



Wisconsin TAX BULLETIN

New Wisconsin Tax Laws

The Wisconsin Legislature has enacted a number of changes to the Wisconsin tax laws. This issue of the *Wisconsin Tax Bulletin* contains an index and brief descriptions of the major individual and fiduciary income, corporation franchise or income, farmland preservation credit, temporary recycling surcharge, sales/use, and excise tax provisions.

All of the provisions described are contained in 1993 Wisconsin Act 16, the 1993-95 budget bill.

The description for each provision indicates the sections of the statutes affected, and the effective date of the new provision.

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A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code Reference Updated for 1993 for Individuals, Estates, and Trusts (1993 Act 16, amend sec. 71.01(6)(g) and (7r) and create sec. 71.01(6)(h), effective for taxable years beginning on or after January 1, 1993.)

For taxable years that begin on or after January 1, 1993, "Internal Revenue Code" for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 1992. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

For example, Public Law 102-486, enacted October 24, 1992, repealed the minimum tax preference for depletion and intangible drilling costs of independent oil and gas producers and royalty owners for taxable years beginning on or after January 1, 1993. That same effective date applies for Wisconsin purposes.

For property placed in service in taxable years beginning on or after January 1, 1993, individuals and fiduciaries may compute depreciation or amortization under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1992, at the taxpayer's option.

2. Federal Laws Enacted During 1992 Apply Simultaneously for Wisconsin Purposes (1993 Act 16, amend sec. 71.01(6)(f), and (g), effective for taxable years beginning after December 31, 1990 and before January 1, 1993.)

The following federal laws enacted during 1992 apply for Wisconsin income tax purposes at the same time as for federal purposes:

- Unemployment Compensation Amendments of 1992 (Public Law 102-318), enacted July 3, 1992
- Energy Policy Act of 1992 (Public Law 102-486), enacted October 24, 1992

As a result of this amendment to sec. 71.01(6)(f) and (g), Wis. Stats. (1991-92), the following changes in federal law are effective for Wisconsin purposes at the same time as for federal purposes.

- The exclusion for certain employer-provided transportation (up to \$60 per month) and employer-provided parking (up to \$155 a month) benefits provided after December 31, 1992. (Public Law 102-486)
- The exclusion for certain energy conservation subsidies provided by public utilities after December 31, 1992. (Public Law 102-486)
- The limitation on the deduction for travel expenses paid or incurred after December 31, 1992, for travel expenses in connection with employment away from home in a single location that lasts for more than one year. (Public Law 102-486)
- The deduction for certain clean-fuel vehicles and refueling property placed in service after June 30, 1993. (Public Law 102-486)
- The requirement that a partner who contributes appreciated property to a partnership must include pre-contribution gain in income in the case of certain partnership distributions on or after June 25, 1992. (Public Law 102-486)
- New rules pertaining to rollovers of partial distributions from retirement plans after December 31, 1992. (Public Law 102-318)

3. Head of Household Filing Status Created for Wisconsin (1993 Act 16, amend secs. 71.03(2)(a)1, 71.05(22)(d), and 71.06(1)(intro.) and create secs. 71.01(5m) and 71.05(22)(dm), effective for taxable years beginning on or after January 1, 1994.)

Who Qualifies

A head of household filing status is created for Wisconsin purposes. All persons who qualify for the head of household filing status for federal tax purposes qualify to file as head of household for Wisconsin. In addition, persons who qualify to file their federal return as a qualifying widow(er) with a dependent child may file as head of household for Wisconsin.

Filing Requirement

A person who qualifies as head of household and who is a legal resident of Wisconsin for the entire year is required to file a Wisconsin income tax return if he or she has gross income of \$7,040 or more. The filing requirement remains at \$2,000 or more of gross income for a person who is a nonresident or part-year resident of Wisconsin.

Standard Deduction

The Wisconsin standard deduction for a person who qualifies as head of household is as follows:

- a. If Wisconsin adjusted gross income is less than \$7,500, the standard deduction is \$7,040.
- b. If Wisconsin adjusted gross income is at least \$7,500 but not more than \$25,000, the standard deduction is the amount obtained by subtracting from \$7,040, 22.515% of Wisconsin adjusted gross income in excess of \$7,500, but not less than \$0.
- c. If Wisconsin adjusted gross income is more than \$25,000 but not more than \$50,830, the standard deduction is the amount obtained by subtracting from \$5,200, 12% of Wisconsin adjusted gross income in excess of \$7,500, but not less than \$0.
- d. If Wisconsin adjusted gross income is more than \$50,830, the standard deduction is \$0.

(Note: For nonresidents and part-year residents of Wisconsin, the head of household standard deduction must be calculated on the basis of federal adjusted gross income, rather than Wisconsin adjusted gross income, and then prorated based on the ratio of Wisconsin adjusted gross income to federal adjusted gross income.)

Tax Rates

For persons who qualify as head of household, the income tax rates and brackets are as follows:

- a. On taxable income from \$0 to \$7,500 — tax rate is 4.9%.
- b. On taxable income exceeding \$7,500 but not exceeding \$15,000 — tax rate is 6.55%.
- c. On taxable income exceeding \$15,000 — tax rate is 6.93%.

4. Filing Requirements and Standard Deduction for Dependents with Unearned Income Conformed to Federal (1993 Act 16, amend sec. 71.03(2)(a)3, renumber sec. 71.05(22)(f) to 71.05(22)(f)1 and amend as renumbered, and create secs. 71.03(2)(a)4 and 5 and 71.05(22)(f)2 and 3, effective for taxable years beginning on or after January 1, 1993.)

For taxable years beginning in 1993, a person who can be claimed as a dependent on another taxpayer's Wisconsin income tax return is required to file a Wisconsin income tax return if he or she has any amount of unearned income and gross income (including both earned income and unearned income) of \$600 or more (for 1992, the amount was \$550 instead of \$600).

The minimum standard deduction for a dependent with unearned income is increased from \$550 to \$600. (Note: The \$600 filing requirement and minimum standard deduction levels will also apply for federal purposes for the tax year 1993 for dependents having unearned income.)

For taxable years beginning on or after January 1, 1994, the filing requirement and standard deduction for dependents with unearned income will be adjusted annually for inflation in the same manner as for federal tax purposes. This will result in the same filing requirement and standard deduction applying for federal and Wisconsin tax purposes.

5. Earned Income Credit Revised (1993 Act 16, amend sec. 71.07(9e)(a)(intro.) and create sec. 71.07(9e)(ad), (ah), (ap) and (at), various effective dates.)

The computation of the Wisconsin earned income credit is changed for taxable years beginning on or after January 1, 1994. The amount of credit varies depending upon the taxpayer's earned income and federal adjusted gross income.

The maximum Wisconsin earned income credit for taxable years beginning in 1994 is:

- \$91.77 if the person has one qualifying child
- \$498.75 if the person has two qualifying children
- \$1,496.25 if the person has more than two qualifying children

A phase-out of the credit begins when federal adjusted gross income or earned income exceeds \$12,570. The credit is no longer available when federal adjusted gross income or earned income is above \$23,740.

Example: A taxpayer has wages of \$15,000. The taxpayer has no other source of income, so federal adjusted gross income is also \$15,000. The taxpayer's 1994 earned income credit will be one of the following:

- \$71.84 if taxpayer has 1 qualifying child.
- \$390.13 if taxpayer has 2 qualifying children.
- \$1,170.63 if taxpayer has more than 2 qualifying children.

For taxable years beginning on or after January 1, 1995, the variables used in computing the credit will be adjusted annually for changes in the U.S. consumer price index.

The tax form booklets for 1994 will likely include tables for computing the credit.

6. Deduction for Medical Care Insurance Costs Increased for Self-Employed Persons (1993 Act 16, amend secs. 71.05(6)(b)18(intro.) and 71.07(5)(a)15 and create sec. 71.05(6)(b)19 and 20, effective for taxable years beginning on or after January 1, 1995.)

For taxable years beginning on or after January 1, 1995, the portion of a self-employed person's medical care insurance costs, which can be used in computing a subtraction from federal adjusted gross income in computing Wisconsin taxable income, is increased from 50% to 100%. For a person who is an employee of another person and whose employer pays no amount of money towards the person's medical care insurance, the amount to use in computing the subtraction remains at 50%.

Existing Wisconsin law provides that certain persons may be able to claim a subtraction for a portion of the amount paid for medical care insurance for the person, his or her spouse, and dependents. The subtraction is available to (1) a self-employed person, or (2) a person who is an employee of another person if the employer pays

no amount of money toward the person's medical care insurance.

For taxable years beginning in 1993, 25% of the amount paid by the person for medical care insurance can be used in computing the subtraction.

For taxable years beginning in 1994, 50% of the amount paid by the person for medical care insurance can be used in computing the subtraction.

7. Reference to the Internal Revenue Code for Lump-Sum Distributions Corrected (1993 Act 16, amend sec. 71.05(6)(a)4, effective for lump-sum distributions received on or after January 1, 1993.)

To reflect a renumbering change made to the Internal Revenue Code (IRC) by Public Law 102-318, the reference to an Internal Revenue Code provision relating to lump-sum distributions in sec. 71.05(6)(a)4, Wis. Stats. (1991-92), is changed from sec. 402(e)(1), IRC, to sec. 402(d)(1), IRC.

8. Limitation on Costs Used for State Historic Rehabilitation Credit Restored (1993 Act 16, create sec. 71.07(9r)(b)7, effective for taxable years beginning on or after January 1, 1993.)

Costs for the preservation or rehabilitation of historic property incurred before the State Historical Society approved the proposed preservation or rehabilitation plan cannot be used in the computation of the State Historic Rehabilitation Credit.

(Note: This limitation was in effect for taxable years beginning prior to January 1, 1991. However, it was eliminated by 1991 Act 39 for taxable years beginning in 1991 and 1992.)

9. Development Zone Credits Amended (1993 Act 16, amend secs. 71.07(2dj)(am)9, 560.71(3)(a), and 560.745(2)(a) and create sec. 71.07(2dj)(am)8m, various effective dates.)

Effective August 12, 1993, the number of development zones that may be designated by the Department of Development is increased from 12 to 14.

Effective for taxable years beginning on or after January 1, 1993, the development zones jobs credit is expanded. A credit is allowed for each person, whether or not he or she is a member of a targeted group, who is determined by the Department of Development to be a resident of the development zone in which he or she is employed. The credit is equal to 10% of the wages earned by such person during the first year of the person's employment in the development zone, up to a maximum credit of \$600.

B. Corporation Franchise or Income Taxes

1. Internal Revenue Code References Updated for 1993 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits (1993 Act 16, amend secs. 71.22(4)(g) and (4m)(e), 71.26(2)(b)7 and (3)(y), 71.34(1g)(g), 71.365(1m), 71.42(2)(f), and 71.45(2)(a)13 and create secs. 71.22(4)(h) and (4m)(f), 71.26(2)(b)8, 71.34(1g)(h), and 71.42(2)(g), effective for taxable years beginning on or after January 1, 1993).

For taxable years that begin on or after January 1, 1993, "Internal Revenue Code" for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real estate investment trusts (REITs), and real estate mortgage investment conduits (REMICs) means the federal Internal Revenue Code as amended to December 31, 1992, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- a. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 1993, depreciation or amortization may be computed under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1992, at the taxpayer's option.

- b. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- c. For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in passthroughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
- d. For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
- e. For RICs, REITs, and REMICs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.

2. Federal Laws Enacted During 1992 Apply Simultaneously for Wisconsin Purposes (1993 Act 16, amend secs. 71.22(4)(f) and (g) and (4m)(d) and (e), 71.26(2)(b)6 and 7, 71.34(1g)(f) and (g), and 71.42(2)(e) and (f), effective for taxable years beginning after December 31, 1990, and before January 1, 1993).

The federal Unemployment Compensation Amendments of 1992 (Public Law 102-318) and Energy Policy Act of 1992 (Public Law 102-486) apply for Wisconsin franchise and income tax purposes at the same time as for federal purposes. For example, the rules relating to the recognition of precontribution gain in the case of certain distributions to contributing partners apply for both federal and Wisconsin purposes for distributions on or after June 25, 1992.

3. Dividends Received Deduction Modified (1993 Act 16, amend secs. 71.26(3)(j) and 71.45(2)(a)8, effective for taxable years beginning on or after January 1, 1993).

a. Dividends Deductible if 70% Ownership of Stock of Payor

In calculating its net income, a corporation or insurance company may deduct dividends that it receives from another corporation with respect to its common stock if the corporation receiving the dividends owns, directly or indirectly, during the entire taxable year at least 70% of the total combined voting stock of the payor corporation. For insurance companies, the deduction is no longer limited to dividends received from payor corporations that are organized under Wisconsin law.

Under prior law, the corporation or insurance company receiving the dividend had to own, directly or indirectly, during the entire taxable year at least 80% of the total combined voting stock of the payor corporation. Additionally, for dividends received by insurance companies to be deductible, the payor corporation had to be a Wisconsin corporation.

b. Eliminate Dividend Deduction Based on Payor's Activity in Wisconsin

A corporation may no longer take a deduction for dividends received based on the amount of activity of the payor corporation in Wisconsin. Under prior law, a deduction was available if the payor corporation was subject to Wisconsin franchise or income tax law, filed a Wisconsin return, and did not deduct the dividends for Wisconsin tax purposes, and 50% or more of the payor corporation's net income or loss, after adjustment for tax purposes, was used in computing Wisconsin taxable income for the year preceding the payment of the dividends.

4. Development Zone Credits Amended (1993 Act 16, amend secs. 71.28(1dj)(am)9, 71.47(1dj)(am)9, 560.71(3)(a), and 560.745(2)(a) and create secs. 71.28(1dj)(am)8m, and 71.47(1dj)(am)8m, various effective dates.)

Effective August 12, 1993, the number of development zones that may be designated by the

Department of Development is increased from 12 to 14.

Effective for taxable years beginning on or after January 1, 1993, the development zones jobs credit is expanded. A credit is allowed for each person, whether or not he or she is a member of a targeted group, who is determined by the Department of Development to be a resident of the development zone in which he or she is employed. The credit is equal to 10% of the wages earned by such person during the first year of the person's employment in the development zone, up to a maximum credit of \$600.

C. Farmland Preservation Credit

1. Lien Provisions for Land Released From Farmland Preservation Program Changed (1993 Act 16, amend secs. 91.17(2) and 91.19(7) and (8) and create sec. 91.19(1m) and (13), effective for farmland preservation agreements or transition area agreements relinquished on or after August 12, 1993.)

When the owner of land subject to a farmland preservation agreement has died or is certified by a physician to be totally and permanently disabled, land released from the farmland preservation program is not subject to the lien provisions of sec. 91.19(8), Wis. Stats., in the amount of farmland preservation credits received in the past 10 years, plus interest. Under those circumstances, the Department of Agriculture, Trade and Consumer Protection shall relinquish the agreement when requested to do so.

The lien provisions of sec. 91.19(7) and (8), Wis. Stats., also do not apply to land covered by a farmland preservation agreement or transition area agreement which has been relinquished under sec. 91.19(1) or (1m), Wis. Stats., if the owner has satisfied all of the requirements relating to the agreement up to the date of the relinquishment.

Under prior law, the lien provisions did apply to land released as a result of the relinquishment of an agreement under sec. 91.19(7) or (8), Wis. Stats., even if the owner died or became disabled, or if the owner had satisfied the agreement requirements up to the date of the relinquishment.

D. Temporary Recycling Surcharge

1. Estimated Payment and Interest Provisions Modified to Conform to Franchise and Income Tax Provisions (1993 Act 16, amend secs. 71.09(1)(b) and (2), 71.29(1)(b), 77.95, and 77.96(2) and (5) and create sec. 77.947, effective dates are given below).

a. Due Date of Temporary Recycling Surcharge

For taxable years beginning on or after January 1, 1993, the temporary recycling surcharge is due on the unextended due date of the taxpayer's Wisconsin franchise or income tax return. If a taxpayer receives an extension of time to file its Wisconsin franchise or income tax return, 12% interest applies to the unpaid temporary recycling surcharge during the extension period.

Under prior law, the temporary recycling surcharge was due on the due date, including extensions, for filing the taxpayer's Wisconsin franchise or income tax return. However, a taxpayer receiving an extension of time to file generally was required to make an estimated temporary recycling surcharge payment, based on the prior year's gross tax or net business income, by the unextended due date of the tax return.

b. Quarterly Estimated Temporary Recycling Surcharge Payments

For taxable years beginning on or after January 1, 1994, persons may be required to make quarterly payments to prepay the temporary recycling surcharge.

Partnerships that owe at least \$200 of surcharge are to make quarterly estimated surcharge payments using the rules and due dates applicable for individuals under sec. 71.09, Wis. Stats. (1991-92), as amended by this Act. If required estimated surcharge payments are not made, underpayment interest under sec. 71.84(1), Wis. Stats., may apply.

Individuals, estates, and trusts add the surcharge to their net income tax (including the alternative minimum tax) to determine whether estimated payments are required and, if so, the

amount of the required installment payments. If the sum of the net tax and surcharge due is at least \$200, a calendar year filer generally must make equal installment payments on or before April 15, June 15, September 15, and January 15. In most cases, the amount that must be prepaid is the smaller of 100% of the tax and surcharge shown on the prior year's return, or 90% of the tax and surcharge shown on the current year's return. Individuals, estates, and trusts make estimated tax and surcharge payments using Form 1-ES. If required estimated tax and surcharge payments are not made, underpayment interest may apply.

For example, an individual owes \$5,400 of net income tax and \$220 of temporary recycling surcharge for the 1994 calendar year. For 1993, the individual had reported \$6,000 of net income tax and \$300 of temporary recycling surcharge. The individual must have made quarterly estimated tax and surcharge payments for 1994 of \$1,264.50 $(\$5,400 + \$220) \times 90\% \times \frac{1}{4}$.

2. Temporary Recycling Surcharge for Partnerships Modified (1993 Act 16, amend secs. 77.92(4) and 77.93(3) and create sec. 77.92(4m), effective for taxable years beginning on or after January 1, 1993).

a. Which Partnerships Are Subject to the Surcharge?

The temporary recycling surcharge applies to all partnerships, except partnerships engaged only in farming, that derive income from business transacted in Wisconsin, from property in Wisconsin, or from services performed in Wisconsin for the taxable year. Prior law imposed the surcharge on all partnerships, except partnerships engaged only in farming, required to file a Wisconsin partnership return under sec. 71.20(1), Wis. Stats. (1991-92), which stated that "every partnership" must file a return.

The surcharge continues to apply to partnerships engaged in farming that have at least \$1,000 of net farm profit.

b. What Is a "Partnership"?

For purposes of the surcharge, "partnership" has the meaning given in IRC sec. 761(a) and excludes entities that have elected not to be treated as partnerships under IRC sec. 761(a). Under this Code section, the term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on.

An unincorporated organization may elect not to be treated as a partnership under federal regulations if it is established (a) for investment purposes only and not for the active conduct of a business, (b) for the joint production, extraction, or use of property, but not for the purpose of selling services or property produced or extracted, or (c) by dealers in securities for a short period for the purpose of underwriting, selling, or distributing a particular issue of securities, if the income of the members of the organization may be adequately determined without the computation of partnership taxable income.

c. What Is Partnership "Net Business Income"?

For a partnership, "net business income" subject to the surcharge is computed by adding items (1) through (4) and subtracting item (5). Income, gain, loss, and deductions from farming are excluded from "net business income."

- Add:
- (1) taxable income as calculated under IRC sec. 703
 - (2) income and gains that are separately stated under IRC sec. 702
 - (3) payments to partners that are treated as made to one who is not a partner under IRC sec. 707(a)
 - (4) development zone credits claimed
- Subtract:
- (5) items of loss and deduction that are separately stated under IRC sec. 702

Under prior law, "net business income" meant the ordinary income from trade or business activities.

3. Gross Receipts Requirement Increased for Sole Proprietorships and Partnerships (1993 Act 16, amend sec. 77.94(1)(b), effective for taxable years beginning on or after January 1, 1994).

The temporary recycling surcharge applies to sole proprietorships and partnerships that are not engaged in farming if they have at least \$4,000 of gross receipts. Under prior law, the surcharge applied to nonfarm sole proprietorships and partnerships having at least \$1,000 of gross receipts.

4. Effective Date of Temporary Recycling Surcharge Rate Changes Modified (1993 Act 16, amend sec. 77.945, effective for taxable years beginning on or after January 1, 1994).

Annually, in time for consideration by the Legislature's Joint Committee on Finance (JCF) at its December meeting, the Department of Revenue is required to establish the temporary recycling surcharge rates, subject to JCF's approval. The new rates will apply for taxable years beginning on the January 1 after the department notifies JCF. For example, if a rate change is proposed in December 1993 and approved by JCF, the new rates will first apply to taxable years beginning on January 1, 1994. Under prior law, new rates first applied to taxable years ending after April 1.

If JCF disapproves the proposed rates, the rates then in effect will continue in effect.

E. Sales and Use Taxes

1. Surrender of Seller's Permit Requirement Eliminated for Occasional Sales Exemption (1993 Act 16, amend sec. 77.51(9)(am), effective August 12, 1993.)

The conditions that must be met for the sale of business assets to qualify as an exempt occasional sale are changed.

Under prior law, the sale of tangible personal property, other than inventory held for sale, previously used by a seller to conduct its business at a location, was exempt from Wisconsin sales or use tax as an occasional sale if both of the following conditions were met:

- a. The sale of tangible personal property occurred after the seller ceased actively operating

as a seller of tangible personal property or taxable services at that location.

- b. The seller delivered its seller's permit to the Department of Revenue for cancellation within 10 days after the last sale at that location of tangible personal property, other than inventory.

The amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92), eliminates the condition that the seller must surrender its seller's permit within 10 days of the last sale (condition "b"). However, condition "a" above still applies.

Note: This amendment applies to all sales of tangible personal property meeting condition "a" above, if the last sale of that property occurs on or after August 12, 1993, regardless of whether the seller ceased actively operating the business before, on, or after August 12, 1993.

Example 1: Company A ceases actively operating as a seller of tangible personal property and taxable services on August 1, 1993 (i.e., prior to the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92)). Company A sells its business assets, other than inventory held for sale, on August 30, 1993, (i.e., on or after the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92)). Company A does not deliver its Wisconsin seller's permit to the department for cancellation.

Since the sale of business assets by Company A takes place on or after the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92), it is exempt from Wisconsin sales and use taxes as an occasional sale.

Example 2: Company C ceases actively operating as a seller of tangible personal property and taxable services on May 31, 1993. Company C sells its business assets, other than inventory held for sale, to various companies over a period of 3 months, the last sale occurring on August 30, 1993 (i.e., on or after the August 12, 1993, effective date of the amendment to sec. 77.51(9)(am), Wis. Stats. (1991-92)). Company C does not deliver its Wisconsin seller's permit to the department for cancellation.

Since the last sale of business assets by Company C takes place on or after August 12, 1993, the sales of business assets during the period of June 1, 1993, to August 30, 1993, are exempt from Wisconsin sales or use tax as occasional sales.

2. Impose Use Tax on Tangible Personal Property Manufactured, Processed, or Otherwise Altered In or Outside Wisconsin and Used in Wisconsin (1993 Act 16, repeal and recreate sec. 77.53(1), effective August 12, 1993.)

Use tax is imposed on the storage, use, or other consumption of tangible personal property manufactured, processed, or otherwise altered, in or outside Wisconsin, by the person who stores, uses, or consumes it, from material purchased from any retailer.

This provision reverses the effect of the Circuit Court of Dane County decision in *Morton Buildings, Inc. vs. Wisconsin Department of Revenue* (February 10, 1992).

The following examples illustrate the application of use tax under this provision:

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 advertising brochures 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 advertising brochures are mailed by Company A to its customers in Wisconsin.

The paper and ink used to print the advertising brochures that are mailed to Wisconsin customers are 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.

The raw materials used to manufacture the desks that are used by Company B in Wisconsin are 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.

The raw materials used to manufacture automobiles that are used by Company C employees in Wisconsin are 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. Company D erects the modular homes in Wisconsin.

The raw materials used by Company D to produce the modular homes which are erected in Wisconsin are 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.

The raw materials used by Company E to manufacture asphalt used in road construction in Wisconsin are 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.

The rods bent by Company F outside Wisconsin and used in real property construction in Wisconsin are subject to Wisconsin use tax.

3. Definition of Storage and Use Revised for Raw Materials Incorporated Into Printed Materials (1993 Act 16, amend sec. 77.51(22)(a) and repeal and recreate sec. 77.51(18), effective for materials purchased and first stored in Wisconsin on or after October 1, 1993.)

"Storage" and "use" for purposes of imposing Wisconsin use tax under sec. 77.53(1), Wis. Stats. (1991-92), do not include the keeping, retaining, or exercising any right or power over raw materials by a publisher or printer of printed materials for processing, fabricating, or manufacturing into, attachment to, or incorporation into printed materials to be transported outside Wisconsin, and thereafter used solely outside Wisconsin.

Example: Company A, a Wisconsin company, publishes catalogs to promote the sale of its products. Company A, on October 1, 1993, purchases paper from an out-of-state company which does not have nexus in Wisconsin. The paper is delivered to a Wisconsin printer on October 4, 1993, who prints the catalogs for Company A. The catalogs are subsequently shipped outside Wisconsin for use solely outside Wisconsin.

The paper is not "stored" or "used" in Wisconsin and, therefore, is not subject to Wisconsin use tax.

Note: If the paper was purchased and delivered to Wisconsin prior to October 1, 1993, the effective date of this provision, the paper would be subject to Wisconsin use tax.

4. Exemption Created for Certain Items Sold by Department of Agriculture, Trade, and Consumer Protection (1993 Act 16, create sec. 77.54(42), effective October 1, 1993.)

Sales of the following items by the Wisconsin Department of Agriculture, Trade, and Consumer Protection are exempt from Wisconsin sales or use tax:

- Animal identification tags to persons who are required or authorized to use those identification tags.
- Standard samples representing product or commodity grades.

F. Excise Taxes

1. Motor Vehicle Fuel Tax — Point of Collection of Tax on Gasoline and Diesel Fuel Changed

- a. Imposition Changed** (1993 Act 16, amend Subchapter I (title), Subchapter II (title), secs. 78.01(1), 78.015(1) and (3), 78.07(title), (3) and (4), 78.10(1), (2), (4), (5) and (6), 78.11(1)(b), (2), (3) and (4), 78.12(1), (3) and (3m), 78.13, 78.15, 78.19, 78.22(title), (1), (2) and (4), 78.57(9)(c), 78.59(2), 78.65(1), 78.66(title), (1) and (2), 78.67, 78.68(2)(intro.) and (9), 78.70(2) and (4), 78.71, 78.73(1)(dm), (dr) and (e), 78.75(1m)(a), (b), (c) and (e) and (2), 78.77(1), (2), (3), (4) and (5), 78.78(1) and (2), 78.80(1), (2) and (3) and 78.82; consolidate, amend and renumber sec. 78.07(1)(intro.) and (a) to 78.07(1); repeal secs. 78.01(2)(c), 78.07(1)(b) and (c) and (2), 78.10(8), 78.14, 78.17 and 78.18; create sec. 78.215; and amend and renumber sec. 78.58(3)(a) to 78.58(3) and 78.84 to 78.585, effective April 1, 1994.)

The collection point of the excise tax on gasoline and diesel fuel is moved to the point of first "receipt" in Wisconsin, which is generally the terminal/refinery level. Currently, the collection point for gasoline is the wholesale level and the collection point for diesel fuel is the retail/user level. This change imposes the excise tax on gasoline at the same level as imposed by the federal government.

A new category of license is created, a *supplier* (as defined in Part b). It is estimated that there will be approximately 50 licensed suppliers. Prior law required monthly tax payment from approximately 750 motor fuel wholesalers and 2,200 special fuel dealers and users.

While most sections in the prior motor vehicle fuel tax law have been revised by 1993 Act 16, the basic framework of the new law is:

- No person other than a supplier is permitted to import, store, sell, or transport gasoline or diesel fuel in Wisconsin without first paying the motor vehicle fuel tax or having accrued liability for the motor vehicle fuel

tax. This requirement applies even if the product is acquired out-of-state.

- Suppliers, and persons licensed to collect and remit taxes to other states, can export product tax free. All other persons are required to pay the destination state tax to the supplier and present proof of export. (See Part p for additional information).
 - The tax is imposed on gasoline and diesel fuel when the fuel is removed from the terminal or refinery rack. However, no tax is imposed upon diesel fuel that is withdrawn for an exempt use (see Part d) if an indelible dye has been added to the fuel before or at the time of withdrawal (see Part e).
- b. Definitions** (1993 Act 16, create secs. 78.005(intro.), (1), (2), (3), (5), (6), (7), (8), (9), (13), (13m), (14), (15), (16), (17) and (18) and 78.64; repeal secs. 78.02(title), 78.03(title), 78.04, 78.05, 78.06(title), 78.08, 78.16, 78.41, 78.42, 78.43, 78.44, 78.45(title) and 78.46(title); renumber sec. 78.02 to 78.005(4); amend and renumber secs. 78.03(1) to 78.005(12) and 78.06 to 78.005(10); and consolidate, amend and renumber sec. 78.03(2) and (3) to 78.005(11), effective April 1, 1994.)

The following definitions apply for purposes of the motor vehicle fuel tax:

- "Alcohol" means fuel ethanol, except denaturant and water, that is at least 98% ethanol by volume. "Alcohol" also means ethanol derivative substances that are capable of use as a blendstock, including ethyl tertiary butyl ether, methanol, methanol derivative substances and methyl tertiary butyl ether.
- "Blending" means the mixing of one or more petroleum products, with or without another product, and regardless of the original character of the product blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle. "Blending" does not include mixing that occurs in refining by the original refiner of crude petroleum nor mixing of lubricating

oil in the production of lubricating oils and greases.

- “Bulk plant” means a motor vehicle fuel storage facility, other than a terminal, that is primarily used to redistribute motor vehicle fuel by vehicles that have a capacity of 4,200 gallons or less.
- “Diesel fuel” means any liquid fuel capable of use in discrete form or as a blended component in the operation of diesel-type engines in motor vehicles including number one and number two fuel oils, except that K-1 kerosene is not “diesel fuel” unless it is blended with diesel fuel for use in motor vehicles that have a diesel-type engine.
- “Export” means deliver across the boundaries of this state by or for the seller or purchaser from a place of origin in this state.
- “Gasoline” means gasoline, casing head or natural gasoline, benzol, benzine, naphtha, and any blend stock or additive that is sold for blending with gasoline other than products typically sold in containers of less than 5 gallons. “Gasoline” includes a liquid prepared, advertised, offered for sale, sold for use as, or used in the generation of power for the propulsion of a motor vehicle, including a product obtained by blending together any one or more products of petroleum, with or without another product, and regardless of the original character of the petroleum products blended, if the product obtained by the blending is capable of use in the generation of power for the propulsion of a motor vehicle. “Gasoline” also includes transmix. “Gasoline” does not include diesel fuel, commercial or industrial naphthas or solvents manufactured, imported, received, stored, distributed or sold for exclusive use other than as a fuel for a motor vehicle.
- “Import” means deliver across the boundaries of this state by or for the seller or purchaser from a place of origin outside this state.
- “Licensee” means a person who is licensed under sec. 78.09.
- “Manufacturing” means producing motor vehicle fuel by refining or preparing motor vehicle fuel by any process involving substantially more than the blending of motor vehicle fuel.
- “Mobile machinery and equipment” includes a vehicle which is self-propelled by an internal combustion engine or motor but not designed or used primarily for the transportation of persons or property and only incidentally operated or moved over a highway, such as farm tractors, ditch digging apparatus, power shovels, drag lines, earth-moving equipment and machinery and road construction and maintenance machinery such as asphalt spreaders, bituminous mixers, bucket loaders, ditchers, leveling graders, finishing machines, motor graders, paving mixers, road rollers, scarifiers and earth-moving scrapers. “Mobile machinery and equipment” does not include dump trucks or self-propelled vehicles originally designed for the transportation of persons or property to which machinery has been attached, such as truck-mounted transit mixers, cranes, shovels, welders, air compressors, well-boring apparatus, corn shellers, lime spreaders and feed grinders.
- “Motor vehicle” means any automobile, truck, truck-tractor, tractor, bus, vehicle or other conveyance that is self-propelled by an internal combustion engine or motor and licensed for highway use, except that “motor vehicle” does not include mobile machinery and equipment.
- “Motor vehicle fuel” means gasoline or diesel fuel.
- “Retail dealer” means a person, other than a wholesale distributor, who engages in the business of selling or distributing motor vehicle fuel to the end user in this state.
- “Supplier” includes a person who imports, or acquires immediately upon import, motor vehicle fuel by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a terminal and who is registered under 26 USC 4101 for tax-free transactions in gasoline. “Supplier” also includes a person who

produces in this state; or imports into a terminal or bulk plant; or acquires immediately upon import by truck, railcar or barge into a terminal; alcohol or alcohol derivative substances. "Supplier" also includes a person who produces, manufactures or refines motor vehicle fuel in this state. "Supplier" does not include a retail dealer or wholesaler who merely blends alcohol with gasoline before the sale or distribution of the product. "Supplier" does not include a terminal operator who merely handles in a terminal, motor vehicle fuel consigned to the terminal operator.

- "Terminal" means a motor vehicle fuel storage and distribution facility that is supplied by a pipeline or a marine vessel and from which motor vehicle fuel may be removed at a rack. "Terminal" does not include any facility at which motor vehicle fuel blend stocks and additives are used in the manufacture of products other than motor vehicle fuel and from which no motor vehicle fuel is removed.
- "Terminal operator" means the person who by ownership or contractual agreement is charged with the responsibility for, or physical control over, and operation of a terminal. If co-venturers own a terminal, "terminal operator" means the person who is appointed to exercise the responsibility for, or physical control over, and operation of the terminal.
- "Transmix" means the buffer between two different products in a pipeline shipment, or a mix of two different products in a refinery or terminal, that results in an off-grade mixture.
- "Wholesaler distributor" means a person who acquires motor vehicle fuel from a supplier or from another wholesaler distributor for subsequent sale at wholesale and distribution by tank cars or tank trucks or both.

Definitions in current law for "motor fuel," "blending," "wholesaler," "broker," "dealer," "motor vehicle," "mobile machinery and equipment," "special fuel," and "use" are repealed.

- c. **Gasoline Exemptions** (1993 Act 16, amend sec. 78.01(2)(title), (a), (b), (d), (e) and (f) and repeal sec. 78.01(2)(c) and (3), effective April 1, 1994.)

Gasoline is exempt from the motor vehicle fuel tax if:

- It is exported by a person licensed to export. Gasoline carried out of Wisconsin in the ordinary fuel tank of a motor vehicle is not gasoline exported.
- It is sold to and used by the United States or its agencies if that sale is evidenced by proper documentation.
- It is sold to a common motor carrier as defined in ch. 194, Wis. Stats. (1991-92), if that carrier certifies to the department that the gasoline is for use in the operation of a motor vehicle for the urban mass transportation of passengers as defined in sec. 71.38, Wis. Stats. (1991-92).
- It is sold for nonhighway use in mobile machinery and equipment and delivered directly into the consumer's storage tank in an amount of not less than 100 gallons if the supplier obtains from the consumer a valid exemption certificate prescribed by the department.
- It is sold to a general aviation fuel dealer licensed under sec. 78.56, Wis. Stats. (1991-92), for use in an aircraft, as defined in sec. 78.55(2), Wis. Stats. (1991-92), and delivered directly into the dealer's storage tank in a volume of at least 100 gallons.

- d. **Diesel Fuel Exemptions** (1993 Act 16, create sec. 78.01(2m) and (2p), effective April 1, 1994.)

No motor vehicle fuel tax is imposed under sec. 78.01(1), and no supplier, wholesaler or retail dealer may collect a motor vehicle fuel tax, on diesel fuel that is purchased by an end user if that fuel fulfills one of the following conditions:

- It is exported by a person licensed to export.

- It is sold to and used by the United States or one of its agencies and that sale is evidenced by proper documentation.
- It is sold for use as a heating oil.
- It is sold for use in trains.
- It is sold to a common motor carrier, as defined in sec. 194.01(1), Wis. Stats. (1991-92), if that carrier certifies to the department that the diesel fuel is to be used in the operation of a motor vehicle for the urban mass transportation of passengers, as defined in sec. 71.38, Wis. Stats. (1991-92).
- It is sold for off-highway use.
- It is exported by an unlicensed person who has paid the tax on it to the state of destination, as evidenced by a bill of lading.

e. Dyed Diesel Fuel (1993 Act 16, create sec. 78.01(2p), effective April 1, 1994.)

When an indelible dye has been added to diesel fuel either before or upon withdrawal at a terminal or refinery rack, the dyed fuel may only be sold for exempt usage (see Part d above). The dye may be either dye required to be added per the federal Environmental Protection Agency (blue dye required per EPA reg 40 CFR Parts 80 and 86 for high sulfur diesel fuel sold in the United States for off-road use on or after October 1, 1993) or dye that meets the specifications and amount required by the department.

f. Refunds for Exempt Transactions (1993 Act 16, create sec. 78.01(2r), effective April 1, 1994.)

Refunds can be obtained from the department by wholesale distributors and retail dealers of the Wisconsin motor vehicle fuel taxes paid relating to gasoline and undyed diesel fuel sold for exempt usage (see Parts c and d above).

g. Diesel Fuel Inventory Tax Payment Required (1993 Act 16, create nonstatutory provision, effective April 1, 1994.)

Any person who, on April 1, 1994, holds for sale, resale or use, undyed diesel fuel on which the tax is due but not paid, shall pay the tax on that fuel to the department on or before May 15, 1994.

h. Gasoline Shrinkage Allowance Reduced (1993 Act 16, repeal and recreate sec. 78.12(4), effective April 1, 1994.)

The 1½% shrinkage allowance provided under prior law is repealed.

For reporting and paying the motor vehicle fuel tax on gasoline, licensees are allowed to reduce the number of taxable gallons by 1.35%, effective April 1, 1994. Of this amount, 1.25% must be passed on to a wholesale distributor when the distributor pays the gasoline tax to the licensee.

i. Due Date of Motor Vehicle Fuel Tax Payment (1993 Act 16, repeal and recreate sec. 78.12(5), effective April 1, 1994.)

Taxes on motor vehicle fuel sold during a month are due on the 15th day of the next month.

j. Due Date of Motor Vehicle Fuel Tax Report (1993 Act 16, repeal and recreate sec. 78.12(2), effective April 1, 1994.)

Reports detailing a licensee's motor vehicle fuel transactions during a month are due no later than the last day of the next month.

k. Department May Require Electronic Filing and Payment (1993 Act 16, repeal and recreate sec. 78.12(2) and (5), effective April 1, 1994.)

The department may require motor vehicle fuel licensees to transfer tax revenue electronically to the appropriate state account.

The department may also require that certain monthly reports required of motor vehicle fuel licensees relating to terminal operation, imports and exports of fuel, and production, refining, blending, or manufacture of fuel be filed electronically.

- l. Tax Payment Delay from Wholesale Distributor to Licensee** (1993 Act 16, repeal and recreate sec. 78.12(5), effective April 1, 1994.)

Wholesale distributors have the option to delay paying the motor vehicle fuel tax to their licensed supplier until the date the fuel tax is due the department by the supplier (15 days after the close of the month in which the wholesale distributor received the fuel). A wholesale distributor who makes delayed tax payments to a licensed supplier must make such payments by electronic funds transfer. If a wholesale distributor fails to make timely payments, the licensed supplier may terminate the right of the wholesale distributor to make delayed payments. A licensed supplier must notify the department of any wholesale distributor who fails to timely make delayed tax payments. If a wholesaler wishes to continue making delayed tax payments, the department will require such distributor to file a surety bond with the department in an amount not exceeding 3 times the highest estimated monthly tax owed by the wholesale distributor. The department will notify licensed suppliers when a distributor has filed a surety bond.

- m. Security Limits Changed for Motor Vehicle Fuel Taxes** (1993 Act 16, amend secs. 78.11(1)(a), 78.48(9) and 78.57(9)(a), effective April 1, 1994.)

The department may require any person liable for motor vehicle fuel taxes to place with the department, either before or after a license is issued, security in the amount which the department determines, but not to exceed 3 times the licensee's average monthly liability for motor vehicle fuel taxes, as estimated by the department.

Prior law contained a maximum security limit of \$25,000 to obtain a special fuel (diesel fuel) license, and a \$100,000 limit to obtain a motor fuel (gasoline) license.

- n. Tax Credit Allowed Licensee for Motor Vehicle Fuel Tax Uncollectible From Customers** (1993 Act 16, create sec. 78.01(2s), effective April 1, 1994.)

A licensed supplier who is unable to recover the motor vehicle fuel tax from a customer is not liable for the tax. With proper documentation the licensed supplier may claim a tax credit for the amount of uncollectible motor vehicle fuel tax.

- o. Seizure and Forfeiture Provisions Created** (1993 Act 16, create sec. 78.21, effective April 1, 1994.)

Any untaxed motor vehicle fuel that is received by a person other than a licensee is subject to seizure along with the vehicle or other means of transportation used to transport the motor vehicle fuel.

Any transporter who imports motor vehicle fuel into Wisconsin for use, distribution, storage or sale and who does not possess a manifest may also be subject to seizure of the motor vehicle fuel and the vehicle.

- p. Supplier and Exporter Licenses** (1993 Act 16, amend sec. 78.10(title) and repeal and recreate sec. 78.09, effective April 1, 1994.)

A person who meets the definition of "supplier" and who is registered under 26 USC 4101 for tax-free transactions in gasoline by the United States Government and who desires to import or acquires immediately upon import, motor vehicle fuel by pipeline or marine vessel from a state, territory or possession of the United States or from a foreign country into a Wisconsin terminal is required to obtain a license from the department. A person who exports motor vehicle fuel is required to obtain an export license or a supplier license from the department. In order to obtain a license to export motor vehicle fuel to another specified state, a person shall be licensed either to collect and remit motor vehicle fuel taxes or to deal in tax-free motor vehicle fuel in that other specified state of destination.

In order to procure a license, a supplier and/or exporter shall file with the department an application prescribed and furnished by the department, which shall be accompanied by a copy of the applicant's license under 26 USC 4101.

q. Installment Payments Will Be Allowed for March 1994 Special Fuel Tax Liability of Certain Dealers/Users (1993 Act 16, create nonstatutory provision, effective April 1, 1994.)

Special fuel dealers/users who are not required to be licensed by the department after March 1994 and who pay the special fuel tax on a monthly basis will be allowed to pay the special fuel tax due for the month of March 1994 in four equal installments (due April 15, 1994; July 15, 1994; October 15, 1994; and January 15, 1995).

Note: Persons licensed both before and after April 1994 are not eligible to make installment payments.

2. Alternate Fuel Tax Created (1993 Act 16, create secs. 78.39 and 78.64; amend secs. 78.40(1) and (2)(a) and (c), 78.47, 78.48(1), (2), (4), (5), (6) and (9), 78.49, 78.50, 78.51, 78.52, 78.53, 78.66, 78.68(2)(intro.) and (9), 78.70(1)(intro.), (2) and (4), 78.71, 78.73(1)(e), 78.75(1m)(a) to (e) and (2), 78.77(1), (2), (3), (4) and (5), 78.78(1), 78.80(1) and (3) and 78.82; repeal sec. 78.40(2)(b); and renumber and amend sec. 78.45 to 78.39(2), and sec. 78.46 to 78.39(3), effective April 1, 1994.)

Under prior law, all fuels used to power a motor vehicle other than gasoline and general aviation fuel were referred to as special fuel. The new provisions create an "alternate fuels" tax for all fuels used to power a motor vehicle other than gasoline, diesel fuel and general aviation fuel.

Any person who is a dealer of alternate fuels or who wants to purchase such fuel ex-tax and place it in the supply tank of a motor vehicle must obtain a license from the department and remit any tax owing directly to the department. An alternate fuel license is valid until suspended or revoked for cause by the department or cancelled by the licensee. There is no fee for this license. The department may require security prior to issuing an alternate fuel license.

Alternate fuel licensees are required to file reports with the department paying any tax due by the

last day of the following month. Quarterly filing and payment may be allowed by the department when a licensee's tax liability averages less than \$500 per quarter.

The tax rate on alternate fuel is the same tax rate per gallon as that which applies to gasoline and diesel fuel.

Numerous definitions are created including:

- "Alternate fuels" means all combustible gases and liquids suitable for generation of power for propulsion of motor vehicles, except that "alternate fuels" does not include motor vehicle fuel (gasoline or diesel fuel) or general aviation fuel. Examples of alternate fuels include compressed natural gas (CNG) and liquid propane gas (LPG).
- "Alternate fuels dealer" means any person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) in the business of handling alternative fuels who delivers any part thereof into the fuel supply tank or tanks of a motor vehicle not then owned or controlled by that person or to a retailer or user if the supplier reports and pays the tax under sec. 78.40(1).
- "Alternate fuels user" means the owner or other person (including the state of Wisconsin and any political subdivision thereof, but not including the United States or its agencies except to the extent now or hereafter permitted by the constitution and laws thereof) responsible for the operation of a motor vehicle at the time an alternate fuel is placed in the fuel supply tank or tanks thereof while such vehicle is within this state.
- "Use" means the receipt, delivery, or placing of alternate fuels into the fuel supply tank of a motor vehicle in Wisconsin, by an alternate fuels user and the delivery to a retailer or user if the supplier reports and pays the tax under sec. 78.40(1).

3. Provisions Relating to Motor Vehicle Fuel, General Aviation Fuel and Alternate Fuel

a. Transporter Registration Changed (1993 Act 16, amend sec. 78.77(1), effective April 1, 1994.)

Each person transporting motor vehicle fuel, general aviation fuel or alternate fuels by truck, trailer, semi-trailer or other vehicle on any highway in Wisconsin from a point without Wisconsin to a point within Wisconsin, from a point within Wisconsin to a point without Wisconsin, or for hire, as defined in sec. 194.01(4), Wis. Stats. (1991-92), is required to register with the department. Each registered transporter will receive one registration number which must be displayed on all of its fuel transport vehicles.

The registration number assigned to fuel transporters will be valid until it is suspended, revoked for cause by the department, or cancelled by the transporter.

Prior law required that a separate registration number be displayed on each vehicle, with annual expiration on June 30.

b. Personal Liability Revised to Include Penalties, Interest or Other Charges (1993 Act 16, amend sec. 78.70(6), effective April 1, 1994.)

Any officer, employee, fiduciary or agent who is responsible for paying taxes, interest, penalties or other charges under Chapter 78 incurred by another person, as defined in sec. 77.51(10), Wis. Stats. (1991-92), is personally liable for those taxes, interest, penalties or other charges.

4. Payment Date for Cigarette Tax Stamps Revised (1993 Act 16, amend secs. 100.30(2)(c)1.b, 139.32(1) and (6) and 139.44(8)(intro.); create secs. 139.32(5m) and (7), 139.321(title) and 139.322; renumber 139.32(8) to 139.321(1) and amend 139.321(1)(intro.) as renumbered; and renumber 139.32(9) to 139.321(2), effective September 1, 1993.)

Cigarette distributors and manufacturers must pay for cigarette stamps by the 15th day after the

month in which cigarette stamps are received. The amount due will be the face value of the stamps received during the previous month, reduced by 2%, but then increased by the department's costs of printing the stamps and shipping them to distributors and manufacturers. Beginning in 1994, the department will annually redetermine the cost of printing the stamps, with the new cost becoming effective on July 1.

The Secretary of Revenue may require any person who has not paid the tax under sec. 139.31(1), Wis. Stats. (1991-92), or who has failed to file a timely report for that tax, to place security with the department in an amount determined by the Secretary. That security may be a surety bond that is payable to the state, and that is in the form prescribed by the Secretary. The Secretary may refuse to issue a permit to, and may revoke the permit of, any person who is required to place security with the department, and fails to do so. Interest may not be paid on security placed with the department. After giving 10 days' notice, the Secretary may recover any tax, interest, penalties, and other charges due the department from the security of any person who is delinquent under Subchapter II of Chapter 139.

Under prior law, cigarette stamps were paid for with cash when purchased from the department, or on credit with payment due at the time of the next stamp purchase, but not later than 30 days after the stamps were acquired.

5. Theft When Cigarette Tax Moneys Are Not Paid (1993 Act 16, create sec. 139.395, effective September 1, 1993.)

All cigarette tax moneys received by a distributor or manufacturer for the sale of cigarettes on which the tax under Subchapter II of Chapter 139, Wis. Stats. (1991-92), has become due and has not been paid are trust funds in the hands of the distributor or manufacturer and are property of the state.

A cigarette distributor or manufacturer who does not pay the taxes to the Department of Revenue is considered guilty of theft under sec. 943.20(1), Wis. Stats. (1991-92).

G. Other

1. Uniform Assessment of Personal Liability (1993 Act 16, amend secs. 71.83(1)(b) 2 and 77.60(9), effective for reporting periods beginning on or after August 12, 1993.)

These amendments define a "person" who may be personally liable to include an officer, employee or other responsible person of a corporation or other form of business association or a member, employee or other responsible person of a partnership or sole proprietorship.

Also, the amendments to sec. 71.83(1)(b)2, Wis. Stats. (1991-92), clarify that:

- a. For assessments of personal liability, the statute of limitations does not apply if the corporation, other form of business association, partnership or sole proprietorship with which the person is associated is assessed within the statute of limitations, under sec. 71.77, Wis. Stats. (1991-92).
- b. Personal liability survives the dissolution of the corporation or other form of business association.

2. Payers of Gambling Winnings Subject to Withholding Must Provide Payee and Department With Written Statement (1993 Act 16, renumber sec. 71.67(4) to 71.67(4)(a); create secs. 71.67(4)(b) and (c) and (5)(c) and (d); and amend sec. 565.30(4), effective for winnings received by a payee on or after August 12, 1993.)

Payers of pari-mutuel wager winnings and Wisconsin lottery winnings are required to provide each payee whose winnings are subject to withholding during the year with 2 copies of a written statement by January 31 of the succeeding year, which shows the following:

- a. The name of the payer and the payer's Wisconsin income tax identification number.
- b. The name of the payee and the payee's social security number.
- c. The gross amount of the lottery prize winnings or pari-mutuel wager winnings subject to withholding.
- d. The total amount of Wisconsin income tax withheld.

Payers are also required to furnish to the Department of Revenue a copy of the written statement given to the payee.

The payee is required to include a copy of the written statement received from the payer, with the payee's Wisconsin income or franchise tax return on which the winnings are reported.

Under prior law, although Wisconsin income tax was required to be withheld from pari-mutuel wager winnings, and Wisconsin lottery winnings, the payer was not required to provide the payee with a written statement showing the amount withheld.
