be reported in Part II, on line 7 (see Part II insert below).

A complete copy of Schedule I and the related instructions can be found on pages 41 to 44 of this Bulletin.

<b>SCHEDULE I</b>  Wisconsin Department of Revenue	<b>ADJUSTMENTS TO CONVERT 1992 FEDERAL ADJUSTED GROSS INCOME AND ITEMIZED DEDUCTIONS TO THE AMOUNTS ALLOWABLE UNDER THE DECEMBER 31, 1991 INTERNAL REVENUE CODE</b>  Attach to Wisconsin Form 1 or Form 1NPR	<b>1992</b>
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### PART I — FEDERAL ADJUSTED GROSS INCOME

(Read instructions before completing Schedule I)

5. Other adjustments:

Description	COL. I Amount per 1992 federal return	COL. II Amount deter- mined under 12/31/91 IRC	COL. III Difference (Col. II — Col. I)
a.			
b.			
c.			
d.			
e.			
f.			
g.			
h.			

i. Total Difference (combine amounts in Col. III) .....

### PART II — ITEMIZED DEDUCTIONS

(Complete this part only for those federal itemized deductions which may be used in computing the Wisconsin itemized deduction credit.)

7. Adjustments:

Description	COL. I Amount per 1992 federal return	COL. II Amount deter- mined under 12/31/91 IRC
a. Medical expense		
b. Contributions		
c. Job expenses and miscellaneous deductions subject to the 2% of federal adjusted gross income limitation		
d. Other (specify)		
e.		
f.		
g.		
h.		

The amounts in Col. II should be used to compute the Wisconsin itemized deduction credit (Schedule 3 of Form 1 or Schedule 1 of Form 1NPR).

## Annual Bulletin Index

Once each year the *Wisconsin Tax Bulletin* includes an index of materials that have appeared in past Bulletins. The latest index available appears in *Wisconsin Tax Bulletin* 78 (July 1992) and includes information for issues 1 to 75 (January 1992). □

## Educational Assistance Payments May Be Taxable Wages

### Wisconsin Doesn't Follow IRC Section 127

For the tax year 1992, Wisconsin's individual income tax law prohibits the use of Internal Revenue Code (IRC) section 127. This IRC section provides an exclusion from 1992 federal taxable income for up to \$5,250 of benefits an employee receives under an employer's educational assistance program during January 1 through June 30, 1992.

### Effect of Not Following Federal Law

For Wisconsin, educational assistance payments do not qualify for the \$5,250 exclusion under IRC sec. 127. As a result, for Wisconsin purposes employers must treat educational assistance payments made in the tax year 1992 as additional wages to the employee, unless the payment qualifies as a "working condition fringe benefit," as explained below.

Employees who receive educational assistance benefits treated as wages must include the amount of the benefit in taxable income on their 1992 Wisconsin income tax returns. Because IRC sec. 127 expired for the 1992 tax year as of June 30, 1992, Wisconsin and federal treatment of educational assistance benefits only differ for the first six months of

1992. Payments an employer makes for educational assistance benefits after June 30, 1992, are treated the same for Wisconsin and federal purposes for the tax year 1992.

### **Working Condition Fringe Benefit Not Treated as Wages**

IRC sec. 132(d) defines a "working condition fringe benefit" as property or services provided to an employee which, if paid for by the employee, would be deductible by the employee as a trade or business expense. Educational expenses of employees are generally deductible as trade or business expenses if they (1) maintain or improve skills required in the employee's current employment, or (2) are required by the employer or by law as a condition of retaining the employee's job, status, or salary. However, educational expenses are not deductible if they are for education that (1) is needed to meet the minimum requirements for the job, or (2) are part of a program of study which leads to a new trade or business.

For example, payments for review courses to prepare for the bar examination or the certified public accountant (CPA) examination, and courses required as part of an apprenticeship program, do not qualify as a "working condition fringe benefit." Expenses for these courses are not deductible as a trade or business expense because the courses qualify the person for a new profession (in the case of the bar and CPA examination courses), or are needed to meet the minimum requirements for the job (in the case of the apprenticeship program).

Employer-provided educational assistance benefits which qualify as a "working condition fringe benefit" are *not* treated as wages to employees. This applies regardless of whether the employer pays the expenses directly

to the educational organization or reimburses the expenses to the employee.

### **Notify Employee On W-2 Wage Statements**

Employer educational assistance payments made during January 1, 1992, through June 30, 1992, which represent additional wages to an employee for Wisconsin purposes, can be reported to employees by either: (1) including the amount which is taxable for Wisconsin purposes (but not taxable for federal purposes) in Box 25 of Form W-2, or (2) providing employees with a supplemental "Wisconsin only" W-2 with the taxable educational assistance benefits shown in Box 25.

The employee is required to include taxable educational assistance payments in taxable income on his or her 1992 Wisconsin income tax return. If the employee receives such payments and the taxable amount is different for Wisconsin and federal, the employee should use Wisconsin Schedule I (titled "Adjustments To Convert 1992 Federal Adjusted Gross Income And Itemized Deductions To The Amounts Allowable Under The December 31, 1991 Internal Revenue Code").

Employees may have questions as to why educational assistance benefits are taxable for Wisconsin and not for federal. It may be helpful to provide additional information (e.g., flyer) with the W-2 to explain the difference between the Wisconsin and federal treatment of educational assistance benefits during January 1, 1992 to June 30, 1992.

(Note: The information in this article was sent to various accounting and tax practitioner associations in November 1992. They were encouraged to distribute the information to their membership.) □

## **Extension of Time to File Franchise and Income Tax Returns**

Due dates for filing Wisconsin individual, partnership, and fiduciary income tax returns and corporation franchise and income tax returns are determined by Wisconsin Statutes and administrative rules. The Wisconsin Statutes also authorize extensions of time for filing these tax returns.

The Wisconsin Statutes relating to extensions of time to file individual, partnership, and fiduciary (estate and trust) income tax returns were revised for 1992 returns. To be allowed an extension of time to file, individuals and fiduciaries are generally required to make a reasonable estimate of the tax that will be due with their return and pay such amount by the unextended due date of the return.

For further information on extensions of time available for filing individual, partnership, and fiduciary income tax returns and corporation franchise and income tax returns, see the tax release titled "Extension of Time to File Franchise and Income Tax Returns" on page 28 of this Bulletin. □

## **Reminder: Use Your Label**

Computers do a great job of preparing Wisconsin tax returns. However, a computer cannot apply the preprinted address label to the completed return. Preparers and taxpayers should remember to use these address labels, even if they are preparing or filing computerized returns.

Taxpayers who use the preprinted label receive their Wisconsin refund checks faster than those who do not use the label. Corrections to information on the label may be made directly on the label. □

## Reminder: Quick Refunds Available for Individuals

The Department of Revenue will continue its Quick Refund Program for 1992 individual income tax returns processed in 1993. 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 checked for computation and other errors at a later date and, if necessary, an adjustment notice is mailed at that time.

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

- File a signed and completed 1992 Form WI-Z, Form 1A, or Form 1, including all attachments, on or before April 1, 1993.
- Use the department-printed mailing label on which none of the information is changed.
- Have a Wisconsin address on the department-printed mailing label.
- Have a refund due and enter that refund amount, less any amount carried over to 1993 estimated taxes, in the quick refund box which appears at the top of the return. Be sure to enter both dollars and cents.
- Claim no homestead credit or farmland preservation credit, and owe no delinquent taxes or delinquent debts to other state agencies.
- Mail the return to: Quick Refund, P.O. Box 38, Madison, WI 53787.

Approximately 1.7 million refunds were issued in 1992, and over 482,000 of those were quick refunds.

This is an increase of 2.5% over the 470,000 quick refunds issued in 1991. ☐

## Tips to Speed Refund Processing

You can avoid delays in the processing of your Wisconsin income tax return 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 or social security tax withheld, or state tax withheld for another state.
6. Attach the necessary supporting schedules.
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 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. Complete the married couple credit schedule (Form 1, Schedule 4) when claiming this credit.

Many taxpayers claim the credit but don't complete the schedule showing their computation.

10. Attach a completed rent certificate if you are a renter claiming homestead credit (a rent certificate is not necessary if you are claiming only the renters' school property tax credit). ☐

## Incomplete Returns Sent Back to Taxpayers

Many tax returns are sent back to taxpayers each year because of missing schedules or information. In the 1992 processing season (1991 returns and claims) the department sent back 52,000 individual income tax returns, 500 corporation franchise and income tax returns, 880 partnership returns, 40,200 homestead credit claims, and 5,500 farmland preservation credit claims. Common reasons for sending back returns are described below.

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

- Copies of federal tax return and schedules not attached to Form 1 or 1NPR.
- Withholding statements (Form W-2 and Form 1099-R) not attached.
- Married couple credit schedule not completed.
- Form 1NPR (for nonresidents and part-year residents) filed without completed residence questionnaire.
- Other state's tax return not attached, when Tax Paid to Other States claimed.
- Signature(s) missing.

### Corporation Franchise and Income (Forms 4, 5, and 5S)

- Federal employer identification number not filled in.

- Federal Form 1120 or 1120S copy not attached.
- Schedules to support credits (such as manufacturer's sales tax, research, development zone, and farmland tax relief credits) not attached.
- Schedule S (temporary recycling surcharge) on Form 5S not completed.
- Signature(s) missing.

#### **Homestead Credit (Schedule H)**

- Rent certificate and/or tax bill not attached.
- Rent certificate altered or not filled in completely.
- Number of occupants not filled in on rent certificate.
- Rent certificate shows more than one occupant, but claimant claims all rent and does not explain why.
- Copy of proper or correct year's property tax bill not attached.
- Tax bill(s) shows owner(s) other than claimant, or different address.
- Wisconsin tax return, copy of federal return, necessary schedules, or wage statements missing.
- Special instructions for separated spouses not followed.
- Signature(s) missing.

#### **Farmland Preservation Credit (Schedule FC)**

- Ownership not verified, when other owners listed on tax bill.
- Prior year's property tax payment not verified, when tax bill shows delinquent taxes.
- Copies of applicable property tax bills or correct year's tax bills not attached.
- Copy of properly executed farmland preservation agreement not attached.
- No indication made of which improvements are in agricultural district, when agreement or zon-

ing certificate indicates acres are to be excluded.

- Copy of transfer statement not attached, when property subject to farmland preservation agreement transferred to new owner.
- Zoning certificate certified for year of claim not attached.
- Number of acres not filled in.
- Schedule showing property tax computation not attached, when proration is necessary.
- Federal Form 1040 copy or income schedule not attached.

#### **Partnership (Form 3)**

- Federal employer identification number not filled in.
- Copies of federal Form 1065 or Wisconsin Schedule 3K-1 not attached.
- Federal Form 1065 and Schedule K-1 filed without Wisconsin Form 3 and Schedule 3K-1. ☐

### **Avoid Errors on Tax Returns**

Are your tax returns filed without any errors? Many errors on tax returns are discovered each year, either in processing the returns or in subsequent audits by the Department of Revenue. The information below may be helpful to you in preparing your Wisconsin tax return or your clients' returns.

#### ***Errors Discovered in Processing Returns***

Common errors discovered in processing 1991 individual income tax returns include the following:

- Math errors. Over 270,000 income tax returns (10% of the returns processed) were adjusted to correct math errors.
- Incomplete returns. In addition to the 52,000 returns sent back because they were incomplete (see

the preceding related article), processing of thousands of other returns was delayed because of missing information regarding the school or tax district, school property tax credit, earned income credit, itemized deduction credit, or taxes paid to other states.

- Underpayment of estimated tax. Adjustments charging estimated tax underpayment interest were sent to over 38,000 taxpayers.
- Insufficient payments. Thousands of returns were adjusted where taxes were due but no payment or only a partial payment was included. Over 4,500 returns included checks that were returned due to insufficient funds.

#### ***Audit Adjustments***

Errors discovered in auditing Wisconsin tax returns by the department's auditors resulted in the collection of \$137 million in taxes, penalties, and interest in the fiscal year ending June 30, 1992. This includes sales and use taxes of \$62.8 million, income taxes of \$40.4 million, corporation taxes of \$24 million, and other taxes (inheritance, alcohol, tobacco, fuel, etc.) of \$9.8 million. The most common errors, by type of tax, are described below.

#### **Individual and Fiduciary Income Taxes**

- Capital gain or loss reported incorrectly, including failure to apply \$500 loss limitation, to claim 60% capital gain exclusion, and to use correct cost basis.
- Taxable unemployment compensation or social security computed incorrectly.
- Nonbusiness travel and entertainment expenses claimed as business expenses.
- IRA penalty, distribution, or deduction omitted or claimed incorrectly.

## Department Offers Taxpayer Assistance

During the filing season of January through April 15, 1993, 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 are exceptions as noted below.

### Offices Providing Daily Assistance

Location	Address	Telephone No.	Hours
* Appleton	265 W. Northland Ave.	(414) 832-2727	7:45-4:30
* Eau Claire	718 W. Clairemont Ave.	(715) 836-2811	7:45-4:30
* Green Bay	200 N. Jefferson St.	(414) 448-5179	7:45-4:30
* Kenosha	5906 10th Ave., Rm. 106	(414) 653-7100	7:45-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
* Milwaukee	819 N. Sixth St., Rm. 408	(414) 227-4000	7:45-4:30
* Racine	616 Lake Ave.	(414) 638-7500	7:45-4:30
* Waukesha	141 N.W. Barstow St.	(414) 521-5310	7:45-4:30

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

Ashland	Courthouse	NONE	10:00-2:00(a)
Baraboo	1007 Washington	(608) 356-8973	7:45-4:30
Beaver Dam	211 S. Spring St.	(414) 887-8108	7:45-4:30
Elkhorn	300 S. Lincoln St.	(414) 723-4098	7:45-4:30
Fond du Lac	845 S. Main, Ste. 150	(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., Ste. 1B	(715) 386-8224	7:45-4:30
Janesville	101 E. Milwaukee	(608) 758-6190	7:45-4:30(b)
* La Crosse	620 Main St.	(608) 785-9720	7:45-4:30(b)
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-4:30
Madison	545 Zor Shrine Place	NONE	8:00-4:00(c)
Manitowoc	1314 Memorial Dr.	(414) 683-4152	7:45-4:30
Marinette	Courthouse, 1926 Hall Ave.	(715) 732-7565	9:00-12:00
Marshfield	300 S. Peach Ave., Ste. 4	(715) 387-6346	7:45-4:30
Monroe	1518 11th St.	(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., Ste. 5	(715) 392-7985	7:45-4:30
Tomah	1200 McLean Ave.	(608) 372-3256	7:45-11:45
Watertown	600 E. Main St.	(414) 261-7700	7:45-4:30
Waupaca	201½ 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) 335-5380	7:45-4:30
Wisconsin Rapids	2811 8th St. S.	(715) 421-0500	7:45-4:30

\* Open During noon hour

(a) Open Tuesday only, January only

(b) Open Monday, Tuesday, and Wednesday

(c) Open Monday and Wednesday

- Interest or dividend income not reported.
- Office-in-home deduction claimed incorrectly.
- Incorrect filing status used.
- Dependent credit incorrectly claimed for taxpayer and/or spouse.
- Farm loss limitation computed incorrectly.
- Credit for tax paid to another state based on withholding rather than net tax actually paid.
- Amended Wisconsin return not filed to report IRS adjustments to federal return.

## Corporation Franchise and Income Taxes

- Officers' and/or shareholders' personal expenses incorrectly deducted.
- State franchise or income taxes incorrectly deducted.
- Net operating loss carryover, depreciation, or transitional adjustments computed incorrectly.
- Income, deductions, credits, or allowances incorrectly distributed, apportioned, or allocated between related corporations.
- Income of foreign sales corporations (FSCs) not properly allocated.
- Unitary income improperly excluded from apportionable income.
- Manufacturer's sales tax credit or research credits not properly computed.
- Throwback sales not included in computation of sales factor.

## Sales and Use Taxes

- Use tax not reported on taxable property and services stored, used, or consumed in Wisconsin.

- Manufacturer's rebates not included in taxable gross receipts.
- Mandatory tips not included in taxable gross receipts.
- Transportation charges not included in taxable gross receipts.
- Tax not collected by nonprofit organizations on taxable sales.
- Failure to keep required exemption certificates to prove sale was exempt.
- Purchaser improperly giving exemption certificate (e.g., manufacturer, farmer, resale, etc.) for items that do not qualify for exemption.
- Failure to pay tax on taxable canned computer software.
- Contractor adjustments:
  - Buying items without tax which are used in real property construction and then failing to pay use tax.
  - Buying items without tax out-of-state and failing to pay use tax on those items used in Wisconsin.
  - Failing to charge sales tax when acting as a retailer (e.g., installing kitchen cupboards in a restaurant).
  - Failing to charge sales tax on repair of personal property (e.g., repairing a furnace).
  - Failing to pay tax on materials used in construction of real estate for exempt entities (e.g., churches, schools).
- County sales/use adjustments:
  - Failure of seller to recognize that it has nexus in a taxable county and to charge that county's sales tax.
  - Failure to pay county use tax.
  - Failure of contractor to pay county tax on items used in real property construction in a taxable county.

#### Homestead Credit

- AFDC, IRA and deferred compensation deductions, deprecia-

tion, section 179 expense, and unemployment compensation not included in household income.

- Special assessments and charges incorrectly claimed as property taxes.
- Property taxes not properly prorated for homestead owned with others or occupied only part of year.
- Property taxes or rent not reduced for months AFDC received.
- Property taxes before lottery credit incorrectly claimed.
- Total rent incorrectly claimed for jointly occupied homestead.
- Percentage of rent constituting property taxes computed incorrectly.
- Credit looked up incorrectly on computation tables.

#### Farmland Preservation Credit

- Gross pension, depreciation, deferred compensation, and capital gain exclusion not included in household income.
- Total household income computed incorrectly.
- Property taxes computed incorrectly.
- Property taxes not prorated for property owned by or with others.
- Incorrect credit percentage claimed. □

#### Tax Publications Available

The Department of Revenue publishes over 30 publications that are available, free of charge, to taxpayers or practitioners. To order any of the publications, write or call Shipping and Mailing Section, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903 (telephone (608) 266-1961).

#### Number Title of Publication

- |     |  |
|-----|--|
| 102 | Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders    |
| 103 | Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts |
| 104 | Wisconsin Taxation of Military Personnel   |
| 109 | Tax Information for Married Persons Filing Separate Returns and Persons Divorced |
| 111 | How to Get a Private Letter Ruling From the 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        |
| 114 | Wisconsin Taxpayer Bill of Rights  |
| 117 | Guide to Wisconsin Information Returns   |
| 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                                  |
| 205 | Do You Owe Wisconsin Use Tax?  |
| 206 | Sales Tax Exemption for Nonprofit Organizations                                  |
| 207 | Sales and Use Tax Information for Contractors                                    |
| 210 | Sales and Use Tax Treatment of Landscaping                                       |
| 211 | Sales and Use Tax Information for Cemetery Monument Dealers                      |
| 212 | Businesses: Don't Forget About Use Tax   |

- 213 Travelers: Don't Forget About Use Tax
- 214 Do You Owe Wisconsin Use Tax? (Businesses)
- 400 Wisconsin's Temporary Recycling Surcharge
- 500 Tax Guide for Wisconsin Political Organizations and Candidates
- 501 Field Audit of Wisconsin Tax Returns
- 502 Directory of Free Publications
- 503 Wisconsin Farmland Preservation Credit
- 504 Directory for Wisconsin Department of Revenue
- 505 A Taxpayer's Appeal Rights of an Office Audit Adjustment
- 506 Taxpayers' Appeal Rights of Field Audit Adjustments
- 507 How to Appeal to the Tax Appeals Commission
- 508 Wisconsin Tax Requirements Relating to Nonresident Entertainers
- 509 Filing Wage Statements and Information Returns on Magnetic Media
- 600 Wisconsin Taxation of Lottery Winnings
- 601 Wisconsin Taxation of Pari-Mutuel Wager Winnings
- 700 Speakers Bureau presenting ...
- W-166 Wisconsin Employer's Withholding Tax Guide ☐

## Farm Losses May Be Limited

When preparing 1992 income tax returns, don't forget to review farm losses to determine if the deduction for farm losses is limited for Wisconsin.

The amount of farm loss that may be deducted each year is limited if the taxpayer's nonfarm Wisconsin ad-

justed gross income exceeds \$55,000 (\$27,500 if married filing separately).

You can find further information on the Wisconsin farm loss limitations in two tax releases titled "Limitations on Farm Losses" which appear in *Wisconsin Tax Bulletin* 51 (July 1987), page 9, and *Wisconsin Tax Bulletin* 63 (October 1989), page 12. ☐

## CPAs and Accountants Contacted for Use Tax

Accounting firms and self-employed CPAs were sent a letter in November 1992, requesting them to review their records for use tax not previously reported. The letter provided information on use tax requirements and also included a worksheet for computing and remitting previously overlooked use tax.

Wisconsin use tax is imposed on the purchase price of tangible personal property and taxable services that are used, stored, or consumed in Wisconsin, when Wisconsin sales or use tax was not previously paid. A few examples of taxable purchases include reference materials, computer hardware, computer software that is not custom software, gifts or promotional items, and office furniture, equipment, or supplies, as well as shipping and handling charges on these items.

The letter sent to accounting firms and CPAs was part of a use tax self-audit project initiated by the Department of Revenue to achieve voluntary tax compliance. Additional phases of the project will include mailings to other accountants, practitioners, and attorneys. ☐

## Sales and Use Tax Treatment of Landscaping Services for Utilities

Landscaping services are subject to

Wisconsin sales or use tax when performed in lawn and garden areas. This includes lawn, shrub, and tree services performed in residential, commercial, and industrial locations, cemeteries, golf courses, athletic fields, stadiums, parking lots, and other developed areas. Taxable landscaping services include the seeding, sodding, and spreading of top soil in backfilled trenches as a result of installing, repairing, maintaining, or replacing utility transmission or distribution lines in lawn and garden areas.

One type of landscaping service that is not taxable is tree and shrub trimming and defoliation spraying for a utility, for purposes of keeping the overhead transmission and distribution lines free from interference from nearby trees or shrubs or inaccessible to children. This is based on the *Capital City Tree Experts, Inc.* decision by the Circuit Court of Dane County (September 21, 1987).

A copy of Wisconsin Publication 210, which explains the Wisconsin sales and use tax treatment of landscaping services in more detail, appears on pages 49 and 50 of this Bulletin. ☐

## Topical and Court Case Index Available

Are you looking for a convenient way to locate reference material so you can research a particular Wisconsin tax question? The *Wisconsin Topical and Court Case Index* will help you find reference material for use in researching your Wisconsin tax questions. This index references Wisconsin statutes, administrative rules, *Wisconsin Tax Bulletin* articles, tax releases, publications, Attorney General opinions, and court decisions.

The first part of the index, the "Topical Index," gives references to alphabetized subjects for the various taxes,

including individual income, corporation franchise and income, withholding, sales and use, gift, inheritance and estate, cigarette, tobacco products, beer, intoxicating liquor and wine, and motor fuel, special fuel, and general aviation fuel.

The second part, the "Court Case Index," lists Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court decisions by alphabetized subjects for the various taxes.

If you need an easy way to research Wisconsin tax questions, consider subscribing to the *Wisconsin Topical and Court Case Index*. The annual cost is \$14, plus sales tax. The \$14 fee includes a volume published in December, and an addendum published in May.

To order your copy, complete the order blank that appears on page 53 of this Bulletin. The order blank may also be used for subscribing to the *Wisconsin Tax Bulletin* and for ordering the Wisconsin Administrative Code. □

## Need a Speaker?

Are you planning a monthly meeting or training program? The Wisconsin Department of Revenue provides speakers to business, community, and educational organizations.

Department representatives are available to speak on a variety of topics that can be targeted toward your group's particular areas of interest, including:

- New income and corporate tax laws.
- How sales tax affects contractors, landscapers, manufacturers, non-profit organizations, or businesses in general.
- What to expect in an audit.

- Common errors discovered in audits.
- Homestead credit.
- Farmland preservation credit.

To arrange for a speaker, please write to Wisconsin Department of Revenue, Speakers Bureau, P.O. Box 8910, Madison, WI 53708-8910, or call (608) 266-3969. □



## Look for the Loon

*The following article was*

*submitted by the Bureau of Endangered Resources, Wisconsin Department of Natural Resources.*

The loon. Its haunting call echoing over a northern Wisconsin lake is a symbol of all that is wild in our state. It is also the new symbol of Wisconsin's Endangered Resources Fund. The fund is the primary means of support for the Bureau of Endangered Resources which is responsible for protecting our rare plants and animals for future generations. Wisconsin taxpayers can contribute to the fund when preparing their state income tax returns by looking for the symbol of the loon on this year's form.

Thanks in large part to the support of Wisconsin tax practitioners, endangered species were given a shot in the arm in 1992. More than 62,000 taxpayers contributed a total of \$668,000 to the Endangered Resources Fund on their 1991 state tax returns. The fund is used to preserve and manage Wisconsin's 207 endangered and threatened species, nongame animals, and the natural areas they inhabit. From the tiny frosted elfin butterfly to the majestic bald eagle, all benefit from donations to the Endangered Resources Fund.

Last year's contributions were heartening, but the amount remains far shy of the total needed to protect Wisconsin's ever-growing list of rare species. The support of tax practitioners is vital to continuing the success of the Endangered Resources Fund. Practitioners can ensure that this important work will proceed by informing clients of the opportunity to contribute to the fund on their tax forms.

For more information on the Endangered Resources Fund please contact the Bureau of Endangered Resources, Box 7921, Madison, WI 53707, or call (608)266-7012. □

## Electronic Filing Improves Service and Reduces Costs

New technologies and growing public acceptance of electronic data interchange offer an unprecedented opportunity to improve service and reduce costs. Electronic individual income tax return filing is the most immediate example of how emerging technologies can be used.

The key to these new technologies is the development of agreed-upon national standards and guidelines. The Wisconsin Department of Revenue (DOR) is one of several states cooperating with the Internal Revenue Service (IRS) in a Federal/State Electronic Filing program (ELF). This process is designed to test procedures and lay the groundwork for an ongoing electronic tax return filing system.

A pilot electronic filing effort was implemented in the 1992 tax filing season (1991 returns). Three tax practitioners, plus DOR as a transmitter of agency employee returns, volunteered to participate. A total of 492 ELF returns were received and 466 were accepted by DOR (95%). This

was a very small sample of the 2.6 million individual income tax returns filed in 1992.

### Multi-Step Filing Process

The major steps in the process were:

1. The electronic return originator creates a record, using designated software, which includes state and federal income tax return data in two distinct electronic data packets.
2. The record is transmitted over telephone lines to the IRS service center in Austin, Texas.
3. The IRS performs front-end edits and acknowledges receipt or rejects the return.
4. The accepted data packets move into the federal processing stream.
5. The state packet is retrieved by DOR over telephone lines within 24 hours of the federal acknowledgement.
6. Wisconsin performs additional processing edits and acknowledges receipt by FAX or mail (any returns rejected at this point need to be refiled on paper).
7. Wisconsin direct deposits or mails refund checks or the taxpayer pays the amount due by April 15.
8. Taxpayer files Form 8453W, the Wisconsin signature document, and other paper documents, such as W-2s.

Wisconsin forms that can be filed electronically at this time are Form 1, Form 1A, Form WI-Z, Schedule WD, Schedule MT and Schedule 2440W.

The pilot confirmed that electronic filing offers benefits for taxpayers, practitioners and the state.

### Faster Refunds

Taxpayers will enjoy faster refunds. Direct deposits will average 5 working days and mailed checks will average 7 days. There is less chance that an electronically filed return will be adjusted by DOR because front-end edit features of the software catch most errors before returns are filed. The error rate for 1991 ELF returns was only 0.6%, compared to an average of 12.3% for all returns. Taxpayers with taxes due also have the flexibility of filing when the return is prepared but not paying until April 15.

Practitioners benefit from IRS and DOR acknowledgements that returns have been received and accepted. Electronic filing also allows practitioners to obtain prompt refunds for their clients for returns filed as late as April 15. By contrast, quick refund claims must be filed by April 1.

DOR and IRS both improve efficiency by eliminating or reducing many labor-intensive tax return processing steps. These include mail opening, sorting, coding, data entry and filing.

In 1993, DOR will expand the pilot to 272 practitioners who were selected on a first-come, first-served basis, and expects to process up to 50,000 ELF 1992 returns. Service enhancements include priority processing of rejected returns refiled on paper and a help line during the processing season. In future years, further improvements are planned, such as automated acknowledgements and electronic filing of other tax returns.

If you would like more information about these activities, contact Carolyn Larson, DOR's electronic filing coordinator, at (608) 264-6886. □

## Wisconsin Accepts Substitute Federal Forms

Wisconsin requires many individuals and all partnerships and fiduciaries to include a copy of their federal return with their Wisconsin return. The Internal Revenue Service (IRS) accepts, within prescribed guidelines, computer-generated and other substitute tax forms or schedules in lieu of official IRS forms.

To the extent substitute tax forms or schedules are accepted by the IRS, the Wisconsin Department of Revenue also accepts the substitute federal forms.

Taxpayers who file their federal return on the new Form 1040-PC are not required to complete actual federal forms for Wisconsin filing purposes. They should include a copy of Form 1040-PC with their Wisconsin return.

Note: Form 1040-PC is a computer-generated summary, in a 3-column format, of all pertinent data from a taxpayer's return. For most filers, the tax data from the entire return will fit on a single page, which will include a signature area and will be considered the taxpayer's legal return when filed with the IRS. □

## New IRS Program Aimed at Nonfilers

The federal Internal Revenue Service (IRS) has announced that 2,000 of its agents will be assigned to a new program designed to find individuals and businesses that do not file tax returns. The IRS estimates that nonfilers are cheating the federal government out of at least \$7 billion each year.

There are an estimated 7,200 known nonfilers in Wisconsin alone and local

IRS sources suspect there may be many more who are currently unknown to IRS. The Milwaukee District Office of the IRS will work to get these nonfilers back into the tax system.

The new initiative is called the Non-filer Program and aims to secure delinquent returns, and to collect taxes, interest, and penalties due. While this is not an amnesty program, the IRS will help nonfilers who come forward voluntarily by assisting in the preparation of delinquent documents and will consider each case individually - reducing penalties in certain cases and working out installment agreements and offers in compromise based on the taxpayer's ability to pay.

Because information obtained by the IRS will be shared with state tax agencies, those participating in the federal Nonfiler Program should also contact the Wisconsin Department of Revenue to receive necessary state tax forms. Call the IRS toll free at 1-800-829-1040, or contact the nearest Wisconsin Department of Revenue office. □

## How to Obtain Wisconsin Tax Forms

Small supplies of forms can be obtained from any Department of Revenue office. 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 of forms should write to Shipping and Mailing Section, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903. □

## How to Obtain 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, in person, or by FAX. Requests made by telephone will not be honored. The department's response cannot be made by FAX.

Individual income tax returns and homestead credit claims are available for at least the 4 prior tax years. Form 1 and 1NPR income tax returns 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 always available with Forms 1A and WI-Z.

Partnership tax returns and closed files of fiduciary returns filed by trusts are available for at least the 4 prior tax years. Gift tax reports and

withholding statements are available for at least the 5 prior tax years. Corporation or insurance franchise or income tax returns are available for at least the 6 prior tax years. Micro-filmed copies of sales, use, and withholding tax returns are available for at least the 10 prior tax years.

For most 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

Taxpayers or corporation officers 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 no 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 \$4.50 for each return requested. There is an additional fee of 50¢ 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 or FAX requests for copies must include the following:

1. Name(s) on the requested tax return.
2. Social security number or other identification number of the taxpayer, including spouse's name and social security number, if applicable.
3. Type of return and year(s) or period(s) of the tax return being requested.
4. Name and address to which the copies are to be mailed.
5. Signature of the taxpayer, partner, or corporation officer.

### Where to Direct Requests

**Written Requests:** Mail your request to Wisconsin Department of Revenue, Central Files Section, P.O. 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 (for example, a driver's license) is required.

**FAX Requests:** The Department of Revenue's telephone number in Madison for FAX requests is (608) 267-0834. The department's response, however, cannot be made by FAX.

### Questions

If you have questions about obtaining copies of tax returns, you may call

the Department of Revenue in Madison, at (608) 267-1266. ☐

### Forms 1099-G and 1099-INT Mailed to Taxpayers

Federal law requires that the Department of Revenue provide 1992 information returns (Forms 1099-G) to persons who received a Wisconsin income tax refund in 1992 and claimed state income tax payments as an itemized deduction on the federal tax return for the year to which the refund applies. Federal law also requires that information returns (Forms 1099-INT) be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue.

The department will mail approximately 250 Forms 1099-INT and 650,000 Forms 1099-G during January 1993.

Regardless of whether a taxpayer is sent a Form 1099-INT, the taxpayer must report all interest received in 1992 as income on his or her 1992 federal and Wisconsin tax returns.

All or a portion of a state income tax refund from Form 1099-G may also be includable in federal taxable income. However, the state income tax refund should not be included in Wisconsin taxable income.

The Form 1099-G has an explanation area 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, farmland tax relief, and earned income credits; retirement plan penalties; and any other adjust-

ments. The last line shows the refund amount reported to the IRS. ☐

### Withholding Update Sent to Businesses

The annual Withholding Tax Update was sent in December, along with Forms WT-7, (Employer's Annual Reconciliation of Wisconsin Income Tax Withheld from Wages), to employers registered to withhold Wisconsin taxes.

A copy of the Withholding Tax Update can be found on pages 51 and 52 of this Bulletin. ☐

### Minnesota Filing Requirements for Wisconsin Residents

Under Wisconsin's reciprocity agreement with Minnesota, individuals who received income in Minnesota while they were Wisconsin residents in 1992 are not subject to Minnesota income tax, provided:

1. Their only Minnesota income for 1992 was from wages, salaries, tips, fees, commissions, bonuses, or similar earnings for the performance of personal services in Minnesota, and \$5,900 or less from sources other than the performance of personal services.
2. They maintained a place of abode in Wisconsin and customarily returned to it at least once a month in 1992.

Those individuals need to file a Minnesota income tax return only if Minnesota tax was withheld from their pay and they want it refunded. (To avoid having Minnesota tax withheld, Wisconsin residents should file an Application for Exemption from Minnesota Income Tax With-

holding, Minnesota Form MW-R, with their Minnesota employers.)

Wisconsin residents whose gross Minnesota income, other than personal service income, exceeded \$5,900 for 1992, are subject to Minnesota tax and must file a 1992 Minnesota income tax return, Form M-1, and Minnesota Schedule M-1NR. Examples of income subject to Minnesota tax include rent from Minnesota property, gains from the sale of Minnesota property, winnings from gambling in Minnesota, and income from a business conducted partly or entirely in Minnesota. Business income includes personal or professional service income from a taxpayer's business which has employees who do more than incidental duties, or where the sale or delivery of goods is more than an incidental part of the business.

To obtain copies of Minnesota tax forms and instructions (Form M-1 and Schedule M-1NR) or the withholding exemption form (Form MW-R), you may submit a written request to Minnesota Tax Forms, Mail Station 7131, St. Paul, MN 55146-7131. For more information about Minnesota filing requirements, you may phone the Minnesota Department of Revenue's toll-free Help Line (1-800-852-9094). □

## Criminal Charges for Failure to File

A disbarred Milwaukee attorney, Bradley D. Carr, age 47, of 3351 North Lake Drive, was sentenced in December 1992 by Dane County Circuit Court Judge Daniel Moeser and placed on probation for two years, for criminal violations of Wisconsin income tax laws. Carr was ordered to make restitution to the state of all outstanding tax, penalty, and interest totalling \$50,000, serve 200 hours of community service, file

future tax returns timely, and pay fines and court costs of \$1,260.

Carr was charged with two counts of failure to file income tax returns for the years 1988 and 1989. He pled no contest to one count, and the second count was dismissed as part of the plea agreement. The criminal complaint stated that Carr had gross income of over \$346,000 in 1988 and \$100,000 in 1989, and that he has failed to file timely Wisconsin income tax returns since 1984.

In October 1992, an Elm Grove man was charged in Dane County Circuit Court, with two counts of failure to file state income tax returns and two counts of filing fraudulent applications in conjunction with registering motor vehicles.

According to the complaint, David L. Comey, age 45, 705 Sunnyslope Road, failed to file income tax returns for 1989 and 1990. He received over \$50,000 in interest and dividends during these two years and admitted he had not filed income tax returns since 1977.

The complaint further states that during 1989, and again in 1991, Comey falsified Wisconsin motor vehicle registration forms when he titled Mercedes Benz autos he had purchased from private parties. In each case he stated that the purchase price of the auto was \$100, in an apparent attempt to evade the sales tax due on the purchase of the autos.

In November 1992, a former accountant and investment advisor from Neenah was sentenced by Winnebago County Circuit Judge Robert Haase to eight years in prison for bilking real estate investors during the 1980s.

Dale Helengreen, 44, was sentenced to five years for one felony count of

securities fraud and an additional nine months each, all running consecutively, for four counts of tax violations.

He also was fined \$5,000, plus costs and assessments, and ordered to make restitution of \$35,000 to the creditor named in the case he pled no contest to. Judge Haase also directed the state to collect other restitution figures to add to that figure.

Also in November, William C. Peters, 55, of 2313 S. 28th St., Milwaukee, was arrested in Milwaukee on charges of selling untaxed cigarettes. The complaint alleges that Peters, an Air Force retiree, brought untaxed cigarettes at the commissary at the U.S. Army base at Ft. Sheridan, in Illinois, and sold them to customers in the Milwaukee area.

Agents arrested Peters at a Milwaukee convenience store where they allege he had just sold several cartons of untaxed cigarettes. In addition, 53 cartons of untaxed cigarettes were found in Peters' car, according to investigators. While military retirees may purchase untaxed cigarettes at commissaries and post exchanges for personal use, they may not resell them in Wisconsin.

Failure to file a Wisconsin income tax return on time is a crime punishable by a fine of up to \$10,000, imprisonment for up to nine months, or both. Filing a false sales and use tax return in connection with a motor vehicle registration is a crime punishable by a fine of up to \$500, imprisonment for up to 30 days, or both. Selling untaxed cigarettes in Wisconsin is a crime punishable by a fine of up to \$10,000, imprisonment for up to two years, or both.

In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax

liability. Assessment and collection of the taxes, penalties, and interest due follows conviction for criminal violations. □

## Administrative Rules in Process

Listed below are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of January 1, 1993, or at the stage in which action occurred during the period from October 2, 1992, to January 1, 1993.

Each affected rule lists the rule number and name, and whether it is amended (A), repealed (R), repealed and recreated (R&R), or a new rule (NR).

### Rules at or Reviewed by Legislative Council Rules Clearinghouse

- 2.31 Taxation of personal service income of nonresident professional athletes-R
- 11.04 Constructing buildings for exempt entities-A
- 11.15 Containers and other packaging and shipping materials-A
- 11.38 Fabricating and processing-R&R
- 11.68 Construction contractors-A
- 14.03 Household income and income-A

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

- 2.02 Reciprocity-A
- 2.955 Credit for taxes paid to other states-A
- 11.03 Elementary and secondary schools and related organizations-A
- 11.05 Governmental units-A
- 11.08 Medical appliances, prosthetic devices and aids-A

- 11.12 Farming, agriculture, horticulture and floriculture-A
- 11.17 Hospitals, clinics and medical professions-A
- 11.18 Dentists and their suppliers-A
- 11.33 Occasional sales-A
- 11.45 Sales by pharmacies and drug stores-A
- 11.49 Service stations and fuel oil dealers-A
- 11.57 Public utilities-A
- 11.67 Service enterprises-A
- 11.675 Janitorial services-NR
- 11.70 Advertising agencies-R&R
- 11.71 Computer industry-A
- 11.83 Motor vehicles-A
- 11.84 Aircraft-A
- 11.85 Boats, vessels and barges-A
- 11.88 Mobile homes-A
- 11.95 Retailer's discount-A

### Rules Adopted and in Effect (including date of adoption)

- 11.26 Other taxes in taxable gross receipts and sales price-A (1/1/93)
- 11.32 "Gross receipts" and "sales price"-A (1/1/93)
- 11.51 Grocers' guidelist-A (1/1/93)
- 11.68 Construction contractors-A (1/1/93)
- 11.87 Meals, food, food products and beverages-A (1/1/93)
- 11.925 Sales and use tax security deposits-A (1/1/93) □

## Recently Adopted Rules Summarized

Listed below is a summary of recently adopted administrative rules, including new rules and changes to existing rules. In addition to the summary, new rules and substantive amendments to existing rules are reproduced. In the amendments to existing rules, material lined through (lined through) represents deleted text, and underscored (underscored) material represents new text.

This issue includes information about changes to the following sales and use tax rules, adopted effective January 1, 1993: sections Tax 11.26, 11.32, 11.51, 11.68, 11.87, and 11.925.

**Tax 11.26 Other taxes in taxable gross receipts and sales price.** Tax 11.26(2)(intro.), (2)(c), (3)(intro.), and (3)(b) are amended to update language and to reflect the clarification of sec. 77.51(4)(a)4 and (15)(a)4, Wis. Stats., by 1991 Wisconsin Act 39.

**Tax 11.32 "Gross receipts" and "sales price".** Tax 11.32(2), (4)(a), (4)(c), (5)(a), (5)(am), and (5)(b) are amended to update language. Tax 11.32(7) is amended, as follows, to reflect the amendment of sec. 77.51(4)(b)6, Wis. Stats., by 1991 Wisconsin Act 39:

#### 11.32(7) MOBILE HOMES.

Gross receipts and sales price ~~shall~~ do not include 35% of the amount from the sale of a new mobile home, not including leases and rentals, that is a:

(a) A primary housing unit under s. 340.01(29), Stats. ~~This reduction does not apply to leases or rentals.~~

(b) Transported in two unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation.

**Tax 11.51 Grocers' guidelist.** Tax 11.51(2)(a) and (2)(b) are amended to clarify that breakfast pastries and granola bars that are not candy coated are not taxable. In paragraph (a), the phrase ", candy or yogurt coated" is added after "Granola bars" in the list. In paragraph (b), "Breakfast pastries." and "Granola bars, see par. (a)." are added to the list, and the phrase ", see par. (a)" is added after "Peanuts . . ." and "Raisins."

**Tax 11.68 Construction contractors.** Tax 11.68(2)(c) and (3)(f) are created, as follows, to reflect (respectively) the clarification of sec. 77.51(2), Wis. Stats., by 1991 Wisconsin Act 39 and the creation of sec. 77.54(41), Wis. Stats., by 1991 Wisconsin Act 37:

11.68(2)(c) Real property construction activities include the fabrication of modular units designed and fabricated for a specific prefabricated building to be affixed to land at a particular location designated by the purchaser before the fabrication of the modular units. The modular units must have a realty function and must become a permanent accession to realty.

(3)(f) Under s. 77.54(41), Stats., contractors, subcontractors or builders may purchase without sales or use tax building materials, supplies and equipment acquired solely for or used solely in the construction, renovation or development of property that would be exempt under s. 70.11(36), Stats. Section 70.11(36), Stats., exempts property consisting of or contained in a sports and entertainment home stadium, including but not limited to parking lots, garages, restaurants, parks, concession facilities, transportation facilities, and functionally related or auxiliary facilities and structures; including those facilities and structures while they are being built; constructed by, leased to or primarily used by a professional athletic team that is a member of a league that includes teams that have home stadiums in other states, and the land on which that stadium and those structures and facilities are located.

Tax 11.68(6)(a)(intro.) is amended to update language. Tax 11.68(6)(a)9 is amended to reflect the amendment of sec. 77.51(4)(b)6, Wis. Stats., by 1991 Wisconsin Act 39. Tax 11.68(6)(a)10 is amended to clarify the department's position regarding

concrete foundations. Tax 11.68(9)(b) is renumbered 11.68(9)(c), and new Tax 11.68(9)(b) is created to reflect the repeal of sec. 77.51(19), Wis. Stats., and the amendment of sec. 77.51(18), Wis. Stats., by 1991 Wisconsin Act 39. The amended secs. (6)(a)9 and (6)(a)10 and the newly created sec. (9)(b) are as follows:

11.68(6)(a)9. Except as provided in ss. 77.51(4)(b)6 and (15)(b)5 and 77.54(31), Stats., mobile homes located in a mobile home park on land owned by a person other than the mobile home owner. Exemptions are provided by ss. 77.51(4)(b)6 and (15)(b)5 and 77.54(31), Stats., for 35% of the total amount for which a new mobile home that is a primary housing unit, or that is transported in 2 unattached sections if the total size of the combined sections, not including additions and attachments, is at least 984 square feet measured when the sections are ready for transportation, is sold and the full amount for which a used mobile home that is a primary housing unit is sold or purchased. No credit may be allowed for trade-ins and the exemption does not apply to a lease or rental.

(6)(a)10. Advertising signs, except their underground concrete foundations. A foundation is underground even though a portion of the foundation extends above the grade.

(9)(b) If a construction contractor purchases property outside Wisconsin which will be stored in Wisconsin and subsequently used in real property construction activities outside Wisconsin, the contractor shall pay the Wisconsin use tax on those purchases, but may claim a credit against this use tax for any sales or use tax legally due and paid in the state where the purchase was made or property was used prior to being stored in Wisconsin.

Tax 11.68(10)(a), (10)(c), and (12)(c) are amended to update language.

**Tax 11.87 Meals, food, food products and beverages.** Tax 11.87(2)(d)(intro.), (2)(d)3, (2)(f), (2)(i)(intro.), (2)(i)1.(intro.), (2)(i)2.(intro.), and (2)(k)2 are amended to update language. Tax 11.87(3)(a) is amended, as follows, to update language and to reflect the amendment of sec. 77.54(20)(c)4, Wis. Stats., by 1991 Wisconsin Act 39:

11.87(3)(a) *Health care facilities.* Meals, food, food products or beverages sold on their premises by hospitals, sanatoriums, nursing homes, retirement homes or day care centers registered under ch. 48, Stats. However, if an affiliated organization sells the items, the exemption ~~shall~~ does not apply.

Tax 11.87(3)(b) and (3)(d) are amended to update language. Tax 11.87(3)(e) is created, as follows, to reflect the department's position regarding supervised boarding facilities:

11.87(3)(e) *Supervised boarding facilities.* The portion of the monthly fee charged by a supervised boarding facility for low income adults who are receiving or are eligible for social security, supplemental social security, veterans administration or other disability and retirement benefits reflecting the value of meals provided.

**Tax 11.925 Sales and use tax security deposits.** Tax 11.925(1) and (2)(b) are amended to update language. Tax 11.925(3)(a)3 is repealed to reflect the department's position with respect to third party guarantees. Tax 11.925(3)(b)1, (5)(c), (5)(d)4, and (5)(d)5 are amended to update language. □



## Report on Litigation

*Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.*

The following decisions are included:

### Individual Income Taxes

Farm losses — limitation —  
1986 and thereafter

*Dennis L. and Janet Oliver*  
(p. 18)

Indians — marital property law

*Lee A. and Beverly J. Anderson* (p. 18)

Indians — other

*John A. Anderson* (p. 19)

Tax Appeals Commission —  
class action claims —  
prospective rulings

*J. Gerard and Delores M. Hogan, et al.* (p. 19)

Sales and Use Taxes

Retailer — defined

*Joseph Sanfelippo* (p. 20)

### INDIVIDUAL INCOME TAXES

**— Farm losses — limitation — 1986 and thereafter.** *Dennis L. and Janet Oliver vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, June 29, 1992). The issue in this case is whether the department correctly determined the amount of farm loss subject to limitation.

The department made adjustments to the taxpayer's 1986 and 1988 income tax returns, applying a farm loss limitation to each, which resulted in a partial disallowance of losses claimed and an additional assessment of income taxes. The department limited the taxpayers' 1986 farm loss to \$12,500 and the 1988 farm loss to \$15,000.

The taxpayers argue that their net profit from horses and their ordinary gain from the sale of horses should be used to offset their loss from livestock and grain. This, they contend, would produce a net loss within the \$12,500 loss limitation.

The taxpayer's argument relies on sec. 71.05(1)(a)26, Wis. Stats. (1985-86), which provides for an addition to federal adjusted gross income for "combined net losses exclusive of net gains ... incurred in the operation of a farming business." They assert that the phrase "combined net losses" requires a netting of all ordinary income and loss items relating to the farming operation.

The department replies that the governing statute is sec. 71.05(1)(a)26, Wis. Stats., as amended by 1987 Wisconsin Act 27, which provides that the add back to federal adjusted gross income is for "combined net losses, exclusive of net gains from the sale or exchange of capital or business assets and exclusive of net profits ... incurred in the operation of a farming business ..."

The Commission concluded that sec. 71.05(1)(a) 26, Wis. Stats., as amended by 1987 Wisconsin Act 27 first applies to taxable year 1986, and

the taxpayers are not allowed an offset as sought against the department's 1986 farm loss disallowance. The taxpayers failed to show that the department's 1988 assessment was incorrect in any manner.

The taxpayers have not appealed this decision. □

**— Indians — marital property law.** *Lee A. and Beverly J. Anderson vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 28, 1992). The issues in this case are:

- A. Whether the state can tax, as marital income imputed to a non-Indian spouse, one-half of the income earned on-reservation by an Indian resident of the reservation.
- B. Whether the Wisconsin Marital Property Act, Chapter 766, Wis. Stats., applies where one spouse is an Indian and the couple lives on that spouse's reservation within Wisconsin.

This case concerns income earned by the Andersons during the years of 1986 through 1989. The following facts pertain to all of the years at issue.

Beverly J. Anderson is an enrolled member of the Oneida Tribe of Indians of Wisconsin, a federally recognized Indian tribe, and is married to Lee A. Anderson, a non-Indian.

The Andersons were domiciled and resided on the Oneida Indian Reservation, and Beverly J. Anderson's

reported income consisted entirely of wages earned by her on the Oneida Indian Reservation, rental income from property owned by her on said reservation, and her interest and pension income. Lee A. Anderson's wage income was earned by him solely outside the Oneida Indian Reservation and exceeded Beverly's income from all sources.

The Andersons reported as due and paid the tax due on the income earned by Lee, the non-Indian spouse, but did not pay tax on any portion of the income earned by Beverly.

The Oneida tribe of Indians have not acted to remove the tribe from the operation of the Wisconsin marital property law. The Andersons did not enter into a marital property agreement providing that Beverly's wage and other income was her individual property and that Lee did not have an undivided one-half interest in such income; nor did they enter into any similar agreement respecting Lee's income and Beverly's interest therein. No court order existed that provided that Lee did not have a marital property interest in Beverly's income, nor did any similar court order exist respecting Beverly's marital property interest in Lee's income.

The Commission concluded:

- A. Although the Wisconsin Marital Property Act, Chapter 766, Wis. Stats., may give Lee a one-half interest in Beverly's income earned on the reservation, it cannot change the character of such income to become instead income earned by a non-Indian.
- B. Because the income earned by Beverly retains its character as reservation income earned by a reservation Indian, it is exempt from state taxation under federal law notwithstanding the Wisconsin

Marital Property Act, Chapter 766, Wis. Stats.

The department has not appealed this decision. □

# Indians — other.

*John A. Anderson vs. Wisconsin Department of Revenue* (Wisconsin Supreme Court, June 23, 1992) This is a petition for review of a decision of the Court of Appeals, District III, which held that the taxpayer's income is subject to state income tax. See *Wisconsin Tax Bulletin* 74, page 12, for a summary of that decision.

The issue in this case is whether the state of Wisconsin has the authority to tax the income of a member of the Lac Courte Oreilles Band of the Lake Superior Chippewa Indians (the tribe), earned from tribal educational activities conducted on the Lac Courte Oreilles reservation, when the member lives off the reservation.

The taxpayer is an enrolled member of the tribe and did not file Wisconsin income tax returns for the years 1980 through 1983. During those years, the taxpayer lived in Hayward, Wisconsin, and was employed in various educational capacities by the tribe on the reservation.

The department issued a notice of assessment against the taxpayer based upon the department's estimate of his income for the years 1980 through 1983. The taxpayer subsequently filed Wisconsin individual income tax returns for these years. On those returns, he identified his investment income and outside speaking income as taxable by the state, but subtracted his wages earned on the reservation as nontaxable.

The taxpayer argues that Wisconsin's ability to tax his on-reservation income is preempted by federal law,

that the tax places an impermissible burden on the tribe and infringes on the tribe's sovereignty, and that the tax is contrary to the Supreme Court's decision in *McClanahan vs. Arizona State Tax Comm'n*, 411 U.S. 164 (1973).

The department responds that because the taxpayer is a resident of the state and not the reservation, his income is subject to taxation; that the state's ability to tax the taxpayer's income is not preempted by federal law; that the tax does not impermissibly burden the tribe nor infringe upon the tribe's sovereignty; and that the tax does not violate *McClanahan*.

The Supreme Court concluded that the tax on the taxpayer's income does not place an impermissible burden on the tribe and does not interfere with the tribe's sovereignty. The tax does not violate *McClanahan*, since the term "reservation Indian" refers to an Indian living on the reservation.

The taxpayer has appealed this decision to the United States Supreme Court. □

# Tax Appeals Commission — class action claims —

**prospective rulings.** *J. Gerard and Delores M. Hogan, et al., vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, October 28, 1992.) There are two issues in this ruling and order on motions:

- A. Can Wisconsin Tax Appeals Commission rulings on refund claims ever be "prospective"?
- B. Can the Commission hear class action tax claims?

The taxpayers filed a refund claim for 1988 on April 17, 1989, and an amended refund claim for 1982-1988 on April 16, 1990. They argued that

Wisconsin, like Michigan in *Davis v. Michigan Dept. of Treasury*, had wrongfully and unconstitutionally collected income taxes on federal retirement benefits while simultaneously exempting the retirement benefits of certain retired state and government local employees.

The taxpayers' amended refund claim added as additional claimants all members of the class that they had been certified to represent in separate court litigation. The amended refund claim was signed by the lawyer authorized to represent the class. The state denied both the taxpayers' and the class claim on the grounds that the law made no provision for class tax refund claims. See *Wisconsin Tax Bulletin 75*, January 1992, for a summary of the Wisconsin Supreme Court decision (June 26, 1991) in *Hogan et al. vs. Wisconsin Department of Revenue*. The United States Supreme Court denied the taxpayers' petition for review of the Wisconsin Supreme Court decision, on January 13, 1992.

The Commission upheld the taxpayers' motion to strike the department's argument that refund claims can only be applied prospectively, and it overruled the department's motion for dismissal of the class action. The Commission concluded:

- A. Wisconsin Court or Commission decisions upholding refund claims or assessments are always retroactive and never prospective.
- B. Since agents can act for principals in meeting statutory requirements

imposed on their principals, the class refund claim was properly filed at the Department of Revenue, and the department and Commission have jurisdiction to rule on the class claim. □

## SALES AND USE TAXES

### ■ Retailer — defined.

*Joseph Sanfelippo vs. Wisconsin Department of Revenue*, (Court of Appeals, District IV, July 9, 1992). This is an appeal from an order of the Circuit Court of Dane County, which concluded that the transactions between the taxpayer and his drivers are not taxable. For a summary of that decision, see *Wisconsin Tax Bulletin 71*, page 12.

The issue is whether the taxpayer's receipts from taxicabs leased to drivers are subject to sales tax. During the years at issue, 1981-84, the taxpayer orally leased his cabs to drivers for \$100 to \$125 per week. He exercised no control over the drivers and took no share of their fares. They paid for the gas and some maintenance.

The taxpayer argues that his leases to cab drivers are not taxable because each transfer is for the purpose of "resale" under sec. 77.52(1), Wis. Stats., since the drivers use the cabs to serve the passenger public. He relies on *Dept. of Revenue v. Milwaukee Refining Corp.*, 80 Wis.2d 44, 257 N.W.2d 855 (1977).

The taxpayer maintains that when he leases a cab to a driver, that is not the "final and ultimate employment"

of the cab. The "final and ultimate employment" occurs, he asserts, when a driver transports a passenger in exchange for a fare. This is when the cab is withdrawn from the marketplace of goods and services.

Finally, the taxpayer asserts that the department had once taken the position that cab owners who had an employer-employee relationship with their drivers could not be subject to the sales tax. In 1974, the Wisconsin Department of Industry, Labor and Human Relations, for unemployment compensation purposes, ruled that the taxpayer was in such a relationship. The taxpayer argues that these two positions, taken together, render the statute ambiguous as applied to him.

The Court of Appeals reversed the Circuit Court's decision, concluding that the lease payments are sales at retail and are subject to sales tax. The taxpayer's drivers do not resell, release, or sublease the cabs. His drivers do not transfer ownership of, title to, or possession of the cabs to passengers.

The Court of Appeals also concluded that sec. 77.51(14)(j), Wis. Stats., was not ambiguous as it applied to the taxpayer. It applies to tangible personal property, including cabs, and the record fails to disclose that the department had once taken the position that the taxpayer's transactions were not subject to tax.

The taxpayer appealed this decision to the Wisconsin Supreme Court, which denied the petition for review. □



## 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. Distributions From IRAs, Keoghs, and Deferred Compensation Plans Which Invest in U.S. Government Securities (p. 21)
2. Short Period Returns as a Result of Bankruptcy (p. 25)
3. Taxation of Indians — Wisconsin Individual Income Tax (p. 28)

### Individual Income and Corporation Franchise and Income Taxes

4. Extension of Time to File Franchise and Income Tax Returns (p. 28)

### Sales and Use Taxes

5. Ambulances and Rescue Vehicles Sold to Volunteer Fire Departments (p. 33)
6. Application of Use Tax As a Result of *Morton Buildings, Inc.* Decision (p. 33)
7. Common or Contract Carrier Exemption for Limousines (p. 36)
8. Exemption for Custom-Made Wigs and Hairpieces (p. 36)
9. Sales of Building Materials to Exempt Entities by Supplier Who Is the Subcontractor (p. 37)
10. Sludge Trucks Used at Industrial Waste Treatment Facility (p. 38)

## INDIVIDUAL INCOME TAXES

### 1 Distributions From IRAs, Keoghs, and Deferred Compensation Plans Which Invest in U.S. Government Securities

**Statutes:** Section 71.05(6)(b)1, Wis. Stats. (1989-90)

**Note:** This tax release supersedes the tax release titled "Distributions From IRAs Which Invest in U.S. Government Securities" which appeared in *Wisconsin Tax Bulletin* 61 (July 1989), page 13, and the tax release titled "Distributions From Keogh and Deferred Compensation Plans" which appeared in *Wisconsin Tax Bulletin* 65 (January 1990), page 17, to consolidate and clarify the department's position by providing a more detailed explanation. No change in policy is intended.

This tax release also supersedes the tax release titled "Rollover of a Retirement Plan Distribution Which Includes U.S. Government Interest to an IRA" which appeared in *Wisconsin Tax Bulletin* 78 (July 1992), page 13, to limit the scope to distributions from IRAs, Keoghs, and Deferred Compensation Plans.

**Background:** Federal law (31 USCS § 3124) prohibits states from taxing interest on United States Government obligations. Section 71.05(6)(b)1, Wis. Stats. (1989-90), provides a subtraction from federal adjusted gross income for U.S. Government interest when computing Wisconsin taxable income.

A July 21, 1988, decision by the Wisconsin Court of Appeals, District IV, in *Capital Preservation Fund, Inc. vs. Wisconsin Department of Revenue*, held that interest from direct obligations of the United States Government retains its tax-exempt character when it passes through a mutual fund. As a result, a mutual fund distribution received by a shareholder is exempt from Wisconsin income tax to the extent it is attributable to U.S. government interest that the mutual fund received.

**Policy:** The flow-through of tax-exempt interest principle applies to (1) individual retirement arrangements (IRAs), (2) Keogh retirement plans, and (3) deferred compensation plans (such as Internal Revenue Code section 401(k), 403(b), and 457 deferred compensation plans). Therefore,

a distribution from an IRA, Keogh, or deferred compensation plan which is the direct owner of U.S. government securities or invests in a mutual fund which holds U.S. government securities is exempt from Wisconsin income tax to the extent the distribution is attributable to interest from those U.S. government securities.

It is the department's position that tax-exempt interest does not retain its character when it passes through qualified retirement plans other than the three plans identified in the preceding paragraph. See Question and Answer 9 below. (Note: As of January 1993, application of the flow-through principle to a qualified employer-provided plan is being litigated in Minnesota. Resolution of that case, or litigation in Wisconsin courts, may provide further guidance on this issue.)

**Facts and Question 1:** A taxpayer establishes an individual retirement account (IRA). The amounts contributed to the IRA are invested in securities issued by the United States Government (e.g., U.S. Treasury bonds).

When amounts are withdrawn from this IRA, will a portion of the amount withdrawn constitute interest from a United States Government security which is exempt from Wisconsin income tax?

**Answer 1:** Yes. The portion of the amount withdrawn from the IRA which is attributable to interest from U.S. Government securities may be excluded from Wisconsin taxable income. An individual who receives distributions from an IRA which either (1) directly owns U.S. Government securities, or (2) owns shares of a mutual fund which invests in U.S. Government securities, is considered to have received exempt interest from a U.S. Government obligation.

**Facts and Question 2:** A taxpayer establishes an IRA at a bank. The amounts contributed to the IRA are invested in bank certificates of deposit. The bank receives interest income from its own investment in U.S. Government securities.

When amounts are withdrawn from this IRA, will any portion of the amount withdrawn constitute interest from U.S. Government securities which is exempt from Wisconsin income tax?

**Answer 2:** No. In this situation, the IRA is not the direct owner of the U.S. Government securities. U.S. Government interest received by the bank does not pass through as exempt U.S. interest to the owner of the IRA.

**Facts and Question 3:** A taxpayer establishes an IRA by purchasing an annuity contract from a life insurance company. The life insurance company receives interest income from its own investment in U.S. Government securities.

When amounts are withdrawn from this IRA, will any portion of the amount withdrawn constitute interest from U.S. Government securities which is exempt from Wisconsin income tax?

**Answer 3:** No. In this situation, the IRA is not the direct owner of the U.S. Government securities. U.S. Government interest received by the insurance company does not pass through as exempt U.S. interest to the owner of the IRA.

**Question 4:** 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 4:** 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. (1989-90), pursuant to 31 USCS § 3124, provided the plan is a "qualified retirement plan." The plan must be the direct owner of the U.S. Government securities or own shares of a mutual fund which invests in U.S. Government securities.

**Facts and Question 5:** The taxpayer received a total distribution from a 401(k) deferred compensation plan. The assets of the 401(k) plan had been partially invested in U.S. Government securities. The taxpayer has records to show what portion of the distribution is attributable to interest from U.S. Government securities. Within the allowable time period, the taxpayer rolls over the distribution to an IRA which does not invest in U.S. Government securities.

When amounts are withdrawn from this IRA, does any portion of the amount withdrawn constitute interest from U.S. Government securities which is exempt from Wisconsin income tax?

**Answer 5:** Yes. The U.S. Government interest portion of the distribution from the 401(k) plan retains its tax-exempt character when it is rolled over to the IRA. The portion of the amount withdrawn from the IRA which is attributable to the interest from U.S. Government securities which was

included in the 401(k) plan distribution is exempt from Wisconsin income tax.

**Question 6:** When U.S. Government interest is accumulated in an IRA, what portion of a distribution from the IRA is considered U.S. Government interest?

**Answer 6:** The portion of an IRA distribution which is considered U.S. Government interest is based on the following formula:

Amounts distributed from all IRAs during the year	x	Total U.S. Government interest received by the IRAs for all years minus the amounts of U.S. Government interest withdrawn in prior years
		Total value of all IRAs at the end of the year plus amounts distributed during the year

The following worksheet can be used to determine the portion of an IRA distribution which is considered U.S. Government interest. If the taxpayer has more than one IRA, they must be considered together, as if they were a single IRA, when completing the worksheet.

1. Amounts distributed from all IRAs during the year \$ \_\_\_\_\_
2. Total U.S. Government interest received by the IRAs for all years minus the amounts of U.S. Government interest withdrawn in prior years \$ \_\_\_\_\_
3. Total value of all IRAs at end of year plus amount on line 1 \$ \_\_\_\_\_
4. Divide line 2 by line 3. Enter decimal figure \_\_\_\_\_
5. Multiply line 1 by line 4. This is the amount of the IRA distribution which is considered U.S. Government interest \$ \_\_\_\_\_

**Example 1:** A taxpayer has an IRA which has a fair market value of \$40,000 on December 31, 1991. Over the years, the taxpayer contributed \$25,000 of deductible contributions to the IRA and the IRA was credited with \$10,000 of interest from U.S. Government securities and \$11,000 of other interest. During 1991, the taxpayer received a distribution of \$6,000 from the IRA. The taxpayer did not receive any distributions in prior years.

The Wisconsin subtraction for U.S. Government interest for 1991 is \$1,304.40, computed as follows:

1. Amounts distributed from all IRAs during the year \$ 6,000.00
2. Total U.S. Government interest received by the IRAs for all years minus the amounts of U.S. Government interest withdrawn in prior years \$10,000.00
3. Total value of all IRAs at end of year plus amount on line 1 (\$40,000.00 + \$6,000.00) \$46,000.00
4. Divide line 2 by line 3 .2174
5. Multiply line 1 by line 4. This is the amount of the IRA distribution which is considered U.S. Government interest \$ 1,304.40

**Example 2:** During 1992, the taxpayer in Example 1 receives an additional distribution of \$8,000 from the IRA. No additional contributions are made to the IRA during 1992. Interest income credited to the IRA during 1992 is \$4,000 of which \$1,800 is interest from U.S. Government securities and \$2,200 is other interest. The fair market value of the IRA on December 31, 1992, is \$36,000.

The Wisconsin subtraction for U.S. Government interest is \$1,908.00, computed as follows:

1. Amounts distributed from all IRAs during the year \$ 8,000.00
2. Total U.S. Government interest received by the IRAs for all years minus the amounts of U.S. Government interest withdrawn in prior years (\$10,000.00 + \$1,800.00 - \$1,304.40) \$10,495.60
3. Total value of all IRAs at end of year plus amount on line 1 (\$36,000.00 + \$8,000.00) \$44,000.00
4. Divide line 2 by line 3 .2385
5. Multiply line 1 by line 4. This is the amount of the IRA distribution which is considered U.S. Government interest \$ 1,908.00

**Question 7:** If an IRA which was funded with both deductible and nondeductible contributions accumulates U.S. Government interest, what portion of a distribution from the IRA is considered U.S. Government interest?

**Answer 7:** The following worksheet may be used when nondeductible contributions have been made to an IRA which invests in U.S. Government securities.

1. Amounts distributed from all IRAs during the year \$ \_\_\_\_\_
2. Total nondeductible contributions and U.S. Government interest received by the IRAs for all years minus any tax-free withdrawals in prior years \$ \_\_\_\_\_
3. Total value of all IRAs at end of year plus amount on line 1 \$ \_\_\_\_\_
4. Divide line 2 by line 3. Enter decimal figure \_\_\_\_\_
5. Multiply line 1 by line 4. This is the total amount not taxable for Wisconsin \$ \_\_\_\_\_
6. Subtract line 5 from line 1. This is the amount of the IRA distribution that must be included in Wisconsin income \$ \_\_\_\_\_
7. Amount of IRA distribution included in federal adjusted gross income \$ \_\_\_\_\_
8. Subtract line 6 from line 7. This is the amount of the IRA deduction which is considered U.S. Government interest \$ \_\_\_\_\_

**Example:** A taxpayer has an IRA which has a fair market value of \$60,000 on December 31, 1991. Over the years, the taxpayer contributed \$40,000 of deductible contributions and \$2,000 of nondeductible contributions to the IRA, and the IRA was credited with \$20,000 of interest from U.S. Government securities and \$8,000 of other interest. During 1991, the taxpayer received a distribution of \$10,000 from the IRA. Of this amount, \$9,700 is included in federal adjusted gross income. The taxpayer did not receive any distribution in prior years.

The Wisconsin subtraction for U.S. Government interest for 1991 is \$2,843.00, computed as follows:

1. Amounts distributed from all IRAs during the year \$10,000.00
2. Total nondeductible contributions and U.S. Government interest received by the IRAs for all years minus any tax-free withdrawals in prior years \$22,000.00

3. Total value of all IRAs at end of year plus amount on line 1 (\$60,000.00 + \$10,000.00) \$70,000.00
4. Divide line 2 by line 3 .3143
5. Multiply line 1 by line 4. This is the total amount not taxable for Wisconsin \$ 3,143.00
6. Subtract line 5 from line 1. This is the amount of the IRA distribution that must be included in Wisconsin income \$ 6,857.00
7. Amount of IRA distribution included in federal adjusted gross income \$ 9,700.00
8. Subtract line 6 from line 7. This is the amount of the IRA distribution which is considered U.S. Government interest \$ 2,843.00

**Question 8:** 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 the formula used for IRAs?

**Answer 8:** Yes. The formula used to determine what portion of an IRA distribution is U.S. Government interest should also be used to determine what portion of a Keogh plan or deferred compensation plan distribution is U.S. Government interest.

**Facts and Question 9:** The taxpayer is a retired employee of Corporation X. He receives retirement benefits from Corporation X's retirement system. The retirement system receives a portion of its investment income from U.S. Government securities.

Does any portion of the retirement benefit constitute interest from U.S. Government securities which is exempt from Wisconsin income tax?

**Answer 9:** No. Tax-exempt interest does not retain its character when it passes through qualified retirement plans (except IRAs, Keoghs, and deferred compensation plans, as indicated in the Policy section above). Therefore, no portion of the retirement benefit the taxpayer receives from Corporation X's retirement system may be treated as nontaxable U.S. Government interest. ☐

## 2 Short Period Returns as a Result of Bankruptcy

**Statutes:** Sections 71.03(3) and 71.05(5) and (22)(b)3, Wis. Stats. (1989-90)

**Background:** If an individual debtor files for bankruptcy under Chapter 7 (liquidation) or 11 (reorganization) of the federal Bankruptcy Code, a separate "estate" is created consisting of property that belonged to the debtor before the filing. The bankruptcy estate is a new taxable entity, completely separate from the individual.

Generally, an individual's tax year does not change when the bankruptcy petition is filed. However, an individual debtor who files for bankruptcy under Chapter 7 or 11 and who has assets other than those treated as exempt property may, for federal tax purposes, elect to end his or her tax year on the day before the filing of the bankruptcy case. If this choice is made, the individual's tax year is divided into two "short" tax years of less than 12 months each. The first year ends on the day before the filing date, and the second year begins with the filing date and ends on the date the individual's tax year normally ends. Section 1398(d), Internal Revenue Code (IRC).

The taxable income for the short period must be placed on an annual basis by multiplying taxable income for the short period by 12, and dividing the result by the number of months in the short period. The total tax is then multiplied by the number of months in the short tax year and divided by 12. Section 443(b)(1), IRC.

Wisconsin law provides that if an individual or fiduciary files a federal income tax return for a fractional part of the year, he or she must file a Wisconsin return for that fractional year. Section 71.03(3), Wis. Stats. (1989-90). Wisconsin taxable income is also placed on an annual basis using the federal method in sec. 443(b)(1), IRC. Section 71.05(5), Wis. Stats. (1989-90). An individual who files a short period return may not claim the Wisconsin standard deduction. Section 71.05(22)(b)3, Wis. Stats. (1989-90).

This tax release provides information on reporting certain Wisconsin credits and adjustments and the Wisconsin alternative minimum tax on a short period return. Further information on bankruptcy may be found in the federal Internal Revenue Service Publication 908, *Bankruptcy and Other Debt Cancellation*. Further information on short period returns can be found in Internal Revenue Service Publication 538, *Accounting Periods and Methods*.

**Question 1:** Where are nonrefundable credits, such as the school property tax credit, dependent credit, senior citizen credit, itemized deduction credit, and married couple credit, included in the computation of net tax for a short period return, and how are these credits computed?

**Answer 1:** Any nonrefundable credit that is based on an income or deduction amount is computed upon the amount of related income or deduction annualized separately. The computed credit offsets the gross tax on the basis of the annualized taxable income. This results in an annualized net tax which is then prorated for the number of months in the short period. (Refundable credits are addressed in questions 5 through 7.)

**Example 1:** A single taxpayer has \$5,000 of wages for the short period January 1, 1991, to March 31, 1991. During the short period, the taxpayer paid \$1,000 of property taxes. The taxpayer's net tax is computed as follows:

Taxable income for the short period	\$ 5,000.00
Multiply by 12	<u>x 12</u>
	\$ 60,000.00
Divide by months in short period	<u>÷ 3</u>
Annualized income	\$ 20,000.00

Gross tax on annualized income	\$ 1,205.25
Less school property tax credit*	<u>200.00</u>
Annualized net tax	\$ 1,005.25
Prorate for months in short period	<u>x 3/12</u>
Net tax for short period	\$ 251.31

\* Computation of school property tax credit:

Property taxes for short period	\$ 1,000.00
Multiply by 12	<u>x 12</u>
	\$ 12,000.00
Divide by months in short period	<u>÷ 3</u>
	\$ 4,000.00
Maximum property taxes allowed	\$ 2,000.00
Credit per table	\$ 200.00

**Example 2:** A single taxpayer has \$8,000 of wages for the short period January 1, 1991, to May 31, 1991. The taxpayer has one dependent child. The taxpayer's net tax is computed as follows:

Taxable income for the short period	\$ 8,000.00
Multiply by 12	<u>x 12</u>
	\$ 96,000.00
Divide by months in short period	<u>÷ 5</u>
Annualized income	\$ 19,200.00

Gross tax on annualized income	\$ 1,149.81
Less dependent credit*	<u>50.00</u>
Annualized net tax	\$ 1,099.81
Prorate for months in short period	<u>x 5/12</u>
Net tax for short period	\$ 458.25

\* Any dependent credit or senior citizen credit is not annualized since these credits already reflect the allowable credit for the entire year.

**Example 3:** A single taxpayer has wages of \$5,000 for the short period January 1, 1991, to March 31, 1991. The taxpayer paid investment interest of \$500 during the short period that may be used in computing the itemized deduction credit. The taxpayer's net tax would be computed as follows:

Income for the short period	\$ 5,000.00
Multiply by 12	<u>x 12</u>
	\$ 60,000.00
Divide by months in short period	<u>÷ 3</u>
Annualized taxable income	\$ 20,000.00

Gross tax on annualized income	\$ 1,205.25
Itemized deduction credit*	<u>60.00</u>
Annualized tax	\$ 1,145.25
Prorate tax for short period	<u>x 3/12</u>
Net tax for short period	\$ 286.31

\* Computation of itemized deduction credit:

Investment interest for short period	\$ 500.00
Multiply by 12	<u>x 12</u>
	\$ 6,000.00
Divide by months in short period	<u>÷ 3</u>
	\$ 2,000.00

Limitation on investment interest for 1991	\$ 1,200.00
Less standard deduction	<u>-0-</u>
	\$ 1,200.00
Multiply by 5%	<u>x .05</u>
Annualized credit	\$ 60.00

**Example 4:** A married couple (spouse has joined in the election to end the tax year) file a joint return for the short period January 1, 1991, to June 30, 1991. The husband has wages of \$10,000 for the short period and the wife has wages of \$8,000 for the short period. During the short period, the husband contributed \$1,500 to his IRA. The net tax on the joint return is computed as follows:

Taxable income for the short period	\$ 16,500.00
Multiply by 12	<u>x 12</u>
	\$198,000.00
Divide by months in short period	<u>÷ 6</u>
Annualized income	\$ 33,000.00

Gross tax on annualized income	\$ 2,045.90
Less married couple credit*	<u>300.00</u>
Annualized net tax	\$ 1,745.90
Prorate for months of short period	<u>x 6/12</u>
Net tax for short period	\$ 872.95

\* Computation of married couple credit:

	Husband	Wife
Annualized earned income	\$ 20,000	\$ 16,000
(husband - \$10,000 x 12 ÷ 6; wife - \$8,000 x 12 ÷ 6)		
Less annualized IRA deduction	\$ 2,000	
(\$1,500 x 12 ÷ 6 but limited to \$2,000)		
Qualified earned income	<u>\$ 18,000</u>	<u>\$ 16,000</u>

Smaller of the qualified earned income of each spouse, but limited to \$15,000	\$ 15,000
Multiply by 2%	<u>x .02</u>
Married couple credit	\$ 300

**Facts and Question 2:** Section 71.05(6)(a)10, Wis. Stats. (1989-90), limits the amount of farm losses that may be deducted each year. The deduction for farm losses is limited if nonfarm Wisconsin adjusted gross income is more than \$55,000 (\$27,500 if married filing separately). Farm losses in excess of the allowable loss must be added to federal adjusted gross income in computing Wisconsin taxable income. (For further information on the farm loss limitation, see the tax release titled "Limitations on Farm Losses" in *Wisconsin Tax Bulletin 51* (July 1987), page 9).

How is the farm loss limitation computed when a farm loss occurs in a short period?

**Answer 2:** Nonfarm income and farm loss are annualized separately to determine if an add modification is required.

**Example:** A single taxpayer has the following income/loss for the short period January 1, 1991, to March 31, 1991:

Wages	\$ 15,000
Dividends	1,000
Farm loss	<u>(30,000)</u>
Federal adjusted gross income	\$ (14,000)

The modification is computed as follows:

Annualized nonfarm income	\$ 64,000
(\$16,000 x 12 ÷ 3)	

Annualized farm loss \$ (120,000)  
 $(\$30,000) \times 12 \div 3$

Because annualized nonfarm income is greater than \$55,000, but not more than \$75,000, the taxpayer's farm loss for the year is limited to \$20,000. Therefore, an add modification of \$25,000 is required (\$120,000 annualized farm loss less \$20,000 allowable loss  $\times 3/12$  which is the proration for the number of months in the short period).

Annualized taxable income is computed as follows:

Federal adjusted gross income	\$ (14,000)
Add modification for farm loss limitation	<u>25,000</u>
Wisconsin taxable income for the short period	\$ 11,000
Multiply by 12	<u>x 12</u>
	\$ 132,000
Divide by months in short period	<u>÷ 3</u>
Annualized taxable income	\$ 44,000

**Facts and Question 3:** Section 1398(g), IRC, provides that the tax attribute of a net operating loss carryforward is transferred to the bankruptcy estate.

Does this apply for Wisconsin tax purposes?

**Answer 3:** Yes. The tax attribute of a net operating loss, determined as of the first day of the debtor's tax year in which the bankruptcy case begins, goes to the bankruptcy estate. The estate may use all or any part of a net operating loss carryforward to offset income of the estate. Any remainder of the carryforward reverts back to the individual debtor upon termination of the bankruptcy estate. Therefore, if a bankruptcy estate terminates and did not use the entire net operating loss carryforward, the individual debtor could use the carryforward remaining after termination to offset taxable income.

**Note:** Section 1398, IRC, does not apply if the bankruptcy case is subsequently dismissed, nor does it apply at the partnership level.

**Question 4:** How is the Wisconsin alternative minimum tax (AMT) computed for a short period return?

**Answer 4:** Wisconsin alternative minimum taxable income (line 13 of 1991 Wisconsin Schedule MT) must first be annualized. The appropriate exemption amounts are then subtracted, and the tax rate (6.5% for 1991) applied. The result is the annualized tentative AMT. If the annualized tentative AMT is greater than the annualized regular tax, the difference is the annualized AMT. The annualized AMT is added to the annualized regular tax, and the

resulting total is then prorated for the number of months in the short period.

**Example:** A single taxpayer files a short period return for the period January 1, 1991, to February 28, 1991. The taxpayer has taxable income of \$1,000 and alternative minimum taxable income of \$6,000. The taxpayer's net tax is computed as follows:

Income for the short period	\$ 1,000.00
Multiply by 12	<u>x 12</u>
	\$ 12,000.00
Divide by months in the short period	<u>÷ 2</u>
Annualized taxable income	\$ 6,000.00
Gross tax on annualized income	\$ 294.00
Annualized AMT*	<u>96.00</u>
Annualized net tax	\$ 390.00
Prorate tax for short period	<u>x 2/12</u>
Net tax for short period	\$ 65.00

\* Computation of annualized AMT:

Wisconsin alternative minimum taxable income	\$ 6,000.00
Multiply by 12	<u>x 12</u>
	\$ 72,000.00
Divide by months in short period	<u>÷ 2</u>
Annualized alternative minimum taxable income	\$ 36,000.00
Less exemption amount	<u>30,000.00</u>
	\$ 6,000.00
Tax rate 6.5%	<u>.065</u>
Tentative AMT	\$ 390.00
Less annualized regular tax	<u>294.00</u>
Annualized AMT	\$ 96.00

**Question 5:** Is a farmer eligible to claim a farmland preservation credit and a farmland tax relief credit for a short period as a result of a bankruptcy action? If yes, must the credit be prorated for the period of the short period return?

For example, a farmer files a short period return for January 1, 1991, to March 31, 1991. On April 1, 1991, the bankruptcy action commences and the farmland is transferred to the bankruptcy estate.

**Answer 5:** The farmer is no longer the owner of the farmland at the time it is transferred to the bankruptcy estate. Up until the termination of the bankruptcy estate, the estate may qualify to claim the farmland preservation credit and the farmland tax relief credit as long as the taxes relating to that claim are levied while the estate is the owner. No proration of the property taxes is required

because of the transfer of the farmland in the taxable year. If the estate would terminate prior to the taxes being levied, and the property is transferred back to the farmer, the farmer is eligible to claim the credits provided all other qualifications are met.

**Facts and Question 6:** A taxpayer files a short period return for the period January 1, 1991, to June 30, 1991, and a second short period return for the period July 1, 1991, to December 31, 1991, as a result of bankruptcy proceedings. The taxpayer retains ownership of his farmland for the entire year. Taxes of \$4,000 were levied in November 1991. Household income for the first short period is \$5,000 and \$10,000 for the second short period.

How does the taxpayer compute the farmland preservation credit?

**Answer 6:** Section 71.58(6), Wis. Stats. (1989-90), states that household income is attributable to the taxable year and sec. 71.03(3), Wis. Stats. (1989-90), provides that a short period constitutes a taxable year. Therefore, the taxpayer could file a farmland preservation credit claim for each short period. However, because no property taxes were levied in the first short period there is no basis for filing a claim. In the second short period the taxpayer would file a claim annualizing household income. However, property taxes would not be annualized since they already reflect one year. In this situation, the taxpayer's household income is \$20,000 computed as follows:

Household income for the short period	\$ 10,000
Multiply by 12	<u>x 12</u>
	\$ 120,000
Divide by months in short period	<u>+ 6</u>
Annualized household income	\$ 20,000

The taxpayer is allowed the farmland preservation credit based on \$20,000 household income and \$4,000 of property taxes.

**Facts and Question 7:** A taxpayer files a short period return for the period January 1, 1991, to June 30, 1991, and a second short period return for the period July 1, 1991, to December 31, 1991, as a result of bankruptcy proceedings. The taxpayer paid rent of \$300 for each month in 1991. Actual household income for the first short period was \$5,000 and for the second short period it was \$7,000.

May the taxpayer file a homestead credit claim for each short period? How is the credit computed?

**Answer 7:** The taxpayer may not file a claim for each short period. Section 71.51(5), Wis. Stats. (1989-90), provides that household income is determined for a calendar year; therefore, claims must reflect a calendar year. The taxpayer could file a claim after the second short period using actual household income for the year of \$12,000 and rent paid of \$3,600. □

### 3 Taxation of Indians — Wisconsin Individual Income Tax

**Statutes:** Sections 71.02 and 71.07(6), Wis. Stats. (1989-90)

**Background:** A portion of the tax release titled "Wisconsin Taxation of Indians," in *Wisconsin Tax Bulletin* 69 (October 1990), page 27, has been overturned as a result of a decision by the Wisconsin Tax Appeals Commission (Commission), in *Lee A. and Beverly J. Anderson vs. Wisconsin Department of Revenue* (August 28, 1992). In that decision, the Commission ruled that the Wisconsin Marital Property Act, Chapter 766, Wis. Stats., cannot change the character of income earned on a reservation by an Indian living on the reservation, to be classified as taxable marital property income of a non-Indian spouse.

As a result of this decision, Question and Answer 8 of Part I (Taxation of Indians — Wisconsin Individual Income Tax) of the tax release titled "Wisconsin Taxation of Indians" is revoked. □

### INDIVIDUAL INCOME AND CORPORATION FRANCHISE AND INCOME TAXES

#### 4 Extension of Time to File Franchise and Income Tax Returns

**Statutes:** Sections 71.03(7), Wis. Stats., as amended by 1991 Wisconsin Acts 269 and 305, 71.24(7), Wis. Stats., as amended by 1991 Wisconsin Act 39, 71.44(3) and 71.84(2), Wis. Stats. (1989-90), and 71.83(3), Wis. Stats. as amended by 1991 Wisconsin Acts 190 and 269

**Note:** Various effective dates are provided in the tax release.

#### Wisconsin Law

A. Individuals, partnerships, and fiduciaries (estates and trusts) — Section 71.03(7), Wis. Stats. as amended by 1991 Wisconsin Acts 269 and 305, provides that any

extension of time granted by federal law or by the Internal Revenue Service (IRS) for filing the federal income tax return extends the time for filing the Wisconsin income tax return, provided:

1. Wisconsin tax estimated to be due on a return for which an extension is being obtained is paid by the original (unextended) due date, in the manner prescribed by federal law for federal income taxes, and
2. A copy of any request for an extension required by the IRS is filed with the Wisconsin return.

To satisfy the payment requirement set forth in paragraph 1 above, taxpayers must make a reasonable estimate of their tax for the year. An estimate will be considered reasonable if it is based on all information available at the time the estimate is made, providing a bona fide attempt was made to locate and gather information needed to make a proper estimate of total tax liability. If a reasonable estimate of tax was made, an extension of time to file will be allowed even though the return may show a balance due when it is filed.

The requirement to pay an estimate of tax by the original due date to obtain an extension is effective for taxable years beginning on or after January 1, 1992.

- B. Corporations (including tax-option (S) corporations and insurance companies) — Section 71.24(7), Wis. Stats. as amended by 1991 Wisconsin Act 39 (sec. 71.44(3), Wis. Stats. (1989-90), for insurance companies), provides that any extension of time granted by the IRS for filing a federal return extends the time for filing the Wisconsin franchise or income tax return if a copy of any extension requested of the IRS is filed with the return.

The department may also allow a corporation additional time for filing its franchise or income tax return. This Wisconsin extension granted by the department may not exceed 30 days, except for:

1. Cooperatives or domestic international sales corporations (DISCs) — an extension of up to 6 months may be allowed.
2. Foreign corporations that do not have an office or place of business in the United States — an extension of up to 3 months may be allowed. (Note: The 3-month extension provision for foreign

corporations is effective for taxable years beginning on or after January 1, 1992.)

(Note: Unlike individuals and the other types of entities identified in Part A, corporations are not required to pay the estimated balance due on a return as a condition of receiving an extension of time to file that return.)

### Federal Law

Section 6081(a), Internal Revenue Code (IRC) as of December 31, 1991, provides that the IRS may grant a reasonable extension of time for filing a return. Except in the case of taxpayers who are abroad, an extension cannot be for more than 6 months.

Federal regulations give the conditions for extensions (Regs. § 1.6081-1 through 1.6081-5). Taxpayers generally must make an estimate of tax and remit any unpaid amount, along with the extension form, by the original due date of the return.

The following extensions are available for filing federal income tax returns:

#### A. Individuals

1. Form 4868 — This is an automatic 4-month extension of time to file federal returns. Payment of federal tax is required.
2. Form 2688 — This is a 2-month extension of time to file federal returns which may be granted by the IRS in cases where the taxpayer has already obtained the automatic 4-month extension of time to file but still needs additional time.
3. An automatic 2-month extension of time to file federal returns is allowed to:
  - U.S. citizens or residents living outside the United States and Puerto Rico whose main place of business or post of duty is outside the United States and Puerto Rico on April 15, and
  - U.S. citizens or residents in military or naval service who are on duty outside the United States and Puerto Rico on April 15.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension.

4. Form 2350 — The IRS may grant an extension of time to file federal returns until 30 days after meeting the bona fide residence or physical presence test to qualify for the foreign earned income exclusion and the foreign housing exclusion or deduction. Payment of federal tax is required.

5. Persons serving in a combat zone are allowed an automatic extension of time to file federal returns until 180 days after the later of:

- The last day the taxpayer is in a combat zone (or the last day the area qualifies as a combat zone), or
- The last day of any continuous qualified hospitalization for injury from service in a combat zone.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension. (This extension is provided by sec. 7508, IRC.)

B. Partnerships, trusts (except trusts subject to tax on unrelated business income), and real estate mortgage investment conduits (REMICs)

1. Form 8736 — This is an automatic 3-month extension of time to file federal returns. Payment of federal tax is required for trusts and REMICs.

2. Form 8800 — This is a 3-month extension of time to file federal returns which may be granted by the IRS in cases where the taxpayer has already obtained the automatic 3-month extension of time to file but still needs additional time.

3. An automatic 2-month extension of time to file federal returns is allowed to partnerships which are required to file returns on the 15th day of the fourth month following the close of the partnership's taxable year and which keep their records and books of the account outside the United States and Puerto Rico. No special form is required to apply for the extension. (Note: The automatic 2-month extension does not apply to trusts and REMICs.)

C. Estates and trusts subject to tax on unrelated business income

Form 2758 — This form is used to apply for an extension of time to file federal returns for up to 6 months. Sufficient need must be shown for requests of more than 60 days. Payment of federal tax is required.

D. Corporations (not including REMICs)

1. Form 7004 — This is an automatic 6-month extension of time to file a federal corporate return. Payment of federal tax is required.

2. An automatic 3-month extension of time to file federal returns is allowed to:

- Domestic corporations which transact their business and keep their records and books of the account outside the United States and Puerto Rico,
- Foreign corporations which maintain an office or place of business within the United States, and
- Domestic corporations whose principal income is from sources within the possessions of the United States.

Payment of federal tax is not required to obtain this extension. No special form is required to apply for the extension.

## Questions and Answers

**Facts and Question 1:** Taxpayer has an extension of time to file its federal return.

Does the federal extension extend the time for filing the Wisconsin franchise or income tax return?

**Answer 1:** Any extension of time granted for the filing of the federal income tax return extends the time for filing the Wisconsin franchise or income tax return provided:

- A. A copy of any request for the federal extension is filed with the Wisconsin return, and
- B. In the case of individuals and fiduciaries, a reasonable estimate of any Wisconsin tax to be due on the return is paid by the original due date of the return if required (see Part A under "Wisconsin Law" and the following chart).

**EXTENSION REQUIREMENTS**

<b>Federal Extension</b>	<b>Attach to Wisconsin Return When Filed</b>	<b>Must Wisconsin Tax Be Paid by Due Date?</b>
<b>Individuals</b>		
Automatic 4 months	Form 4868	Yes
Additional 2 months	Form 2688	Yes
Automatic 2 months when living outside U.S. or Puerto Rico on April 15	Statement indicating how qualifications are met	No
Until 30 days after meeting bona fide resident or physical presence test	Form 2350	Yes
Combat zone	Statement indicating how qualifications are met	No
<b>Partnerships and REMICs</b>		
Automatic 3 months	Form 8736	No
Additional 3 months	Form 8800	No
Automatic 2 months for certain partnerships (see Part B.3 under "Federal Law")	Statement indicating how qualifications are met	No
<b>Estates filing Wisconsin Form 2</b>		
Up to 6 months	Form 2758	Yes
<b>Trusts filing Wisconsin Form 2</b>		
Automatic 3 months	Form 8736	Yes
Additional 3 months	Form 8800	Yes
<b>Trusts subject to tax on unrelated business income filing Wisconsin Form 4T</b>		
Up to 6 months	Form 2758	Yes
<b>Corporations (not including REMICs)</b>		
Automatic 6 months	Form 7004	No
Automatic 3 months for certain corporations (see Part D.2 under "Federal Law")	Statement indicating how qualifications are met	No

Any required payment of Wisconsin tax should be made using a Wisconsin estimated tax voucher, Form 1-ES (Form 4-ES for trusts subject to tax on unrelated business income). Payment should be sent to the address printed on the Form 1-ES (or Form 4-ES).

If the taxpayer is unable to obtain Form 1-ES (or Form 4-ES) by the original due date of the Wisconsin return,

payment should be submitted with a letter giving the taxpayer's name, address, and social security number (federal employer identification number for trusts). The letter should also clearly state that the payment is to meet the extension of time to file requirement.

Individuals, estates, and trusts, except trusts with unrelated business income, should mail the estimated tax payment

and letter to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903. The mailing address for trusts with unrelated business income is Wisconsin Department of Revenue, P.O. Box 8908, Madison, WI 53708-8908.

Taxpayers should take credit for extension payments as estimated tax payments when the tax return is filed.

**Facts and Question 2:** The taxpayer will not be requesting an extension of time to file its federal return, but needs additional time to file its Wisconsin return.

What extensions are available for Wisconsin purposes?

**Answer 2:**

A. Individuals, partnerships, estates, and trusts — Any of the extensions of time available to individuals, partnerships, estates, and trusts for filing a federal return are available for Wisconsin, even if an extension is not requested for federal purposes.

To use a federal extension provision for Wisconsin purposes only, the taxpayer must:

1. Make the required payment of Wisconsin tax by the original due date of the Wisconsin return, as indicated in the chart in Answer 1, and
2. Attach the appropriate federal extension form or statement, as indicated in the chart, to the Wisconsin return when filed. In lieu of the federal form, the taxpayer may attach a statement to the front of the return indicating that a federal extension provision is being used for Wisconsin purposes only.

(Note: When the federal extension form is submitted for Wisconsin purposes only, it is not necessary to complete the lines on the form that apply only to the federal return, such as lines for entering federal tax amounts or federal withholding.)

B. Corporations — A corporation may request a 30-day extension of time to file its franchise or income tax return by submitting Wisconsin Form IC-830, Application for Extension of Time to File, to the department on or before the original due date of the return. A cooperative or DISC may request a 6-month rather than a 30-day extension. A foreign corporation that does not have an office or place of business in the United States may request a 3-month extension.

## Interest and Late Filing Fees

### A. Interest

Provisions applicable to individuals, fiduciaries, and corporations — Franchise and income taxes do not become delinquent during an extension period, but are subject to 12% interest per year during the extension period (see exception in Part C for certain corporations). Franchise and income taxes not paid by the extended due date are delinquent and subject to interest at the rate of 18% per year until paid.

### B. Late Filing Fee

Returns filed after the due date, including any extension of time to file, are subject to a late filing fee (sec. 71.83(3), Wis. Stats. as amended by 1991 Wisconsin Acts 190 and 269). The late filing fee for corporations is \$30. The late filing fee for individuals and fiduciaries is:

- \$2 when the tax is less than \$10,
- \$3 when the tax is \$10 or more but less than \$20,
- \$5 when the tax is \$20 or more, but
- \$30 if the return is 60 or more days late, regardless of the amount of tax.

### C. Consequences of Not Providing Copy of Federal Extension Granted by IRS

If a taxpayer files a Wisconsin franchise or income tax return under a federal extension but fails to attach a copy of the federal extension request or approval to the Wisconsin return, the department does not have knowledge that a federal extension was obtained. The department will impose a late filing fee and 18% delinquent interest. Assuming that any required payment of Wisconsin tax was made by the original due date of the return, if the taxpayer subsequently provides information to the department showing that the taxpayer had an extension of time to file for federal purposes (for example, by providing the department with a copy of federal Form 4868 or Form 7004), the late filing fee and delinquent interest (see "Exception" below) will be cancelled. (Note: This cancellation of the late filing fee under these circumstances first applies to 1992 returns.)

**Exception:** A special provision applies to corporations which have a net tax of more than \$500 and have not paid at least 90% of the tax by the unextended due date. For these corporations, under sec. 71.84(2), Wis. Stats. (1989-90), the 12% interest rate during an extension period applies only to the 10% of the tax liability not required to be prepaid as estimated tax. Interest of 18% per year applies to the remainder of the unpaid tax from the unextended due date until the date paid. □

## SALES AND USE TAXES

**Note:** The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The ½% county sales and use tax may also apply. For information on sales or purchases that are subject to the county sales and use tax, refer to the December 1992 issue of the *Sales and Use Tax Report*. A copy can be found on pages 45 to 48 of this Bulletin.

### 5 Ambulances and Rescue Vehicles Sold to Volunteer Fire Departments

**Statutes:** Section 77.54(9a) and (16), Wis. Stats. (1989-90)

**Background:** Section 77.54(9a)(b), Wis. Stats. (1989-90), provides an exemption from Wisconsin sales or use tax for gross receipts from sales of tangible personal property or taxable services to any county, city, village, town, or school district in Wisconsin.

Section 77.54(16), Wis. Stats. (1989-90), provides an exemption from Wisconsin sales or use tax for gross receipts from sales of fire trucks and fire fighting equipment, including accessories, attachments, parts, and supplies for the trucks and fire fighting equipment, sold to volunteer fire departments.

Under the Wisconsin statutes, volunteer fire departments can be organized in several different ways, including as part of a county, city, village, or town government or as an entity separate from a county, city, village, or town government except for the allocation of funds.

**Question 1:** Is the sale of an ambulance or rescue vehicle to a volunteer fire department that is part of a Wisconsin county, city, village, or town government subject to Wisconsin sales or use tax?

**Answer 1:** No. The sale to the volunteer fire department is exempt from Wisconsin sales or use tax under sec. 77.54(9a)(b), Wis. Stats. (1989-90), provided the governmental unit gives its purchase order to the seller indicating itself as the purchaser.

**Question 2:** Is the sale of an ambulance or rescue vehicle to a volunteer fire department that is not part of a Wisconsin county, city, village, or town government subject to Wisconsin sales or use tax?

**Answer 2:** No. The sale to the volunteer fire department is exempt from Wisconsin sales or use tax under sec. 77.54(16), Wis. Stats. (1989-90), provided the volunteer fire department gives the seller a properly completed exemption certificate (Form S-207, Certificate of Exemption). An ambulance or rescue vehicle sold to a volunteer fire department qualifies as fire fighting equipment for purposes of the exemption. □

### 6 Application of Use Tax As a Result of *Morton Buildings, Inc.* Decision

**Statutes:** Section 77.51(19), Wis. Stats. (1989-90), repealed by 1991 Wisconsin Act 39, and secs. 77.51(18) and (22), 77.53(1), and 77.57, Wis. Stats. (1991-92)

**Note:** This tax release applies to all periods open to adjustment under sec. 77.59, Wis. Stats. (1991-92), except as noted in the tax release.

**Background:** Section 77.53(1), Wis. Stats. (1991-92), provides that a 5% use tax is imposed on the storage, use, or other consumption in Wisconsin of tangible personal property or taxable services purchased from any retailer.

“Use” is defined in sec. 77.51(22), Wis. Stats. (1991-92), as the exercise of any right or power over tangible personal property or taxable services incident to the ownership, possession or enjoyment of the property or services, or the results produced by the services, including installation or affixation to real property. Prior to October 1, 1991, storage and use for purposes of imposing Wisconsin use tax did not include the keeping, retaining, or exercising any right or power over tangible personal property for the purposes of subsequently transporting it outside Wisconsin for use thereafter solely outside Wisconsin, or for the purpose of being processed, fabricated, or manufactured into, attached to, or incorporated into other property to be transported outside Wisconsin and thereafter used solely outside Wisconsin (sec. 77.51(19), Wis. Stats. (1989-90), repealed by 1991 Wisconsin Act 39).

In a decision dated February 10, 1992, the Circuit Court of Dane County held in the case of *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* that raw materials purchased without Wisconsin sales or use tax that were used to manufacture, fabricate, or otherwise alter tangible personal property outside Wisconsin were not subject to Wisconsin use tax even though the tangible personal property resulting from the manufacturing, fabricating, or altering of the raw materials was subsequently stored, used, or consumed in Wisconsin. The Court stated that the imposition of Wisconsin use tax under sec. 77.53(1), Wis. Stats. (1991-92), did not apply to the raw materials because:

- A. The raw materials Morton purchased were used and consumed outside Wisconsin when they were produced into building components, and
- B. Morton did not purchase the building components that were used in Wisconsin from a retailer.

The Court stated that raw materials lose their identity as raw materials as soon as they are nailed, bent, reinforced, rolled, glued, laminated, etc.

The department did not appeal the Circuit Court's decision in *Morton Buildings, Inc.*

Section 77.57, Wis. Stats. (1991-92), provides that if a purchaser certifies in writing to a seller that the property purchased will be used in a manner or for a purpose entitling the seller to regard the gross receipts from the sale as exempted from Wisconsin sales or use tax, and uses the property in some other manner or for some other purpose, the purchaser is liable for payment of the sales tax.

### Effect of the *Morton* Decision

**Question 1:** How does the *Morton* decision apply for purposes of imposing Wisconsin use tax?

**Answer 1:** The following conditions must exist for the *Morton* decision to apply, in which case use tax is not imposed on the raw materials.

- A. The item purchased must be a raw material.

"Raw material" is defined in *Webster's Ninth New Collegiate Dictionary* as a crude or processed material that can be converted by manufacture, processing, or combinations into a new and useful product.

- B. The item purchased had to have been purchased outside Wisconsin without Wisconsin sales or use tax.
- C. The raw materials, prior to any storage, use, or consumption in Wisconsin, are used to manufacture tangible personal property outside Wisconsin or are processed or otherwise altered outside Wisconsin resulting in a different and distinct item of tangible personal property from the constituent raw material.

The following examples illustrate the application of the *Morton* decision as stated in Answer 1.

**Example 1:** Company A, located in Minnesota, has its own print shop. Company A has nexus in Wisconsin. All paper and ink used by Company A to print parts lists are transferred from a supplier to Company A in Minnesota. No Wisconsin or Minnesota sales or use tax is paid on the paper and ink transferred from the supplier to Company A. After printing, the parts lists are mailed by Company A to its customers in Wisconsin.

Under the *Morton* decision, the paper and ink used to print the advertising brochures that are mailed to Wisconsin are not subject to Wisconsin use tax.

**Example 2:** Company B, a manufacturer of office furniture, is headquartered in Wisconsin. Company B has 10 desks, which were manufactured in its plant in Texas, delivered to its headquarters in Wisconsin for use by its employees. The raw materials (e.g., steel, laminate, etc.) used to manufacture the desks were transferred by suppliers to Company B outside Wisconsin.

Under the *Morton* decision, the raw materials used to manufacture the desks that are used by Company B in Wisconsin are not subject to Wisconsin use tax.

**Example 3:** Company C, located in Michigan, manufactures automobiles. Employees of Company C who are located in Wisconsin are provided, for business use, automobiles manufactured by Company C. The raw materials (e.g., tires, engines, steel, etc.) used in manufacturing these automobiles were transferred from suppliers to Company C in Michigan.

Under the *Morton* decision, the raw materials used to manufacture automobiles that are used by Company C employees in Wisconsin are not subject to Wisconsin use tax.

**Example 4:** Company D, located in Illinois, is a producer of modular homes. Raw materials (lumber, trusses,

hardware, etc.) used to produce its modular homes were transferred from suppliers to Company D in Illinois without Wisconsin or Illinois sales or use tax. The modular homes are produced in Illinois. Company D erects the modular homes in Wisconsin.

Under the *Morton* decision, the raw materials used by Company D to produce the modular homes which are erected in Wisconsin are not subject to Wisconsin use tax.

**Example 5:** Company E is an asphalt contractor located in Iowa. Raw materials used in manufacturing asphalt outside Wisconsin are transferred from suppliers to Company E outside Wisconsin without sales or use tax. Company E uses the asphalt in road construction in Wisconsin.

Under the *Morton* decision, the raw materials used by Company E to manufacture asphalt are not subject to Wisconsin use tax.

**Example 6:** Company F, located in Illinois, sells and erects silos in Wisconsin. Steel rods, used in erecting the silos, are bent at Company F's plant located in Illinois. The rods are transferred from suppliers to Company F outside Wisconsin without sales or use tax.

Under the *Morton* decision, the rods bent by Company F outside Wisconsin and used in real property construction in Wisconsin are not subject to Wisconsin use tax.

**Example 7:** Company G, located in and outside Wisconsin, is a manufacturer of building components. Company G may use building components in real property construction or may sell them to other contractors for use in real property construction. Raw materials used in manufacturing the building components are transferred from suppliers to Company G in Wisconsin without Wisconsin sales or use tax by Company G giving its suppliers properly completed manufacturer's exemption certificates. The raw materials are manufactured into building components in Illinois. Some of the building components are subsequently used in real property construction in Wisconsin.

The raw materials used by Company G to manufacture building components outside Wisconsin and which are used in real property construction in Wisconsin are subject to Wisconsin tax under sec. 77.57, Wis. Stats. (1991-92). The *Morton* decision does not apply. The raw materials were transferred to Company G in Wisconsin without sales tax as property to be consumed in the manufacture of tangible personal property for sale. Since the manufactured item was consumed by Company G in its real

property construction activities, Company G is liable for tax on the raw materials.

**Example 8:** Company H, located in Wisconsin and Illinois, is a manufacturer of building components. Company H uses the building components *solely* in real property construction. Raw materials used in manufacturing the building components are transferred from suppliers to Company H in Wisconsin without Wisconsin sales or use tax by Company H giving its suppliers manufacturer's exemption certificates. The raw materials are manufactured into building components in Illinois. Some of the building components are subsequently used in real property construction in Wisconsin.

All raw materials used by Company H to manufacture building components which are used in its real property construction in and outside Wisconsin are subject to Wisconsin tax under sec. 77.57, Wis. Stats. (1991-92). The *Morton* decision does not apply because the manufacturer's exemption certificates given were not proper if the contractor knew at the time the raw materials were transferred to it that they would be used in its real property construction activities.

**Question 2:** Does the *Morton* decision have any effect on raw materials that are purchased without Wisconsin sales or use tax and are used in the manufacture, fabrication, or alteration of tangible personal property in Wisconsin?

**Answer 2:** No. The *Morton* decision does not apply to any raw materials used in the manufacture of tangible personal property in Wisconsin or raw materials processed or otherwise altered in Wisconsin resulting in a different and distinct item of tangible personal property which is stored, used, or consumed in Wisconsin.

The definitions of use and storage as provided in sec. 77.51(18) and (22), Wis. Stats. (1991-92), applies for purposes of imposing Wisconsin use tax under sec. 77.53(1), Wis. Stats. (1991-92). Therefore, if the raw materials are manufactured, processed, or altered in Wisconsin, even though subsequently shipped outside Wisconsin, the raw materials are subject to Wisconsin use tax. (Exception: Prior to October 1, 1991, the raw materials are not subject to Wisconsin use tax if they will subsequently be shipped outside Wisconsin for use outside Wisconsin.)

The following examples illustrate the application of Wisconsin use tax as stated in Answer 2.

**Example 1:** Company J, located in Wisconsin, has its own print shop. All paper and ink used to print parts lists are

transferred from suppliers to Company J in Minnesota without Wisconsin or Minnesota sales or use tax. The ink and paper are shipped into Wisconsin by Company J. After printing in Wisconsin, the parts lists are mailed by Company J to its customers in Minnesota.

Effective October 1, 1991, the paper and ink used to print the parts lists are subject to Wisconsin use tax. The exemption for items consumed or destroyed in manufacturing tangible personal property under sec. 77.54(2), Wis. Stats. (1991-92), does not apply to the ink and paper because the parts lists are not destined for sale.

Prior to October 1, 1991, the paper and ink were not subject to Wisconsin use tax because sec. 77.51(19), Wis. Stats. (1989-90), repealed by 1991 Wisconsin Act 39, provided that storage and use do not include keeping, retaining, or exercising any right or power over tangible personal property for purposes of subsequently transporting it outside Wisconsin for use solely outside Wisconsin.

**Example 2:** Company K, located in Wisconsin, is a producer of modular homes. Raw materials used to produce its modular homes are transferred from suppliers to Company K outside Wisconsin without sales or use tax. The raw materials are shipped to Company K's Wisconsin plant where the modular homes are produced. Company K erects the modular homes on a customer's foundation outside Wisconsin.

Effective October 1, 1991, the materials used by Company K to produce the modular homes which are erected outside Wisconsin are subject to Wisconsin use tax because they are stored, used, or consumed in Wisconsin as defined in sec. 77.51(18) and (22), Wis. Stats. (1991-92). The exemption under sec. 77.54(2), Wis. Stats. (1991-92), does not apply to the raw materials because the modular homes are not tangible personal property destined for sale.

Prior to October 1, 1991, the materials are not subject to Wisconsin use tax because of sec. 77.51(19), Wis. Stats. (1989-90) (as explained in Example 1, above).

**Note:** See the tax release titled "Effective Date of Imposition of Use Tax on Items Stored in Wisconsin and Subsequently Shipped Outside Wisconsin" in *Wisconsin Tax Bulletin* 76 (April 1992), page 12, for more information about the application of the revisions to sec. 77.51(18) and (19), Wis. Stats. (1989-90), by 1991 Wisconsin Act 39. □

## 7 Common or Contract Carrier Exemption for Limousines

**Statutes:** Section 77.54(5)(b), Wis. Stats. (1989-90)

**Wis. Adm. Code:** Section Tax 11.16, June 1991 Register

**Background:** Section 77.54(5)(b), Wis. Stats. (1989-90), provides an exemption from Wisconsin sales or use tax for gross receipts from the sale of motor trucks, truck tractors, road tractors, buses, trailers, and semitrailers, and accessories, attachments, parts, supplies, and materials therefor, sold to common or contract carriers who use such items exclusively as common or contract carriers.

Section Tax 11.16(1)(d), Wis. Adm. Code, provides that the exemption under sec. 77.54(5)(b), Wis. Stats. (1989-90), does not apply to:

- A. Automobiles as defined in sec. 340.01(4), Wis. Stats. (1989-90), except an automobile registered as a truck. This includes a motor vehicle designed and used primarily for carrying persons but which does not come within the definition of a motor bus, motorcycle, moped, or motor bicycle.
- B. Station wagons as defined in sec. 340.01(61), Wis. Stats. (1989-90).
- C. Self-propelled vehicles for off-highway use, such as road machinery, fork lifts, and other industrial trucks.

**Facts and Question:** Company ABC is a limousine service that transports people to their required destinations for a fee. Company ABC holds a Licensed Carrier (LC) number issued by the Wisconsin Department of Transportation.

May Company ABC purchase its limousines without Wisconsin sales or use tax under sec. 77.54(5)(b), Wis. Stats. (1989-90)?

**Answer:** No. The exemption in sec. 77.54(5)(b), Wis. Stats. (1989-90), does not apply to limousines because they are not motor trucks, truck tractors, road tractors, buses, trailers, or semitrailers, but rather, are automobiles as defined in sec. 340.01(4), Wis. Stats. (1989-90).

The fact that Company ABC holds an LC number does not in itself allow for exemption under sec. 77.54(5)(b), Wis. Stats. (1989-90). □

## 8 Exemption for Custom-Made Wigs and Hairpieces

**Statutes:** Section 77.54(22)(a) and (b), Wis. Stats. (1989-90)

**Wis. Adm. Code:** Section Tax 11.08, March 1991 Register

**Background:** Section 77.54(22)(a), Wis. Stats. (1989-90), provides that gross receipts from the sale of artificial devices are exempt from Wisconsin sales or use tax if all of the following conditions are met:

- A. The item is individually designed, constructed, or altered.
- B. The item is solely for the use of a particular physically disabled person.
- C. The item becomes a brace, support, supplement, correction, or substitute for the bodily structure.

Section 77.54(22)(b), Wis. Stats. (1989-90), provides an exemption for the gross receipts from the sale of artificial limbs, artificial eyes, hearing aids, and other equipment worn as a correction or substitute for any functioning portion of the body.

In *Black's Law Dictionary*, Fourth Edition, "physical disability" is defined as a disability or incapacity caused by physical defect or infirmity, or bodily imperfection, or mental weakness or alienation.

**Facts and Question 1:** Company A sells wigs and hairpieces to customers who are undergoing chemotherapy or who have a disease known as Alopecia Areata, which causes hair loss. Upon being presented with a prescription from a doctor, the customer's head is measured and hair color is matched. This information is sent to a manufacturer who custom manufactures the wig or hairpiece for the customer.

Are the sales of these wigs or hairpieces exempt from Wisconsin sales or use tax?

**Answer 1:** Yes. The sales of these wigs or hairpieces meet the three conditions in sec. 77.54(22)(a), Wis. Stats. (1989-90), and are thus exempt from the Wisconsin sales or use tax. The wigs or hairpieces are custom-made for a particular person based on head measurements and hair color; a person who has hair loss due to chemotherapy or Alopecia Areata is within the definition of a physically disabled person; and the wigs or hairpieces are a substitute for a bodily structure (i.e. hair).

**Facts and Question 2:** Assume the same facts as in Facts and Question 1 except that the wig or hairpiece is not

individually designed, constructed, or altered for a particular person.

Are the sales of these wigs or hairpieces exempt from Wisconsin sales or use tax?

**Answer 2:** No. Neither the exemption under sec. 77.54(22)(a) nor the exemption under sec. 77.54(22)(b) applies. Since the wig or hairpiece is not individually designed, constructed, or altered for a particular person, the exemption under sec. 77.54(22)(a), Wis. Stats. (1989-90) does not apply. Section Tax 11.08(2)(a), Wis. Adm. Code, provides that the exemption under sec. 77.54(22)(b), Wis. Stats. (1989-90), does not apply to wigs or hairpieces. □

## 9 Sales of Building Materials to Exempt Entities by Supplier Who Is the Subcontractor

**Statutes:** Sections 77.51(2) and (14)(g) and (i) and 77.54(9a), Wis. Stats. (1989-90)

**Wis. Adm. Code:** Section Tax 11.04(4), January 1979 Register

**Background:** In the decision of *Rice Insulation, Inc. v. Wisconsin Department of Revenue*, dated October 10, 1983, the Court of Appeals, District IV, held that a subcontractor who sold insulation to an exempt entity without Wisconsin sales tax and who installed the insulation under a contract with a general contractor was the consumer of the insulation used in real property construction, and the sale of the insulation to the subcontractor was subject to Wisconsin sales or use tax.

Section Tax 11.04(4), Wis. Adm. Code, further provides that a supplier, who is also the contractor who uses the building materials in the construction of buildings or structures, or the alteration, repair, or improvement of real property, for an exempt entity, is the consumer of the building materials, not the seller of personal property to the exempt entity. The sale of the building materials to the supplier/contractor is subject to Wisconsin sales or use tax.

"Exempt entity" includes the following:

- A. The State of Wisconsin or any agency thereof.
- B. Any Wisconsin county, city, village, town, or school district.

- C. A county-city hospital established under sec. 66.47, Wis. Stats.
- D. A sewerage commission organized under sec. 144.07(4), Wis. Stats., or a metropolitan sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.
- E. Any other unit of government in Wisconsin or any agency or instrumentality of one or more units of government in Wisconsin.
- F. Any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals (except hospital service insurance corporations under sec. 613.80(2)), no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation.

**Facts and Question:** Company ABC, a general contractor, enters into a construction contract with an exempt entity to construct a building.

Information regarding the contract is as follows:

- The contract price is \$500,000, which includes all materials, except electrical materials, and all labor.
- The exempt entity purchases the electrical materials directly from a supplier recommended by Company ABC using its own purchase order and paying with its own funds.
- The exempt entity purchases the electrical materials from Company XYZ (supplier) for \$20,000.
- Company XYZ purchased the electrical materials without Wisconsin sales or use tax by giving its supplier a properly completed resale certificate. Company XYZ paid \$17,000 for the materials.
- Company ABC (general contractor) hires Company XYZ as a subcontractor to do the electrical work for \$50,000.

What are the Wisconsin sales or use tax implications of these transactions?

**Answer:** Under sec. Tax 11.04(4), Wis. Adm. Code, the sale of the electrical materials from the supplier to Company XYZ (supplier/contractor) is a retail sale subject to

Wisconsin sales or use tax. Therefore, Company XYZ is subject to Wisconsin use tax on the \$17,000 it paid for the electrical materials.

The transfer of electrical materials by Company XYZ to the exempt entity for \$20,000 is not a retail sale for purposes of Wisconsin sales or use tax.

Although Company XYZ may not charge Wisconsin sales or use tax on the transfer of the electrical materials to the exempt entity, Company XYZ may pass on the use tax it is required to pay on those materials as part of the selling price of the materials to the exempt entity.

The \$50,000 charge by Company XYZ to Company ABC for the electrical work it provides as a subcontractor is not subject to Wisconsin sales or use tax because Company XYZ is performing a real property improvement.

The \$500,000 charge by Company ABC to the exempt entity for constructing the building is not subject to Wisconsin sales or use tax because Company ABC is performing a real property improvement.

Company ABC is subject to Wisconsin sales or use tax on its purchase of materials used in constructing the building for the exempt entity. □

## 10 Sludge Trucks Used at Industrial Waste Treatment Facility

**Statutes:** Section 77.54(26), Wis. Stats. (1989-90)

**Wis. Adm. Code:** Section Tax 11.11, June 1991 Register

**Background:** Section 77.54(26), Wis. Stats. (1989-90), provides an exemption from Wisconsin sales or use tax for gross receipts from sales of and the storage, use, or other consumption of tangible personal property which becomes a component part of an industrial waste treatment facility that is exempt under sec. 70.11(21)(a), Wis. Stats. (1989-90), or that would be exempt under sec. 70.11(21)(a), Wis. Stats. (1989-90), if the property were taxable under ch. 70, Wis. Stats. (1989-90).

Section Tax 11.11(2)(a), Wis. Adm. Code, provides that when any plant or equipment has been approved as exempt from the property tax, the sales and use tax exemption under sec. 77.54(26), Wis. Stats. (1989-90), applies.

In the case of *Fort Howard Paper Company v. Wisconsin Department of Revenue* (Docket No. S-9687, 4/29/88), the

Wisconsin Tax Appeals Commission held that trucks used exclusively to haul treated sludge from a waste treatment facility to a landfill five miles away were exempt as component parts of the exempt facility under sec. 77.54(26), Wis. Stats. (1989-90). The waste treatment facility and landfill had been approved by the Department of Revenue's Property Tax Bureau as exempt from property taxes. The Department of Revenue filed a notice of nonacquiescence with respect to this decision.

**Facts and Question:** Company ABC is a manufacturer. Company ABC constructed and operates a waste treatment facility and landfill to handle the waste from its manufacturing operations.

Company ABC purchased a dump truck that is used exclusively by Company ABC to haul waste materials (e.g., sludge, bark, dirt) from its waste treatment facility to its landfill. The dump truck is used as an integral part of Company ABC's landfill operations. The waste treatment facility and landfill have been approved by the De-

partment of Revenue's Property Tax Bureau as exempt from property taxation.

The Department of Revenue's Property Tax Bureau has granted approval of the dump truck as exempt from property tax under sec. 70.11(21)(a), Wis. Stats. (1989-90), if it had been subject to property tax.

Is the sale of the dump truck to Company ABC subject to Wisconsin sales or use tax?

**Answer:** No. Due to the approval of the dump truck as a part of a waste treatment facility by the Property Tax Bureau, the dump truck must be considered exempt for Wisconsin sales and use tax purposes as a component part of a waste treatment facility under sec. 77.54(26), Wis. Stats. (1989-90).

(Note: The Department of Revenue's nonacquiescence in the *Fort Howard* case does not affect this answer.) □



## 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 "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the number in the series of rulings issued that year. 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 Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following private letter ruling is included:

**Sales and Use Taxes**  
Service enterprises — satellite  
antenna removal, site surveys  
W9241012, July 16, 1992  
(p. 39)

✱ W9241012, July 16, 1992

**Type Tax:** Sales and Use

**Issue:** Service enterprises — satellite antenna removal, site surveys

**Statutes:** Sections 77.51(15)(c)2 and 77.51(2)(a)10, Wis. Stats. (1989-90)

This letter responds to your request for a private letter ruling regarding the Wisconsin sales and use tax implications of providing satellite antenna services.

### Facts

As a local subcontractor, XYZ Corporation provides the following services:

1. Removal of satellite antennas and electronics, including satellite receivers and computers; repositionings.
2. Site surveys; driving to site to obtain information on cable length, antenna placement, build-

ing structure, building permit requirements, etc.

XYZ Corporation bills Company B for these services. Company B is hired by the seller of the satellite systems (Company A) to coordinate the installation of the satellite systems.

### Request

What are the Wisconsin sales and use tax implications of these two types of business activities?

### Ruling

1. The removal of satellite antennas and electronics by itself is a service which is not subject to Wisconsin sales or use tax. However, the service of removing satellite antennas and electronics, if performed in conjunction with taxable sales of satellite antennas or electronics, is subject to Wisconsin sales or use tax, regardless of whether the charge for satellite antenna removal is separately stated.
2. Site surveying by itself is a service which is not subject to Wisconsin sales or use tax. However, site surveying in conjunction with taxable sales of satellite antennas or electronics is subject to Wisconsin sales or use tax, regardless of whether the charge for site surveying is separately stated.

### Analysis

Section 77.52(2)(a), Wis. Stats. (1989-90), provides that sales of certain services are subject to Wisconsin sales tax. Since the removal of satellite antennas and electronics and site surveying are not among the services listed as taxable, the gross receipts for these services are generally not taxable.

However, sec. 77.51(15)(c)2, Wis. Stats. (1989-90), provides that "sales price" includes the amount charged for labor or services rendered in installing or applying tangible personal property sold. Therefore, Company A's charges for the removal of satellite antennas and electronics and site surveying, in conjunction with taxable sales of satellite antenna systems, are subject to tax.

Following is the tax treatment for the transactions involved when Company A's sale of satellite antenna systems are (1) sales of tangible personal property, and (2) real property improvements.

1. *Sales of Tangible Personal Property by Company A:* Section Tax 11.68(6)(a)2, Wis. Adm. Code, June 1991 Register, provides that satellite antennas installed in business, industrial or commercial buildings, schools and hospitals remain personal property after installation. Sales of these satellite antenna systems are subject to sales tax.

Note: Sales made to Wisconsin governmental units or to organizations holding a Certificate of Exempt Status are exempt from sales or use tax.

The charges by XYZ Corporation to Company B for removal of satellite antennas and electronics and for site surveys are for nontaxable services only. Accordingly, XYZ Corporation does not need to obtain an exemption certificate from Company B.

The charge by Company B to Company A for the installation of the satellite antenna system, which includes the charges by XYZ Corporation is for the installation of tangible personal property, which is a taxable

service. However, Company B may obtain a resale certificate from Company A since Company A is reselling the installation service to the purchaser of the satellite antenna system.

Company A's entire charge to the purchaser, including any amounts charged for the antenna survey, installation, and the removal of the old antenna, is subject to sales tax.

2. *Real Property Improvements by Company A:* Satellite antenna systems installed in residential buildings, including apartment buildings and convalescent homes, become a part of realty after installation. A transaction which involves both the sale and installation of satellite antenna systems is not subject to sales tax. However, purchases of items consumed by any of the parties involved in such real property improvements are subject to sales or use tax.

The charges by XYZ Corporation to Company B for removal of satellite antennas and electronics and for site surveys are for nontaxable services only. Accordingly, XYZ Corporation does not need to obtain an exemption certificate from Company B.

Because the satellite antenna system becomes a part of realty after installation, Company B's charges to Company A for the installation, which includes the charges by XYZ Corporation are not subject to sales tax, and it is not necessary for Company B to obtain an exemption certificate from Company A. □