



Wisconsin TAX BULLETIN



Filing Tax Returns

See articles on pages 2 — 10.

Dodge County Adopts County Tax

Effective April 1, 1994, the county sales and use tax will be adopted by Dodge County. This brings to 45 the number of counties that have adopted the ½% county tax. Adams County adopted the tax effective January 1, 1994.

The December 1993 *Sales and Use Tax Report*, a copy of which appears on pages 37 to 40 of this Bulletin, explains how the county tax applies to retailers and other persons. It includes a listing of the counties that have adopted the county tax. □

Don't Forget Use Tax

Make sure use tax is correctly reported on your sales and use tax return. Failure to report use tax may result in penalties as much as 50% of the use tax not reported.

Use tax is imposed on the purchase price of tangible personal property or taxable services that are used, stored, or consumed within Wisconsin, upon which a sales tax is not imposed or paid. Common examples include:

- Property used in Wisconsin is purchased outside Wisconsin without tax.

Example: A Wisconsin company purchases a computer from an Illinois seller without tax. The computer is used in Wisconsin. The Wisconsin company owes Wisconsin use tax on the purchase price of the computer.

- Property is purchased without tax for resale or for a nontaxable use and then is used by the purchaser in a taxable manner.

Example: A furniture store buys desks to resell to customers without tax by giving the seller a "resale certificate." A desk is then taken from the furniture store's inventory and used by the store bookkeeper. The store owes use tax on the desk.

- Property is purchased outside Wisconsin without tax and is then brought into Wisconsin and given away free. □

Package WI-X Available for 1993

Package WI-X contains actual size copies of most 1993 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, estate tax, motor fuel tax, sales and use tax, and withholding tax forms.

If you have not yet ordered your 1993 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. □

Include Temporary Recycling Surcharge When Calculating Estimated Payments

For taxable years beginning on or after January 1, 1994, businesses are required to make quarterly payments to prepay the temporary recycling surcharge if the sum of their franchise or income tax and temporary recycling surcharge is expected to exceed the minimum amounts listed below. The requirement to include the temporary recycling surcharge in the estimated tax calculation is new for 1994.

The due dates for quarterly installments of partnerships, individuals, estates, and trusts filing on a calendar year basis are April 15, June 15, September 15, and January 15. For corporations and exempt organizations filing on a calendar year basis, the due dates for quarterly installment payments are March 15, June 15, September 15, and December 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.

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income tax (including the alternative minimum tax) and temporary recycling surcharge must make quarterly estimated payments using Form 1-ES.

Contact any department office if you need forms or have any questions. ☐

Most Federal Tax Laws Enacted in 1993 Do Not Apply for Wisconsin for 1993

As a result of the Omnibus Budget Reconciliation Act of 1993 (OBRA, Public Law 103-66), changes have been made to the Internal Revenue Code for 1993 which may result in a difference between certain income and deduction items for Wisconsin and federal purposes for 1993.

With the exception of depreciation and amortization provisions, federal tax laws enacted during 1993 do not apply for Wisconsin purposes for 1993 unless subsequently adopted by the Wisconsin Legislature.

Accounting for Differences

Individuals — Differences between Wisconsin and federal income and deduction items resulting from federal tax law changes not applying for Wisconsin should be reported on Wisconsin Schedule I for individuals. A copy of Schedule I and its instructions appears on pages 41 to 46 of this Bulletin.

Other taxpayers — For other taxpayers, refer to the 1993 forms and instructions for information on how to account for these differences.

Depreciation and Amortization Changes May Be Used

Wisconsin law (secs. 71.01(7r), 71.26(3)(v), 71.365(1m), and 71.45(2)(a)13, Wis. Stats. (1991-92)) allows depreciation or amortization to be computed under either the Internal

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Corporations and Exempt Organizations that expect to owe at least \$500 of franchise or income tax and temporary recycling surcharge must make quarterly estimated payments using Form 4-ES.

Partnerships that expect to owe at least \$200 of temporary recycling surcharge must make quarterly estimated surcharge payments using Form 3S-ES.

Individuals, Estates, and Trusts that expect to owe at least \$200 of net

Revenue Code in effect for the taxable year for which the return is filed or the Internal Revenue Code as amended to a specified date, at a taxpayer's option. For example, for property placed in service during taxable years beginning on or after January 1, 1993, depreciation or amortization may be computed under either the Internal Revenue Code in effect for the taxable year 1993, or the Internal Revenue Code as amended to December 31, 1992.

This option is available to individuals, fiduciaries, partnerships, corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies.

NOTE: Depreciation or amortization changes which apply retroactively for federal purposes also apply retroactively for Wisconsin purposes. For example, the OBRA change relating to amortization of goodwill and other purchased intangibles applies for federal purposes (at a taxpayer's option) to all such property acquired after July 25, 1991. This change may also be used to determine amortization for the same property for Wisconsin purposes. Taxpayers electing to use the OBRA amortization provision for Wisconsin for taxable year 1991 or 1992 would be required to file amended returns. ☐



Electronic Filing is Fast

Wisconsin individual income tax returns that are filed electronically result in faster refunds than paper-filed returns (even faster than "quick refund" returns). The Department of Revenue can process electronically filed returns more efficiently and at a cost savings to Wisconsin taxpayers. In addition, the department acknowledges receipt of each electronically filed tax return.

Focus on Forms: Using Schedule I

Individuals should use Schedule I to report certain differences between Wisconsin and federal tax law. Differences affecting the computation of federal adjusted gross income should be reported in Part I, on line 5 (see line 5 insert below). One of the more common differences reported in Part I may result from the change in federal law which increased the maximum section 179 deduction to \$17,500

for 1993. For Wisconsin, the maximum deduction remains at \$10,000. Differences affecting the computation of federal itemized deductions and the Wisconsin itemized deduction credit should be reported in Part II, on line 7 (see line 7 insert below).

A complete copy of Schedule I and the related instructions can be found on pages 41 to 46 of this Bulletin.

SCHEDULE I

Wisconsin Department
of Revenue

ADJUSTMENTS TO CONVERT 1993 FEDERAL ADJUSTED GROSS INCOME AND ITEMIZED DEDUC- TIONS TO THE AMOUNTS ALLOWABLE UNDER THE DECEMBER 31, 1992 INTERNAL REVENUE CODE

Attach to Wisconsin Form 1 or Form 1NPR

1993

5. Other adjustments:

Description	COL. I Amount per 1993 federal return	COL. II Amount deter- mined under 12/31/92 IRC	COL. III Difference (Col. II - Col. I)
a.			
b.			
c.			
d.			
e.			
f.			
g.			
h.			
i. Total difference (combine amounts in Col. III)			

7. Adjustments:

Description	COL. I Amount per 1993 federal return	COL. II Amount deter- mined under 12/31/92 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).

Wisconsin's electronic filing program is piggy-backed on the Internal Revenue Service's (IRS) program. Any electronic return originator authorized by the IRS to file federal electronic returns can also submit Wisconsin tax returns electronically.

Tax returns with either a refund, a balance due, or no net tax can be filed electronically. Electronic filing is permitted for both timely filed tax returns and returns with an extension of time to file through August 15, 1994.

For more information about electronic filing, contact the Department's electronic filing coordinator at the following address or telephone number:

Carolyn Larson
Wisconsin Department of Revenue
P.O. Box 8903
Madison, WI 53708-8903
Phone: (608) 264-6886
FAX: (608) 264-6884 ☐

Annual Bulletin Index Available

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* 82 (July 1993), pages 36 to 58, and includes information for issues 1 (October 1976) to 80 (January 1993). ☐

Reminder: Educational Assistance Payments May Be Taxable Wages

The federal exclusion from gross income for up to \$5,250 of employer-provided educational assistance benefits under Internal Revenue Code sec. 127 does not apply for Wisconsin. As a result, for Wisconsin purposes employers must treat educational assistance payments made in the 1993 tax year as additional wages to the employee, unless the payment qualifies as a "working condition fringe benefit."

Employees who receive educational assistance benefits treated as wages must include the amount of the benefit in taxable income on their 1993 Wisconsin income tax returns (using Wisconsin Schedule I).

For further information, see the article titled "Educational Assistance Payments May Be Taxable Wages" in *Wisconsin Tax Bulletin* 84 (October 1993), page 3. ☐

Reminder: Certain Information Returns Are Due January 31

Various information returns are required to be filed by January 31 with the Wisconsin Department of Revenue.

For further information on the required information returns, see the copy of Publication 117, *Guide to Wisconsin Information Returns*, on pages 47 and 48 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, remember to use the address label, even if preparing or filing a computerized return. If you or your client received a postcard with an address label instead of an income tax booklet, be sure to transfer the label to the tax return.

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

Did You Receive a Postcard?

Approximately 250,000 individuals recently received a postcard instead of a 1993 Wisconsin income tax booklet. The postcards were sent to those individuals who used a paid preparer in filing their 1992 return which included a federal Schedule C and/or F. The postcard includes a removable name and address label.

If any of your clients received a postcard, make sure you apply the name and address label to the 1993 Wisconsin return you prepare for your client. ☐

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

Reminder: Quick Refunds Available for Individuals

The Department of Revenue will continue its Quick Refund Program for 1993 individual income tax returns processed in 1994. 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 1993 Form WI-Z, Form 1A, or Form 1, including all attachments, on or before April 1, 1994.
- 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 1994 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 1993, and over 467,000 of those were quick refunds. □

Tips to Speed Refund Processing

You can avoid delays in the processing of a 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 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 1993 processing season (1992 returns and claims) the department sent back 11,000 individual income tax returns, 4,000 corporation franchise and income tax returns, 300 partnership returns, 41,000 homestead credit claims, and 3,400 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.

Corporation Franchise and Income (Forms 4, 5, 5S, 4T, and 4I)

- Federal employer identification number not filled in.
- Federal form 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.
- More than 12 months rent/taxes claimed, with no explanation.
- Lottery credit claimed but not shown on property tax bill.
- Tax bill(s) shows owner(s) other than claimant, or different address.
- Wisconsin tax return, federal copy, schedules, wage statements, or signature missing.
- Special instructions for separated spouses not followed.

Farmland Preservation Credit (Schedule FC)

- Zoning certificate incorrect or incomplete.
- Prior year's property tax payment not verified, when tax bill indicates delinquent taxes.
- Inadequate information submitted when improvements made to property.
- Copies of all property tax bills or correct year's tax bills not attached.
- Ownership not verified, when other owners listed on tax bill.
- Copy of **executed** farmland preservation agreement not attached.
- Zoning certificate missing land conservation committee signature.
- Form 1040 copy or income schedule not attached.
- Closing agreement for sale or purchase of land 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 1992 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 11,000 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 35,000 taxpayers.

- Insufficient payments. Thousands of returns were adjusted where taxes were due but no payment or only a partial payment was included. Over 5,100 returns included checks that were returned due to insufficient funds.
- Social security claimed as Wisconsin tax withheld.

Audit Adjustments

Errors discovered in auditing Wisconsin tax returns by the department's auditors resulted in the collection of \$133.6 million in taxes, penalties, and interest in the fiscal year ending June 30, 1993. This includes sales and use taxes of \$53.5 million, income taxes of \$44.5 million, corporation taxes of \$25.3 million, and other taxes (inheritance, alcohol, tobacco, fuel, etc.) of \$10.3 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.
- 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.
- Imputed interest on loans to shareholders not claimed.
- Travel/entertainment 20% reduction not added back.

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, depreciation, 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. ☐

Extensions for Filing Tax Returns

Extensions of time are permitted for filing certain Wisconsin tax returns. For information about 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 23 of this Bulletin. □

Remember: Nonqualified Plan Distributions May Be Taxable to Nonresidents

Distributions from a *nonqualified* retirement or deferred compensation plan which are received by a person while a nonresident of Wisconsin are taxable to Wisconsin to the extent the payment is attributable to personal services performed in Wisconsin. A tax release explaining the proper treatment for Wisconsin purposes of distributions from nonqualified retirement plans and nonqualified deferred compensation plans was published in *Wisconsin Tax Bulletin* 82 (July 1993), on page 28.

Example: During 1993, Taxpayer X received a distribution of \$50,000 from a nonqualified retirement plan of his former employer. Taxpayer X had worked for this employer for 25 years, and 10 of those years of employment were spent in Wisconsin. X is now a legal resident of Arkansas. \$20,000 (\$50,000 x 10/25) of the amount received during 1993 is attributable to services X performed in Wisconsin and is taxable to Wisconsin.

NOTE: Distributions from *qualified* retirement plans or *qualified* deferred compensation plans received by a person while a nonresident of Wisconsin are exempt from Wisconsin income tax. □

Department Offers Taxpayer Assistance

During the filing season of January through April 15, 1994, 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., Ste. 526	(414) 448-5179	7:45-4:30
* Kenosha	5906 10th Ave., Rm. 106	(414) 653-7100	7:45-4:30
Madison	125 S. Webster St.	NONE	9:00-4:30
* Madison	4638 University Ave.	(608) 266-2772	7:45-4:30
* Milwaukee	819 N. Sixth St., Rm. 408	(414) 227-3883	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)

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	1930 Wisconsin Ave.	(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(a)
* La Crosse	620 Main St.	(608) 785-9720	7:45-4:30(a)
Lancaster	130 W. Elm St.	(608) 723-2641	7:45-4:30
Manitowoc	1314 Memorial Dr.	(414) 683-4152	7:45-4:30
Marinette	Courthouse, 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	300 S. Koeller	(414) 424-2100	7:45-4:30
Rhineland	203 Schiek Plaza	(715) 365-2666	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	830 Airport Ave.	(715) 421-0500	7:45-4:30(b)

* Open During noon hour

(a) Open Monday, Tuesday, and Wednesday

(b) Open Tuesday only

Tax Publications Available

The Department of Revenue publishes over 35 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
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- 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 □



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, nonprofit 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 8933, Madison, WI 53708-8933, or call (608) 266-1911. □

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 a supplement published in May.

To order your copy, complete the order blank that appears on page 51 of this Bulletin. The order blank may also be used for subscribing to the *Wisconsin Tax Bulletin* and for ordering the Wisconsin Administrative Code. □



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 1993. More than 57,700 taxpayers contributed a total of \$609,548.52 to the Endangered Resources Fund on their 1992 tax returns. The fund is used to preserve and manage more than 200 Wisconsin endangered and threatened species and the natural habitats where they live. 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. □

Tax Kit Sent to Wisconsin High Schools

Wisconsin high schools were recently sent a tax kit to help teachers explain Wisconsin taxes to students.

The tax kit was developed by the Wisconsin Department of Revenue for use in conjunction with the IRS's Understanding Taxes Program.

The kit contains a student tax guide which explains various Wisconsin taxes and provides problems and instructions for completing Form 1A and Form WI-Z. It also includes a teacher's tax guide. □

Ceasing Business? What About Your Seller's Permit?

Occasional sale exemption

The requirement to turn in your seller's permit within 10 days to qualify for the occasional sale exemption in sec. 77.51(9)(am), Wis. Stats. (1991-92), was eliminated effective August 12, 1993, as a result of the enactment of 1993 Wisconsin Act 16. The law change provides that the sale of tangible personal property (other than inventory held for sale) previously used by a seller to conduct its business at a location, is exempt from Wisconsin sales and use tax if it meets the following condition:

- The sale of tangible personal property occurs after the seller ceases actively operating as a seller of tangible personal property or taxable services at that location.

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

Should you turn in your seller's permit?

Regardless of whether or not you qualify for the occasional sale exemption described above, you must still turn in your seller's permit to the department as required by sec. 77.52(12), Wis. Stats. (1991-92), if you cease actively operating as a

seller of tangible personal property or taxable services. Although the Wisconsin statutes do not indicate the specific number of days for turning in your seller's permit, the department suggests you turn in your seller's permit within 60 days of ceasing business.

Upon notification that you are no longer actively operating as a seller, the department will inactivate your seller's permit account. If you don't notify the department that you have ceased operating, the department will continue to send you sales and use tax returns for periods after you have ceased operating.

If you hold seller's permits at more than one location and cease business at one of them, turn in your seller's permit only for the location at which you ceased business. □

Oshkosh Gambling Kingpin Sentenced

In October 1993, 61-year-old James Franta, 308 Shorelane St., Oshkosh, pled no contest to charges of commercial gambling and income tax fraud. Winnebago County Circuit Court Judge Robert Haase sentenced Franta in December 1993, to five years probation and confinement in his home for nine months. He was also fined \$2,000 and ordered to perform 500 hours of community service. Franta will be allowed to leave his home for medical treatment, alcohol/drug and gambling counseling, church, and community service.

According to the criminal complaint, Franta ran a gambling operation worth about \$4 million, and in 1992 he collected about \$67,000, which he failed to report on his 1992 Wisconsin income tax return.

In September 1993, insurance agent Wilbur S. Ashman, 73, 2015 Hickory Court, Appleton, was sentenced for failure to file income tax returns for 1989, 1990, and 1991, and for filing a false application for title/registration when he purchased a motor home. Outagamie County Circuit Court Judge Michael W. Gage ordered Ashman to serve two years probation, pay fines and court costs of \$660, make restitution for Wisconsin taxes, penalties, and interest of \$5,500, and serve 96 hours of community service.

The criminal complaint alleged that Ashman failed to file income tax returns when he had gross income in excess of \$27,000 in 1989, \$27,000 in 1990, and \$19,000 in 1991. In addition, Ashman filed an application for title/registration in connection with a motor home, on which he understated the purchase price by more than \$30,000, reducing his sales tax by more than \$1,500.

In November 1993, former Appleton resident Leo E. Wanta, 53, was deported from Switzerland and arrested in New York, for unlawful flight to avoid prosecution. He was extradited to Wisconsin in December and charged in Dane County Circuit Court, with tax evasion and filing false Wisconsin income tax returns. Wanta faces \$40,000 in fines and 22 years in prison on the felony charges. Wisconsin authorities had been attempting to get him into court voluntarily since early 1992.

Wanta is alleged to have filed fraudulent Wisconsin income tax returns for 1988 and 1989, having claimed no income while he actually earned taxable income of more than \$166,000 in 1988 and \$63,000 in 1989. In addition, he owes delinquent Wisconsin income taxes of more than \$237,000 for 1986 to 1989. □

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.

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, or call (608) 266-1961.

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." □

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 or in person. Requests made by telephone will not be honored.

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 home-
stead 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 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 Ave-

nue, 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.

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 1993 information returns (Forms 1099-G) to persons who received a Wisconsin income tax refund in 1993 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 570,000 Forms 1099-G during January 1994.

Regardless of whether a taxpayer is sent a Form 1099-INT, the taxpayer must report all interest received in 1993 as income on his or her 1993 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 adjustments. 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 49 and 50 of this Bulletin. □

Administrative Rules in Process

Listed below are proposed new administrative rules and changes 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, 1994, or at the stage in which action occurred during the period from October 2, 1993, to January 1, 1994.

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 Sent to Revisor of Statutes for Publication of Notice

- 11.04 Constructing buildings for exempt entities-A

- 11.05 Governmental units-A
11.19 Printed material exemptions-A
11.34 Occasional sales exemption for sale of a business or business assets-A
11.56 Printing industry-A
11.61 Veterinarians and their suppliers-A
11.68 Construction contractors-A

Rules Sent to Legislative Committees

- 9.67 Cigarette tax credit-R&R

Rules Adopted But Not Yet Effective

- 3.095 Income tax status of interest and dividends received from government and other securities by individuals and fiduciaries-R&R
11.27 Warranties-R&R
11.82 Mailing lists and mailing services-A

Rules Adopted And in Effect (including date of adoption)

- 2.07 Earned income tax credit-NR (12/1/93)
11.67 Service enterprises-A (12/1/93)

Rules Repealed (effective 12/1/93)

- 2.13 Moving expenses
2.14 Aggregate personal exemptions
2.15 Methods of accounting for corporations
2.16 Change in method of accounting for corporations
2.165 Change in taxable year
2.19 Installment methods of accounting for corporations
2.20 Accounting for acceptance corporations, dealers in commercial paper, mortgage discount companies and small loan companies

- 2.21 Accounting for incorporated contractors
2.22 Accounting for incorporated dealers in securities
2.24 Accounting for incorporated retail merchants
2.25 Corporation accounting generally
2.26 "Last in, first out" method of computing inventory for corporations
2.51 Rent received by corporations from Wisconsin real estate
2.53 Stock dividends and stock rights received by corporations
2.56 Insurance proceeds received by corporations
2.57 Annuity payments received by corporations
2.60 Dividends on stock sold "short" by corporations
2.63 Dividends accrued on stock
2.65 Interest received by corporations
2.70 Gain or loss on capital assets of corporations; basis of determining
2.72 Exchanges of property by corporations generally
2.721 Exchanges of property held for productive use or investment by corporations
2.73 Involuntary conversion by corporations
2.75 Recoveries by corporations
2.76 Refunds of taxes to corporations
2.80 Improvements on leased real estate, income to corporate lessor
2.81 Damages received by corporations
2.83 Requirements for written elections as to recognition of gain in certain corporation liquidations
2.86 Income to corporations from cancellation of government contracts
3.01 Rents paid by corporations
3.05 Profit-sharing distributions by corporations

- 3.07 Bonuses and retroactive wage adjustments paid by corporations
- 3.08 Retirement and profit-sharing payments by corporations
- 3.09 Exempt compensation of military personnel
- 3.12 Losses on account of wash sales by corporations
- 3.14 Losses from bad debts by corporations
- 3.17 Corporation losses, miscellaneous
- 3.35 Depletion, basis for allowance to corporations
- 3.36 Depletion of timber by corporations
- 3.37 Depletion of mineral deposits by corporations
- 3.38 Depletion allowance to incorporated mines and mills producing or finishing ores of lead, zinc, copper or other metals except iron
- 3.43 Amortization of trademark or trade name expenditures — corporations
- 3.45 Bond premium, discount and expense — corporations
- 3.48 Deductions for research or experimental expenditures — corporations
- 3.52 Automobile expenses — corporations
- 3.54 Miscellaneous expenses — corporations
- 3.81 Occupational taxes paid by corporations
- 3.82 Evasion of tax through affiliated interests
- 5.01 Filing reports
- 17.01 Administrative provisions
- 17.02 Eligibility
- 17.03 Application and review
- 17.04 Repayment of loan

Emergency Rules in Effect (including date of adoption)

- 9.67 Cigarette tax credit-R&R
(9/1/93) ☐

Recently Adopted Rules Summarized

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

This issue includes information about sec. Tax 2.07, created effective December 1, 1993, and sec. Tax 11.67, amended effective December 1, 1993. In addition, 53 rules in chapters Tax 2, 3, 5, and 17 have been repealed effective December 1, 1993, because they are obsolete. (Chapter Tax 17 is obsolete because the property tax deferral loan program is no longer administered by the Department of Revenue.) The repealed rules are listed in the "Rules Repealed" section of the preceding article titled "Administrative Rules in Process."

Tax 2.07 Earned income tax credit. Tax 2.07 is created, to describe criteria the Department of Revenue has established and the methods it uses to provide information about the availability of the federal and Wisconsin earned income tax credits. The text of Tax 2.07 is as follows; examples and notes appearing in the rule are not reproduced here:

Tax 2.07 Earned Income Tax Credit. (ss. 71.07(9e) and 73.03(48), Stats.) (1) **CRITERIA FOR PROVIDING INFORMATION.** The department has established the following criteria regarding the dissemination of information to the public concerning the federal and Wisconsin earned income tax credits:

(a) Disseminate information to potential claimants in the most cost-effective manner possible.

(b) Disseminate information to the public through multiple channels to increase the probability that potential claimants will become aware of the earned income tax credits.

(c) Utilize volunteer tax preparers and community-based organizations that have personal contact with potential claimants, to provide earned income tax credit information and assistance.

(d) Clarify the relationship between federal and Wisconsin earned income tax credits and coordinate outreach efforts with the internal revenue service, or "IRS."

(e) Provide sufficient information to allow potential claimants to self-evaluate their eligibility for the earned income tax credits.

(f) Provide convenient ways for potential claimants to obtain additional information, assistance and forms.

(2) **METHODS OF PROVIDING INFORMATION.** Methods the department uses to disseminate information to the public concerning the federal and Wisconsin earned income tax credits include the following:

(a) Produce an informational flyer, distribute copies through appropriate organizations having regular contact with potential earned income tax credit claimants throughout the state, and have additional copies available for distribution upon request.

(b) In conjunction with the IRS, when training volunteers who provide free tax-filing assistance throughout Wisconsin, include training to identify potential earned income tax credit claimants and to assist them in claiming both the federal and Wisconsin credits.

(c) Highlight the Wisconsin earned income tax credit in the Wisconsin individual income tax and homestead credit booklets.

(d) Mail camera-ready copies of earned income tax credit informa-

tional flyers to large Wisconsin employers, and request them to make and distribute copies of the flyer to their employees as appropriate.

(e) Work with the IRS in providing joint efforts to publicize both the federal and Wisconsin earned income tax credits.

(f) Annually produce a report summarizing the level of participation in and level of benefits provided by the earned income tax credit program.

(g) Work with other state agencies, public utilities, and other organizations to distribute information about the federal and Wisconsin earned income tax credit programs.

Tax 11.67 Service Enterprises. Tax 11.67(title) is amended, to add previously omitted statutory references; (1), (2)(b), (3)(d)1 and 2, (3)(e)1, and (3)(L) are amended, to update language and style; (2)(c) is amended, to reflect that other methods may be used to determine taxability if they accurately reflect the tax liability; (3)(a) is amended, to clarify that hospitals or clinics may be required to obtain a seller's permit, and to update language and style; (3)(e)2 is amended, to clarify that prototype materials may be tax-exempt, and to update language; (3)(g) is amended, to reflect sec. 77.52(2)(a)20, Wis. Stats.; (3)(m) is amended, to clarify taxable and exempt items related to car washes, and to update language; and (3)(n) is amended, to reflect the December 1, 1981, Wisconsin Supreme Court Horne Directory Company, decision. The text of the amended material is as follows; examples appearing in the rule are not reproduced here:

Tax 11.67 Service Enterprises. (ss. 77.51(4), (11), (12), (13), (14)(intro.), (h) and (L), (15), (20) and (22)(a) and (b) and 77.52(1), (2)(a) and (2m)(a) and (b), Stats.)

(1) GENERAL. When a transaction involves the transfer of tangible personal property along with the performance of a service, the true objective of the purchaser ~~must be considered to~~ shall determine whether ~~such the~~ transaction is a sale of tangible personal property or the performance of a service with the transfer of property being merely incidental to the performance of the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved even though, as an incidence to the service, some tangible personal property may be transferred. ~~Thus, a person performing business advisory, record keeping, payroll and tax services for small businesses is providing a service. Such person is the consumer, not the seller, of property such as forms and binders which are furnished without separate charge as an incidence to the service.~~

(2)(b) A person who performs a nontaxable service in conjunction with the sale of tangible personal property is a retailer with respect to ~~such sales the sale~~, and the tax applies to the total gross receipts ~~therefrom from the sale~~ without any deduction for the work, labor, skill, time spent or other expense of producing the property.

(2)(c) If there is a single charge for providing both taxable and nontaxable services, the entire charge is subject to the tax, unless it is determined by the department that another method, such as allocation or primary purpose of the transaction, more accurately reflects the tax. ~~However, if~~ If the charges for taxable and nontaxable services are separately stated on an invoice, the tax applies only to the charge properly attributable to the taxable services, unless it is determined by

the department that the primary purpose of the transaction method for computing the tax more accurately reflects the tax.

(3)(a) *Hospitals and clinics.* Hospitals and medical clinics generally provide nontaxable professional services. They are, therefore, the consumers of tangible personal property used in rendering ~~such the~~ services. Hospitals and clinics which, in addition to rendering professional services, also sell tangible personal property or taxable services are retailers which shall obtain a seller's permit and report the tax on ~~such these~~ sales. ~~For example, sales of non-prescription medicine by a hospital or clinic pharmacy are taxable.~~

(3)(d)1. An interior decorator's fee is taxable when the decorator's services are part of a sale of tangible personal property. ~~For example, a decorator's fee is taxable when it is added to the bill for tangible personal property on a cost plus arrangement. Also, if~~ If a decorator bills a client only for the full list price of property sold and then receives the equivalent of a fee through the decorator's supplier in the form of a trade discount, the decorator shall pay a tax on the full amount billed the client without any deduction for services performed.

2. A decorator's fee is not taxable if the fee is solely for services rendered ~~(such as designing a decorative scheme, advising clients or recommending colors, paints, wall paper, fabrics, brands, or sources of supply)~~ and there is no sale of tangible personal property involved with the transaction.

(3)(e)1. The development of information pursuant to a research and development contract is a sale of a service which is not subject to the sales tax. Although the person performing the research and development may be under contract to provide ~~such things as~~ plans, de-

signs and specifications, or to test and evaluate a proposed product, the primary objective of the customer is to obtain the results of the technical skill and the experimental and research work of the engineers and other technicians of the researcher.

2. In certain instances under a research and development contract, the information cannot be developed without the production of a prototype. In this situation, the researcher owes tax on the materials used to construct the prototype since it is used to compile the data, designs, drawings and whatever else is provided to the customer. The measure of the tax is the cost of the materials going into the production of the prototype as well as all other materials consumed in performing the contract. The transfer of the prototype is incidental to the transfer of information, and for sales tax purposes, is deemed not a sale of

tangible personal property. However, if the prototype is transferred to a customer for use in its business or for the purpose of reselling it, the researcher may purchase the materials used to construct the prototype without tax as property for resale.

(3)(g) *Architects.* Fees paid to architects, except fees paid to architects for landscaping planning, to design buildings or structures are for services performed, and are not subject to the tax. If, however, an architect has blueprints made from original drawings, the sale of the blueprints is subject to the tax.

(3)(L) *Taxidermists.* ~~Taxidermists~~ Gross receipts from services taxidermists perform service on tangible personal property. ~~Gross receipts from such service~~ are subject to the tax.

(3)(m) *Car washes.* The gross receipts of persons providing car wash service, including those providing coin-operated self-service car

washes consisting of a pressurized spray of soap and water, are taxable. ~~Such~~ These persons are the consumers of the tangible personal property, such as soap, brushes, and towels, they purchase, except for the wax, air freshener and protectants physically transferred to a customer's vehicle. Thus, suppliers may accept a resale certificate for wax, air freshener and protectants sold to car wash operators, but suppliers are liable for the tax on all other sales of supplies to ~~such~~ these operators.

(3)(n) *Soliciting advertising for telephone directories.* Persons who solicit advertising for telephone books and who, as an incident of ~~such~~ the service, provide telephone books to telephone companies or their subscribers, are the consumers of and shall pay tax on all the telephone books they distribute in Wisconsin ~~or have shipped into Wisconsin by an out of state supplier.~~ □



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

Interest — deduction limitation

Robert and Margaret Yunker
(p. 16)

Nonresidents — allocation of income

Thomas J. Flynn (p. 17)

Corporation Franchise and Income Taxes

Accounting — 1986 and prior — change in accounting period

Interest income — 1986 and prior — U.S. obligations

M.B. Investment Corp. (p. 18)

Sales and Use Taxes

Occasional sales — business assets

Carrión Corporation (p. 18)

Gift Taxes

Interest — foregone interest

Home Juice Co., Inc.; Kenosha Home Juice Sales Corp. and Milton Hess (p. 19)

INDIVIDUAL INCOME TAXES

➔ **Interest — deduction limitation.** *Robert and Margaret Yunker vs. Wisconsin Department of Revenue* (Circuit Court for Milwaukee County, May 3, 1993). The issue in this case is whether interest paid by the taxpayer was 1) a fully deductible business expense incurred in the taxpayer's real estate business or 2) incurred by the taxpayer to acquire rental or investment property, deductible only on federal Schedule A (Itemized Deductions) as non-business interest and, therefore, subject to the \$1200 interest deduction limitation contained in sec. 71.07(5)(a)7, Wis. Stats.

This is a review of a decision of the Wisconsin Tax Appeals Commission (Commission). The Commission affirmed a decision of the department denying the taxpayers a redetermination of an income tax assessment for the years 1986, 1987, and 1988.

The taxpayer, R. Yunker, is in the business of real estate investment, including the building, renting, buying, and selling of real estate. The assessment at issue involves a 120-unit apartment complex owned and operated by the taxpayer. For a period of approximately eight years, from the time the taxpayer built the complex until he sold it in 1982, he rented out the units.

The taxpayer reported the rental income, expenses, and depreciation from the property at issue on Schedule E of his tax returns. In addition, he reported the gain from the sale of the property as a sec. 1231 capital gain. Thus, the taxpayer characterized the property as investment property as opposed to property used in a trade or business.

The Commission determined that the Fond du Lac apartment complex was held by the taxpayer primarily as an investment for revenue and speculation. This finding of fact was supported by substantial evidence in the record. The taxpayer collected rents from the property for seven years and put forth no evidence that he had held the property out for sale other than his own testimony. The taxpayer's tax returns for the years in question also clearly support the Commission's findings that the property was for investment rather than for business purposes.

The Circuit Court concluded that the finding of the Commission is based upon substantial evidence. The property at issue is considered investment property, and interest incurred by the

taxpayer is subject to the \$1200 interest deduction limitation.

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

← Nonresidents — allocation of income. *Thomas J. Flynn vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 5, 1993). The issue in this case is the amount of the taxpayer's income which may be assessed by Wisconsin.

In 1984 and 1985, the taxpayer was a professional football player employed by the Green Bay Packers, Inc. In these years, the taxpayer was a nonresident of Wisconsin and was a resident of Pennsylvania.

The taxpayer filed 1984 and 1985 Wisconsin income tax returns as a nonresident. In November 1988, the department adjusted the income reported on these returns, providing the following explanation:

Your Wisconsin wages from the Packers is based on a ratio of Wisconsin duty days over total regular season duty days. The ratio is normally around 90%. Duty days include practice days, meeting days, and travel days in addition to game days. In 1984 the Packers calculated a ratio of 91.5%. In 1985 the ratio was 86%. Therefore your Packer wages taxable by Wisconsin are \$89,485.00 for 1984 and \$161,894.65 for 1985. These wages less your IRA contributions are your only income taxable by Wisconsin.

The department also adjusted the deductions claimed by the taxpayer, as well as the exemptions claimed.

In the taxpayer's petition for redetermination, the following statements were made about the 1984 wages

reported: "Taxpayer claimed Wisconsin compensation for all those games played in Wisconsin which was 8 of 16 games or 50%. Therefore, taxable Wisconsin income was claimed in the amount of \$48,899 (i.e., 50% of \$97,797.14). Taxpayer claimed the remaining 50% or \$48,899 as Pennsylvania wages ..."

In the taxpayer's petition for redetermination, the following statements were made about the 1985 wages reported: "Taxpayer claimed Wisconsin compensation for all but \$26,456.00 of his income. This represents 14% of his total income (i.e., 86% was claimed as Wisconsin income.) Taxpayer declared this as Wisconsin income even though only 50% of the income was actually earned in Wisconsin ... Taxpayer declared the remainder of his income as Pennsylvania income."

A standard rider attached to the taxpayer's contract provided for the payment of a \$75,000 signing bonus, \$35,000 of which was paid to the taxpayer during 1984 and 1985, and was included by the department in arriving at the taxpayer's Wisconsin taxable income.

The taxpayer claimed the signing bonus was not compensation for personal services performed in Wisconsin and therefore not subject to Wisconsin tax. He testified that during the off-season in 1985, he conditioned himself while in Pennsylvania by participating in a strength and conditioning program which was specifically provided to him by the Packers' organization. He raised the issue of whether the off-season conditioning program he pursued while in Pennsylvania constituted personal services performed outside the state of Wisconsin, thereby reducing the percentage of his compensation subject to taxation by the department under secs. 71.01 and 71.07, Wis. Stats.

The Commission concluded that:

Although the signing bonus issue was improperly raised at the hearing by the taxpayer, the bonus is clearly personal service income and taxable in the same manner as the taxpayer's other compensation.

The off-season conditioning program pursued by the taxpayer while in Pennsylvania was not a service for which he was compensated by the Green Bay Packers and was therefore properly disregarded in the department's assessment methodology. The department properly included both the pre-season and regular season duty days in apportioning the taxpayer's income to Wisconsin.

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

CORPORATION FRANCHISE AND INCOME TAXES

— **Accounting — 1986 and prior — change in accounting period; Interest income - 1986 and prior — U.S. obligations.** *M.B. Investment Corp., vs. Wisconsin Department of Revenue* (Circuit Court for Milwaukee County, May 5, 1993, amended May 25, 1993).

The issue in this case is whether the taxpayer's final tax return for the period from September 1, 1985, through May 31, 1986, should be treated as a tax year 1985 return or a tax year 1986 return. The taxpayer appeals a decision of the Wisconsin Tax Appeals Commission (Commission) that the taxpayer's final return was for tax year 1986. For a summary of that decision, see *Wisconsin Tax Bulletin* 81 (April 1993), page 10.

The taxpayer filed a 1985 tax return for the period ending August 31, 1985. From September 1, 1985, through March 31, 1986, the taxpayer

invested in U.S. Government securities. On May 31, 1986, the taxpayer dissolved as a corporation and filed a final Form 5, Wisconsin Corporation Income Tax Return, for the period between September 1, 1985, and May 31, 1986. On this tax return the taxpayers reported the interest income from U.S. Government securities as tax exempt pursuant to sec. Tax 2.65, Wis. Adm. Code.

The department sent notice to the taxpayer of an amount due in May 1987, based on 1985 Wisconsin Act 261. Effective for the 1986 tax year, the Act assessed corporations that had ceased doing business in Wisconsin, a special franchise tax based on the entire net income for the year in which the corporation dissolves.

The Circuit Court concluded that the taxpayer's final return was for tax year 1986. The decision of the Commission was reasonable based on the facts that the taxpayer had already filed a 1985 return and sec. 71.10(3m)(b), Wis. Stats., provides that "[i]n no case shall a separate income tax return be made for a period of more than 12 months."

The taxpayer has not appealed this decision. □

SALES AND USE TAXES

— **Occasional sales — business assets.** *Carrion Corporation vs. Wisconsin Department of Revenue* (Court of Appeals, District IV, September 9, 1993). The taxpayer appeals from an order of the Circuit Court for Dane County affirming a decision of the Wisconsin Tax Appeals Commission. See *Wisconsin Tax Bulletin* 79 (October 1992), page 15, for a summary of the Circuit Court decision.

The Commission upheld a sales and use tax assessment against Carrion in

connection with sales of the assets of its commercial and retail laundry divisions.

The issues are:

- A. Whether the taxpayer's sales of its retail and commercial divisions qualified as "occasional sales" and were, thus, exempt from sales and use tax;
- B. Whether the Commission properly taxed the entire asset sale proceeds;
- C. Whether the Commission erroneously valued the amount of tangible property included in the sale of the taxpayer's commercial division;
- D. Whether the true seller of the retail and commercial divisions was the bank or the taxpayer;
- E. Whether certain equipment sales should have been excluded from the assessment because they were made to out-of-state buyers;
- F. Whether the Commission erroneously assessed use taxes on the taxpayer's purchases of materials from out-of-state vendors; and
- G. Whether the taxpayer should have been assessed a negligence penalty on the equipment sales in Issue E and on the equipment purchases in Issue F.

Prior to February 1983, the taxpayer's commercial division was engaged primarily in providing laundry and dry cleaning service to hospitals and nursing homes through a pickup and delivery service. The taxpayer's retail division provided laundry and dry-cleaning service for hotels and restaurants and served the general public through several retail outlets and truck routes.

In mid-1982, the taxpayer, under pressure from First Wisconsin National Bank, changed its leadership and moved to sell its laundry business and liquidate its assets.

On January 17, 1983, the taxpayer sold the retail division to D.S. Nicholas of Wisconsin, Inc. (Nicholas), for \$1,401,618.04 -- \$40,000 of which was paid in cash and the remainder to be paid over time pursuant to a promissory note. Of this price, \$602,553 was allocated to tangible personal property. Nicholas never paid any of the principal of the promissory note.

On February 18, 1983, the taxpayer sold its commercial division to Tousey Laundry Corp. for \$600,000; \$400,000 of the sales price was allocated to tangible personal property, and the entire amount was to be paid pursuant to a promissory note. While Nicholas never made any principal payments, and Tousey paid only \$200,000 to \$300,000 on its note, First Wisconsin provided full credit to the taxpayer on both notes.

Less than an hour before finalizing the Nicholas sale on January 17, 1983, the taxpayer surrendered its seller's permit to the department, assuming that, by doing so, it would qualify the sales of both divisions as "occasional sales" not made in the course of its business as a seller of personal property or services within the meaning of sec. 77.51(10)(a), Wis. Stats., and, thus, be exempt from the sales tax.

The department issued a sales and use tax assessment against the taxpayer as follows:

1. \$30,126.65 in sales taxes on the sale of the retail division's tangible personal property;
2. \$22,905 in sales taxes on the sale of the commercial division's tangible personal property;

3. \$5,883.34 in sales taxes on the sale of \$145,850 worth of miscellaneous equipment between October 1981 and October 1982; and
4. \$7,993.92 in use taxes on the taxpayer's out-of-state purchases of \$197,805 of tangible property.
5. The department also imposed a twenty-five percent penalty on items (3) and (4) under sec. 77.60(3), Wis. Stats.

The Court of Appeals affirmed the Circuit Court's decision, concluding that:

- A. Substantial evidence supports the Commission's conclusion that the taxpayer was required to hold a seller's permit at the time of the asset sale and did not qualify for the occasional sale exemption.
- B. The Commission's determination that tax was due on the entire value of the notes is supported by substantial evidence.
- C. Substantial evidence supports the \$458,100 measure of sales tax.
- D. Substantial evidence supports the Commission's finding that the taxpayer was the true seller of the retail and commercial divisions.
- E. No credible evidence was presented to support the taxpayer's claim that certain sales were made outside Wisconsin.
- F. The department auditor's testimony as to reliance on purchase journals provides sufficient evidence to support the Commission's findings, because the taxpayer's vendors were not charging the tax in 1981 and 1982 and the taxpayer could not produce invoices to show that the purchases in 1979 and 1980 were treated differently.

- G. The Commission correctly rejected the taxpayer's argument, concluding that the taxpayer had failed to meet its burden of establishing error in the department's assessment.

The taxpayer filed a petition for review to the Wisconsin Supreme Court. The petition for review was denied. □

GIFT TAXES

Interest — foregone interest. *Home Juice Co., Inc.; Kenosha Home Juice Sales Corp. and Milton Hess vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 16, 1993). The central issue in this case is whether the taxpayers are liable for gift tax on interest foregone, or not charged, on several demand loans made by two Wisconsin corporations to the controlling shareholder of each corporation. The taxpayers include both creditor corporations and the debtor shareholder.

Complicating the central issue, however, is the issue of whether Internal Revenue Code (IRC) sec. 7872, dealing with below market interest rate loans, is applicable to deemed "transfers" of foregone interest in a corporation-to-shareholder loan setting.

Home Juice Co., Inc. ("HJCI") was, at all times during the years 1982 through 1987 ("the period under review"), a Wisconsin corporation, in business as a broker/distributor of bottled fruit juice products, and taxed under Subchapter S of the Internal Revenue Code.

Kenosha Home Juice Sales Corp. ("Sales Corp.") was, at all times during the period under review, a Wisconsin corporation, in business as a wholesaler of bottled fruit juice

products, and taxed under Subchapter C of the Internal Revenue Code.

Milton Hess ("Hess") was, at all times during the period under review, the sole shareholder of HJCI and the beneficial owner of 100% of Sales Corp.

During the period under review, Sales Corp. and HJCI made interest-free demand loans ("the loans") to Hess, documented in the form of notes; each of the notes disclosing no collateral, bearing no interest, and indicating no set duration or term. Hess made payments on the loans annually to the corporations, and all loans were fully repaid by the end of 1989.

In February 1990, the department issued gift tax assessments to Hess, asserting that because interest was not charged on the loans, Sales Corp. and HJCI made gifts to Hess of the amount of interest not charged.

Also in February 1990, the department sent "donor copies" of the respective assessments to Sales Corp. and HJCI in which it asserted joint and several liability for the alleged Wisconsin gift tax deficiencies against the corporations.

In July 1992, the Wisconsin Tax Appeals Commission issued an order withdrawing all assessments against the taxpayers for the year 1987. The department requested the withdrawal pursuant to Wisconsin's adoption of sec. 7872 of the Internal Revenue Code through Wisconsin's 1985 update of the individual income tax law to embrace changes in the IRC.

IRC sec. 7872 was first made effective for federal tax purposes for certain loans in existence as of June 6, 1984. The department maintains that IRC sec. 7872 was not made effective for Wisconsin corporate income or franchise tax purposes until the 1987 Wisconsin tax year, while acknowledging that sec. 7872 was in effect for Wisconsin individual income taxpayers for 1985 and succeeding Wisconsin tax years. Accordingly, the department contends that prior to the tax periods for which sec. 7872 was made effective in Wisconsin's income tax statutes for all taxpayers, corporate and individual, deemed transfers of foregone interest among the taxpayers may not necessarily be construed to carry Wisconsin income taxation effects. Further, the finding of an income tax effect for the transfers at issue in this case does not necessarily preclude the concurrent reach of the gift tax to the deemed transfers of foregone interest.

The taxpayers contend that IRC sec. 7872 was made applicable for Wisconsin tax purposes to the loan transactions at issue in this case beginning in 1985. For the 1985 tax year and succeeding tax years, the taxpayers argue that the application of sec. 7872 dictates only income, not gift, tax consequences for any deemed transfers of foregone interest.

Both parties agree that IRC sec. 7872 was not in effect for Wisconsin tax purposes for the tax years at issue prior to 1985.

The Commission concluded that, for all periods under review, deemed

"transfers" of foregone interest in a corporation-to-shareholder loan setting must be viewed under the Wisconsin Statutes as distributions in respect of stock, producing either dividend income, basis reduction of shares held, or capital gain consequences to the distributee.

For deemed transfers of foregone interest taking place during and after 1985, the legislative history of IRC sec. 7872 explicitly prescribes that demand loans made from a closely held corporation to a controlling shareholder be treated as a distribution with respect to the stock of the distributing corporation and be taxed to the shareholder as a dividend to the extent of the corporation's earnings and profits.

Deemed transfers prior to 1985, must be viewed through the application of sec. 71.301(3)(b) and (c), Wis. Stats. (1981-82, 1983-84). Once a transfer is deemed to have taken place from corporation to shareholder, the language of sec. 71.301 requires dividend, basis reduction, and capital gain treatment consistent with any distribution made in respect to stock.

On September 3, 1993, the department filed a petition for rehearing of the Commission's ruling and order. The Commission concluded that no material error exists in its finding of fact or conclusions of law contained in its August 16, 1993, ruling and order.

The department has not appealed but has adopted a position of nonacquiescence in regard to this decision. □



Tax Releases

"Tax releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. In situations where the facts vary from those given herein, the answers may not apply. Unless otherwise indicated, tax releases

apply for all periods open to adjustment. All references to section numbers are to the Wisconsin Statutes unless otherwise noted.

The following tax releases are included:

Individual Income Taxes

1. Credit for Taxes Paid to Other States by Tax-Option (S) Corporations (p. 21)
2. Extension of Time to File Franchise and Income Tax Returns (p. 23)
3. Renter's School Property Tax Credit — Tax-Exempt Housing (p. 27)

Sales and Use Taxes

4. Architect's Charge for Blueprints (p. 27)

5. Assembling and Packaging Previously Manufactured Products (p. 28)

6. Calf and Cattle Crates (p. 29)
7. Effect of Motor Fuel Tax Refund on Computation of Gross Receipts and Sales Price (p. 30)
8. Sales of Candy, Confections, and Desserts (p. 31)

Temporary Recycling Surcharge

9. Temporary Recycling Surcharge — Types of Business Activity in Wisconsin (p. 32)

binning the corporation's federal ordinary income or loss and separately stated items of income, loss, and deduction and then making various Illinois additions and subtractions.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the Illinois replacement tax paid by a tax-option (S) corporation?

Answer 1: Yes, a Wisconsin resident shareholder may claim a credit for his or her pro rata share of the Illinois replacement tax paid by a tax-option (S) corporation, provided the income taxed by Illinois is also considered income for Wisconsin.

Facts and Question 2: The Michigan single business tax is imposed on the privilege of doing business in Michigan. The tax base is business income subject to certain modifications and adjustments. For tax-option (S) corporations, business income is federal ordinary income or loss combined with the separately stated items of income, loss, and deduction. Modifications and adjustments include the addition of compensation payments and depreciation deductions and the subtraction of the net capital asset deduction.

Michigan permits an alternate method, the gross receipts short method, to compute the single business tax. Under this method, the tax applies to 50% of the corporation's adjusted gross receipts.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the Michigan single business tax paid by a tax-option (S) corporation?

INDIVIDUAL INCOME TAXES

1 Credit for Taxes Paid to Other States by Tax-Option (S) Corporations

Statutes: Section 71.07(7), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 2.955, April 1993 Register

Note: For more information, see the tax releases titled "Credit for Taxes Paid to Other States on Tax-Option (S) Corporation and Partnership Income" in *Wisconsin Tax Bulletin* 68 (July 1990), page 14, and "Credit for Income Taxes Paid to Other States" in *Wisconsin Tax Bulletin* 53 (October 1987), page 12.

Background: Section 71.07(7)(b), Wis. Stats. (1991-92), provides that a Wisconsin resident who pays a net income tax to another state may claim a credit against tax otherwise payable to Wisconsin on income of the same year. The credit is allowed only if the income taxed by the other state is considered income for Wisconsin income tax purposes.

Income and franchise taxes paid to another state by a tax-option (S) corporation may be claimed as a credit by that corporation's shareholders who are Wisconsin residents and who otherwise qualify for the credit.

Facts and Question 1: The Illinois replacement tax is imposed on a tax-option (S) corporation's net income. The net income is computed by com-

Answer 2: If the Michigan single business tax is measured by net income that is also subject to Wisconsin income taxation, a Wisconsin resident shareholder may claim a credit for his or her pro rata share of the tax paid by the tax-option (S) corporation.

However, Michigan single business tax computed using the gross receipts short method does not qualify for the credit for taxes paid to other states.

Facts and Question 3: Minnesota imposes taxes based on the federal taxes for built-in gains, capital gains, and excess passive income of tax-option (S) corporations.

In addition, a minimum fee, based on the sum of the property, payroll, and sales attributable to Minnesota, applies to all tax-option (S) corporations.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the taxes paid to Minnesota by a tax-option (S) corporation?

Answer 3: No, a Wisconsin resident shareholder may not claim a credit for his or her pro rata share of the tax-option (S) corporation's built-in gains tax, capital gains tax, or excess passive income tax paid to Minnesota since these taxes are not imposed on the corporation's net income.

In addition, the Minnesota minimum fee does not qualify for the credit for taxes paid to other states.

Facts and Question 4: For taxable years beginning after 1989, New York imposes a corporate level tax on tax-option (S) corporations. The tax is equal to the greater of the tax that would be computed on the entire net income base or the fixed dollar minimum tax. The entire net income base is calculated by starting with the amount of federal taxable income that the corporation would have reported if it were a regular C corporation and

making New York additions and subtractions. The fixed dollar minimum tax is determined by the corporation's gross payroll.

Federal S corporations that do not elect New York S corporation status are subject to the New York corporation franchise tax which is imposed on subsidiary capital and whichever of the following bases results in the greatest franchise tax liability: (a) allocated net income, (b) allocated capital, (c) minimum taxable income, or (d) a flat fee minimum tax that varies based on the corporation's gross payroll. Corporations paying the franchise tax on net income start with federal taxable income (before the net operating loss deduction and special deductions) and make various New York modifications. Minimum taxable income is net income modified to reflect certain tax preferences and adjustments.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the taxes paid to New York by a tax-option (S) corporation?

Answer 4: A Wisconsin resident shareholder may claim a credit for his or her pro rata share of the tax-option (S) corporation's tax paid to New York if the tax is based on net income and the income is also considered income for Wisconsin income tax purposes.

The New York fixed dollar minimum tax paid by a tax-option (S) corporation does not qualify for credit for taxes paid to other states.

In addition, the New York tax imposed on subsidiary capital as well as the franchise tax based on allocated capital does not qualify for the tax credit provided by sec. 71.07(7)(b), Wis. Stats. (1992-92).

Facts and Question 5: Pennsylvania has a corporate net income tax, a capital stock tax, a franchise tax, and

a corporate loans tax. The corporate net income tax applies to certain domestic and foreign corporations, except federal S corporations that have qualified and elected to be treated as Pennsylvania S corporations. The net income tax is measured by net income calculated by using federal taxable income (before the net operating loss deduction and special deductions) and making Pennsylvania modifications.

The capital stock tax applies to domestic tax-option (S) corporations, while foreign corporations are subject to a franchise tax on the actual value of their capital stock. The actual stock value for both domestic and foreign corporations is based on the average net income and net worth.

The corporation loans tax applies to interest-bearing obligations issued by domestic and foreign subsidiaries doing business in Pennsylvania that are held by individual Pennsylvania residents and by certain fiduciaries.

May a Wisconsin resident shareholder claim credit for his or her pro rata share of the taxes paid to Pennsylvania by a tax-option (S) corporation?

Answer 5: A Wisconsin resident shareholder may not claim a credit for his or her pro rata share of the Pennsylvania capital stock tax, franchise tax, or corporation loans tax since these taxes are not based on net income.

If a tax-option (S) corporation pays the Pennsylvania net income tax because it is not treated as a Pennsylvania S corporation, a Wisconsin resident shareholder may claim a credit for his or her pro rata share of the tax, provided the income is also subject to Wisconsin income taxation.

Facts and Question 6: Washington imposes a business and occupation tax for the act or privilege of engaging in business activities within that state.

The tax is measured by the application of rates against the value of various bases, such as the value of products manufactured, gross proceeds of sales, or gross income.

If a tax-option (S) corporation pays the Washington business and occupation tax, may a Wisconsin resident shareholder claim a credit for his or her pro rata share of the amount paid?

Answer 6: No, a Wisconsin resident shareholder may not claim credit for the Washington business and occupation tax since it is not measured by net income.

Facts and Question 7: The Texas franchise tax applies to corporations, including tax-option (S) corporations, that do business in the state or that are chartered or authorized to do business in the state. Effective January 1, 1992, the tax is based, in part, on net taxable capital and, in part, on net taxable earned surplus. The net taxable earned surplus is calculated by making certain additions and subtractions to federal taxable income.

May a Wisconsin resident shareholder claim a credit for his or her pro rata share of the Texas franchise tax paid by a tax-option (S) corporation?

Answer 7: A Wisconsin resident shareholder may claim a credit for his or her pro rata share of that portion of the Texas franchise tax based on earned surplus, provided the income is also considered income for Wisconsin income tax purposes. The tax based on earned surplus is computed by subtracting the tax on net taxable capital from the tax on net taxable earned surplus.

That portion of the tax based on net taxable capital does not qualify for the credit for taxes paid to other states. □

2 Extension of Time to File Franchise and Income Tax Returns

Statutes: Sections 71.03(7), 71.24(7), 71.44(3), 71.83(3), and 71.84(2), Wis. Stats. (1991-92)

Note: This tax release supersedes the tax release titled "Extension of Time to File Franchise and Income Tax Returns," which appeared in *Wisconsin Tax Bulletin* 80 (January 1993), page 28.

Wisconsin Law

A. Individuals, partnerships, and fiduciaries (estates and trusts)

Section 71.03(7), Wis. Stats. (1991-92), 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. A copy of any request for an extension required by the IRS is filed with the Wisconsin return, and
2. 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. (**Note:** The IRS does not require individuals to make this advance payment in order to receive a federal extension. Therefore, individuals are also not required to make advance payment of Wisconsin tax in order to obtain an extension for Wisconsin purposes.)

To satisfy the payment requirement set forth in paragraph 2 above, fiduciaries 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.

B. Corporations (including tax-option (S) corporations and insurance companies)

Section 71.24(7), Wis. Stats. (1991-92), and sec. 71.44(3), Wis. Stats. (1991-92) 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:** Unlike fiduciaries, corporations are not required to pay the estimated balance due on a Wisconsin 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,

1992, 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). The regulations indicate that 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. However, in Notice 93-22 dated April 26, 1993, the IRS advised that individuals can obtain an extension of time to file even though they do not pay, on or before the original due date, the tax expected to be due with their 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 not required to obtain this extension.
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. Payment of federal tax is not required to obtain this extension.
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 not required to obtain this extension.
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 copy of any request for the federal extension is filed with the Wisconsin return, and
- In the case of fiduciaries, a reasonable estimate of any Wisconsin tax to be due on the return is paid by the original due date of the return (see Part A under "Wisconsin Law" and the chart at the end of this tax release).

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 identifica-

tion number for trusts). The letter should also clearly state that the payment is to meet the extension of time to file requirement.

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:

- Make the required payment of Wisconsin tax by the original due date of the Wisconsin return, as indicated in the chart at the end of this tax release, and
- 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" 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.

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. (1991-92), 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.

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. (1991-92)). 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" in Part A) will be cancelled. (Note: This cancellation of the late filing fee under these circumstances first applies to 1992 returns.)

EXTENSION REQUIREMENTS

Federal Extension	Attach to Wisconsin Return When Filed	Must Wisconsin Tax Be Paid by Due Date?
Individuals		
Automatic 4 months	Form 4868	No
Additional 2 months	Form 2688	No
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	No
Combat zone	Statement indicating how qualifications are met	No
Partnerships and REMICs		
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
Estates filing Wisconsin Form 2		
Up to 6 months	Form 2758	Yes
Trusts filing Wisconsin Form 2		
Automatic 3 months	Form 8736	Yes
Additional 3 months	Form 8800	Yes
Trusts subject to tax on unrelated business income filing Wisconsin Form 4T		
Up to 6 months	Form 2758	Yes
Corporations (not including REMICs)		
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



3 Renter's School Property Tax Credit — Tax-Exempt Housing

Statutes: Section 71.07(9)(a)4, Wis. Stats. (1991-92)

Background: The renter's school property tax credit is available to individuals who pay rent during the year for living quarters used as a principal residence.

The credit is equal to 10% of the first \$2,000 (\$1,000 if married filing a separate return) of rent constituting property taxes paid during the year. "Rent constituting property taxes" means 25% of rent if heat is not included or 20% of rent if heat is included.

Section 71.07(9)(a)4, Wis. Stats. (1991-92), provides that "rent" does not include rent paid for the use of housing which was exempt from property tax, except housing for which payments in lieu of taxes were made under sec. 66.40(22), Wis. Stats. (1991-92). Section 66.40(22) relates to housing authorities.

Facts and Question: The University of Wisconsin - Madison owns housing that is exempt from property taxes. The housing is rented to faculty, staff, and employees at rates set to reflect fair market rentals for similar housing in the private sector. The University makes payments to the municipality for services. Does the rent paid by an individual for the University faculty housing qualify for the renter's school property tax credit?

Answer: Yes, rent paid for the University faculty housing can be used in computing the renter's school property tax credit. In this case, payments are made by the University to the municipality in lieu of taxes, and the property is rented at a fair rental value. The property is not

subsidized by government funds and thus qualifies for the school property tax credit. □

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 1993 issue of the *Sales and Use Tax Report*. A copy can be found on pages 37 to 40 of this Bulletin.

4 Architect's Charge for Blueprints

Statutes: Sections 77.51(13) and (14) and 77.52(1), Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.67(1) and (3)(g), November 1993 Register

Background: Section 77.52(1), Wis. Stats. (1991-92), imposes a 5% tax on a retailer's gross receipts from the sale of tangible personal property.

Section 77.51(13)(f), Wis. Stats. (1991-92), provides that a retailer includes a service provider who transfers tangible personal property in conjunction with, but not incidental to a service.

Section 77.51(14)(L), Wis. Stats. (1991-92), provides that a sale includes transfers by service providers of tangible personal property in conjunction with, but not incidental to a service.

Section Tax 11.67(1), Wis. Adm. Code, provides that the true objective of the purchaser must be considered to determine whether tangible personal property transferred along with the

performance of services is merely incidental to the service or is in conjunction with the service. If the objective of the purchaser is to obtain the personal property, a taxable sale of that property is involved. However, if the objective of the purchaser is to obtain the service, a sale of a service is involved, even though, as an incidence to the service, some tangible personal property may be transferred.

Section Tax 11.67(3)(g), Wis. Adm. Code, provides that fees paid to architects to design buildings or structures are for services performed and are not subject to Wisconsin sales or use tax. It further provides that an architect's sale of blueprints made from original drawings is subject to the tax.

Facts and Question 1: An architect enters into a contract with a client to provide all of the following:

- Schematic design
- Design development
- Construction document preparation
- Bidding and negotiations services
- Administrative assistance with the construction contract.

Pursuant to Farmers Home Administration requirements, the architect provides 40 photocopies of the original blueprints of the design and specifications which are to be given to prospective bidders. A deposit is placed by the bidder on the blueprints. The architect refunds the deposit when the blueprints are returned.

The architect's billing to the client includes a charge for the blueprints available to prospective bidders in a section titled Reimbursable Expenses. The charge for the blueprints is based on the actual cost of the labor and material and does not include a markup. If the blueprints are produced by an outside firm, a 10% markup is

added to cover the cost of preparing the blueprints for the outside printer.

The architect does not sell copies of the blueprints to the general public.

Is the charge by the architect to the client for the blueprints subject to Wisconsin sales or use tax?

Answer 1: No. The primary objective of the client is to obtain the architect's services. The transfer of the blueprints is incidental to the designing and bidding services provided and is not a sale of tangible personal property, even though the charge for the blueprints is separately stated on the invoice to the client.

Facts and Question 2: An architect enters into a contract with a client to provide only schematic design and design development services. The client intends to prepare its own construction documents, let bids, and administer the construction contract. After receiving the original blueprints, the client requests the architect to make 40 copies of the original for use by the client in its bidding process.

Is the charge by the architect to its client for the blueprints subject to Wisconsin sales or use tax?

Answer 2: Yes. The sale of tangible personal property (i.e., blueprints) is subject to tax under sec. 77.52(1), Wis. Stats. (1991-92). The primary objective of the client is to obtain the blueprints. The transfer of the tangible personal property did not occur with the provision of any architectural services and, therefore, the transfer of the blueprints is not incidental to the services provided.

Facts and Question 3: An architect designs plans for buildings and structures without specifications from any particular client. If a client finds one

of these plans to be acceptable, the architect sells the client the blueprint.

Is the charge by the architect for the blueprint subject to Wisconsin sales or use tax?

Answer 3: Yes. The transfer of the blueprints for a charge is a retail sale subject to Wisconsin sales or use tax. The architect is not providing any services to the customer in conjunction with the transfer of the blueprints. □

5 Assembling and Packaging Previously Manufactured Products

Statutes: Section 77.54(2), (6)(a) and (b), and (6m), Wis. Stats. (1991-92)

Wis. Adm. Code: Sections Tax 11.39, July 1987 Register, and Tax 11.40 and 11.41, March 1991 Register

Facts: Company A is in the retail mail-ordering business, specializing in customized toys. These toys include a base unit with a series of related accessories. A customer, when ordering a base unit, may decide not to order any accessories, or may want to customize the base unit by ordering any number of available accessories. A customer can order the accessories without ordering the base unit.

Research and Development

Company A researches, develops, and designs all of their products. They produce a prototype and samples which are sent to potential manufacturers for bids. Company A does not manufacture the base unit or the accessories.

Assembly

When Company A receives the base units from the manufacturers, the units are placed in "raw material" storage. From storage, the base units are transported, by conveyer, to various work stations, where they are inspected and individually packaged.

The accessories, when received from the manufacturer, are also placed in "raw material" storage. They also are transported, by forklift or a conveyer system, to various work stations, where the manufacturer's protective material is removed. The accessories are then placed into individual boxes with tissue paper. Minor alterations or changes are made on some accessories, using hand tools.

Packaging

The individually packaged base units and accessories are moved, by forklift, from the various work stations to "finished goods" storage. From there they are moved, by conveyor, to a product assembly area in the shipping department. Individual orders are boxed, labelled, and invoiced before being mailed.

Question 1: Do the assembly operations performed by Company A qualify as manufacturing under sec. 77.54(6m), Wis. Stats. (1991-92)?

Answer 1: No. The assembly operations performed by Company A do not qualify as manufacturing. The assembly operations involve the bringing together of items that have already been manufactured. The form of the base unit and accessories has not been modified or changed. The items have been combined pursuant to a customer's order. The use of the items remains the same from the time the manufactured items are delivered to Company A to the time they are shipped to the customer.

Question 2: Does the packaging operation performed by Company A qualify as manufacturing?

Answer 2: No. Since the assembly operation is not considered manufacturing, the packaging of the assembled products is also not considered manufacturing.

Question 3: Are the materials used to make the prototypes and samples, which are provided to manufacturers who will bid for production of the base units and accessories, exempt from Wisconsin sales and use tax under sec. 77.54(2), Wis. Stats. (1991-92), as tangible personal property consumed or destroyed in manufacturing tangible personal property destined for sale?

Answer 3: No. The materials which are used in making the prototypes and samples are not exempt from Wisconsin sales and use tax under sec. 77.54(2), Wis. Stats. (1991-92). The prototype and samples that are produced are not sold. They are provided to persons who will bid on Company A's manufacturing jobs. Therefore, the destined for sale requirement is not met. □

6 Calf and Cattle Crates

Statutes: Sections 77.52(2)(a)10 and 77.54(3) and (3m), Wis. Stats. (1991-92)

Wis. Adm. Code: Sections Tax 11.12(4), April 1993 Register, and Tax 11.68(4) and (6)(a)6, June 1991 Register

Background: Section Tax 11.68(4)(b), Wis. Adm. Code, provides that certain types of property have a variety of functions and may be personal property in some instances and additions to real property in others. When property is installed primarily to provide service to a

building or structure and is essential to the use of the building or structure, it is a real property improvement. However, when similar property is installed to perform a processing function, it may retain its status as personal property.

Section Tax 11.12(4), Wis. Adm. Code, provides an exemption for farm machinery. "Machine" means an assemblage of parts that transmit force, motion, and energy from one part to another in a predetermined manner.

Facts: Calf and cattle crates are usually purchased by farmers, unassembled. The crates are made of wood, each weighing about 300 pounds, and are designed to provide a home for a single animal for a period of 2 to 4 months.

Crates are usually constructed on site, and the setup of each can be different. Variations in the construction may include:

- a. Crates fastened together with other crates.
- b. Crates designed so that one forms a unit with another crate.
- c. Crates bolted to the foundation or held in place by their weight.
- d. Crates set up in rows.

Crates usually have slits in the bottom so that manure may flow towards a gutter or manure pit. The crates are usually not removed from the barn and are cleaned using high pressure water. Cleaning of portions of the barn, at no additional charge, may be necessary as a result of cleaning the crates. The crates are often moved around the barn to facilitate cleaning or to isolate diseased cattle.

Question 1: Is the installation of calf and cattle crates a real property improvement or the installation of tangible personal property?

Answer 1: The crates, when installed, are tangible personal property. The crates do not provide service to the building or structure, but rather serve a processing function (i.e., farming).

Question 2: Is the sale and installation of the calf and cattle crates subject to Wisconsin sales or use tax?

Answer 2: Yes. The sale of tangible personal property is subject to Wisconsin sales or use tax unless an exemption applies. Section 77.54(3)(a), Wis. Stats. (1991-92), provides an exemption for farm machinery. However, a calf or cattle crate is not an assemblage of parts that transmit force, motion, and energy from one part to another in a predetermined manner as required under sec. 77.54(3)(b)2, Wis. Stats. (1991-92), for this exemption to apply.

Question 3: Is the washing of these crates and the incidental cleaning of portions of the barn a taxable service?

Answer 3: Yes. The washing of the calf and cattle crates is subject to Wisconsin sales or use tax. Section 77.52(2)(a)10, Wis. Stats. (1991-92), provides that the cleaning of tangible personal property is a service subject to tax. The entire charge for providing this service is subject to tax even though a portion of the barn (real property) may be cleaned as a result of cleaning the crates. The primary purpose of the service is to clean the crates.

Because the crates, when purchased, do not qualify as farm machinery exempt from taxation under sec. 77.54(3) and (3m), Wis. Stats. (1991-92), the washing of the crates is not

exempt from Wisconsin sales or use tax. ☐

7 Effect of Motor Fuel Tax Refund on Computation of Gross Receipts and Sales Price

Note: This tax release supersedes the tax release by the same title which appeared in *Wisconsin Tax Bulletin 84* (October 1993). The previous tax release in *Wisconsin Tax Bulletin 84* has been revised to remove references to the Wisconsin motor fuel tax. Specifically, in the previous tax release, Facts and Question 3 has been deleted and Facts and Question 4, 5, and 6 have been renumbered and revised to remove any discussion of the Wisconsin motor fuel tax. The facts given regarding the Wisconsin motor fuel tax should not occur because sec. 77.54(11), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for sales of motor fuel subject to the Wisconsin motor fuel tax.

Statutes: Section 77.51(4)(a) and (b) and (15)(a) and (b), Wis. Stats. (1991-92)

Background: Section 77.51(4)(a), Wis. Stats. (1991-92), provides that gross receipts, for purposes of imposing Wisconsin sales tax, means the total amount of the sale of tangible personal property whether received in money or otherwise. Gross receipts includes the federal and Wisconsin motor fuel taxes.

Section 77.51(4)(b), Wis. Stats. (1991-92), provides that gross receipts does not include such part of the sale price as is refunded in cash or credit as a result of adjustments in the sales price after the sale has been completed.

Section 77.51(15), Wis. Stats. (1991-92), provides that sales price, for purposes of imposing Wisconsin

use tax, means the total amount for which tangible personal property is sold, without any deduction for the federal and Wisconsin motor fuel taxes.

There is no provision in the definition of "sales price," the measure used in computing use tax, that allows the purchaser to reduce the sales price subject to use tax by a partial refund.

Facts and Question 1: Company A sells motor fuel to Company B. The amount of the sale of the motor fuel includes the federal motor fuel tax. Company A charges Company B Wisconsin sales tax on the total amount of the sale of the motor fuel, including the federal motor fuel tax.

Company B, subsequent to the sale of the motor fuel, files a claim for refund with the Internal Revenue Service (IRS) for the federal motor fuel tax it paid to Company A. The claim for refund is made using federal Form 843. Company A becomes aware of the motor fuel tax refund made by the IRS to Company B.

May Company A file a claim for refund of the sales tax it paid to the department on that part of its gross receipts that represents the federal excise tax refunded by the IRS to Company B?

Answer 1: No. The refund of federal motor fuel tax to Company B does not reduce the gross receipts subject to Wisconsin sales tax from the sale of the motor fuel by Company A to Company B.

The definition of gross receipts in sec. 77.51(4)(a) and (b), Wis. Stats. (1991-92), does not provide a reduction in the computation of a retailer's gross receipts for a refund to the purchaser by a third party. The amount received by Company A from the sale of motor fuel to Company B has not changed as a result of the

refund by the IRS and, therefore, the gross receipts subject to Wisconsin sales or use tax remain the same.

Facts and Question 2: Assume the same facts as in Facts and Question 1, except that Company B claims a credit on its federal corporate income tax return using federal Form 4136 for the federal motor fuel tax it paid to Company A on the purchase of motor fuel.

May Company A file a claim for refund of the sales tax it paid to the department on that part of its gross receipts that represents the federal motor fuel tax allowed as a credit to Company B?

Answer 2: No. The same answer as given to Facts and Question 1 applies.

Facts and Question 3: Company C sells motor fuel to Company D. The amount of the sale of the motor fuel includes the federal motor fuel tax. Company C does not charge Company D Wisconsin sales tax on the sale of the motor fuel. Company D reports Wisconsin use tax on its Wisconsin sales and use tax return for the purchase of the motor fuel. Company D includes the federal motor fuel tax in the amount on which use tax is computed.

Company D, subsequent to reporting Wisconsin use tax on the motor fuel purchased, files a claim for refund with the IRS for the federal motor fuel tax it paid to Company C. The claim for refund is made using federal Form 843.

May Company D file a claim for refund of the use tax it paid to the department on that part of the purchase price for the motor fuel that represents the federal motor fuel tax refunded by the IRS to Company D?

Answer 3: No. The refund of federal motor fuel tax to Company D does

not reduce the sales price subject to Wisconsin use tax from the sale of the motor fuel by Company C which is stored, used, or consumed in Wisconsin by Company D.

There is no provision in the definition of sales price in sec. 77.51(15)(a) and (b), Wis. Stats. (1991-92), that allows the purchaser to reduce the sales price subject to use tax by a partial refund from the IRS of the federal motor fuel tax paid on the sale.

Facts and Question 4: Assume the same facts as in Facts and Question 3, except that Company D claims a credit on its federal corporate income tax return using federal Form 4136 for the federal motor fuel tax it paid to Company C on the purchase of motor fuel.

May Company D file a claim for refund of the use tax it paid to the department on that part of the sales price that represents the federal motor fuel tax allowed as a credit by the IRS on Company D's federal corporate income tax return?

Answer 4: No. The same answer as given to Facts and Question 3 applies.

Facts and Question 5: Company E sells motor fuel to Company F. The amount of the sale of the motor fuel includes the federal motor fuel tax. Company E does not charge Company F Wisconsin sales tax on the sale of the motor fuel. Company F does not report Wisconsin use tax on its Wisconsin sales and use tax return for the purchase of the motor fuel.

Subsequent to the sale of the motor fuel by Company E, Company F files a claim for refund with the IRS for the federal motor fuel tax it paid on the motor fuel purchased from Company E. The claim for refund is made using federal Form 843.

Company F is audited by the department. It is determined that Company F should have reported Wisconsin use tax on its purchase of motor fuel from Company E.

Is the measure of use tax used in making an assessment the total amount paid to Company E for the motor fuel, including the federal motor fuel tax that was later refunded by the IRS?

Answer 5: Yes. The measure of use tax used in making the assessment is the sales price of the motor fuel, which includes the federal motor fuel tax.

The definition of sales price in sec. 77.51(15)(a) and (b), Wis. Stats. (1991-92), does not provide a reduction in the computation of sales price for a refund to the purchaser by a third party. The amount received by Company E for the sale of motor fuel to Company F has not changed and, therefore, the sales price subject to Wisconsin use tax remains the same.

8 Sales of Candy, Confections, and Desserts

Statutes: Section 77.54(20)(a) and (c)2.d, Wis. Stats. (1991-92)

Wis. Adm. Code: Section Tax 11.51(2), December 1992 Register

Background: Section 77.54(20)(c)2, Wis. Stats. (1991-92), provides that gross receipts from the sales of candy and confections for off-premises consumption are subject to Wisconsin sales or use tax.

Facts and Question 1: Company A sells sweet, sugary food products with a variety of names that are generally descriptive of the major flavor ingredients contained in the product. The products are often coated with choco-

late or yogurt and may contain one or more of the following ingredients:

- Cake
- Chocolate
- Frosting
- Fruit or preserves
- Fudge
- Nuts or nut butters

The size of each individual item allows it to be eaten by one person in a single bite or a few bites. The products are packaged as either an assortment of types or all one type. Each package contains several individual items which are separated from one another by dividers, paper trays, or individual wrappers.

Are the gross receipts from Company A's sales of its products subject to Wisconsin sales and use tax?

Answer 1: Yes. Sales of candy and confections for off-premises consumption are subject to Wisconsin sales or use tax under sec. 77.54(20)(c)2.d, Wis. Stats. (1991-92). The items sold by Company A are candy and/or confections. They are presented as boxes of candy in their packaging, size, and content.

Facts and Question 2: Company B sells products which are made by placing layers of frosting, nuts, fudge, fruit preserves, or combinations of these between layers of cake. The product may be coated with chocolate or yogurt. Each item is advertised to contain multiple portions or servings. The individual items are most often sold separately but may be sold as a package with 2 or 3 items per package.

Are the gross receipts from Company B's sales of its products subject to Wisconsin sales and use tax?

Answer 2: No. Sales of desserts which are not candy or confections

are exempt from Wisconsin sales or use tax under sec. 77.54(20), Wis. Stats. (1991-92). □

TEMPORARY RECYCLING SURCHARGE

9 Temporary Recycling Surcharge — Types of Business Activity in Wisconsin

Statutes: Section 77.93, Wis. Stats. (1991-92)

Note: The temporary recycling surcharge applies to taxable years ending after April 1, 1991, and ending before April 1, 1999. This tax release supersedes the instructions to the 1990 Form S and the 1991 and 1992 individual, corporation, and tax-option (S) corporation tax returns and the information in the December 1991 and 1992 editions of Publication 400, *Wisconsin's Temporary Recycling Surcharge*. The tax release applies for taxable years ending after April 1, 1991.

Background: The temporary recycling surcharge applies to the following entities for the privilege of doing business in Wisconsin:

- Corporations and insurance companies that are required to file a Wisconsin franchise or income tax return and are engaged in business in Wisconsin.
- Individuals, estates, and trusts that are required to file a Wisconsin income tax return and that are engaged in a trade or business in Wisconsin or have income as a statutory employee in Wisconsin.
- Partnerships that are required to file a Wisconsin partnership return and that are engaged in a trade or business in Wisconsin.

However, an individual, estate, trust, or partnership is not subject to the surcharge if:

- It is not engaged in farming and has less than \$4,000 (\$1,000 for taxable years beginning before 1994) of gross receipts from all trade or business activities or as a statutory employee for federal income tax purposes.
- It is engaged solely in farming and has less than \$1,000 of net farm profit for federal income tax purposes.
- It is engaged in both farming and other trade or business activities and has less than \$4,000 (\$1,000 for taxable years beginning before 1994) of gross receipts from all nonfarm trade or business activities and less than \$1,000 of net farm profit for federal income tax purposes.

As used in this tax release, the terms "doing business," "engaged in business," and "nexus" in the state have similar meanings and refer to the degree of activity necessary before a state or foreign country has jurisdiction to impose an income tax or franchise tax measured by net income on the taxpayer.

Facts and Question 1: Individual A, an Illinois resident, sold his vacation home located in Wisconsin and realized a capital gain of \$15,000. The home had not been used for business purposes. Individual A is required to file a 1993 Wisconsin income tax return, Form 1NPR, because he has at least \$2,000 of gross income from Wisconsin sources. For federal income tax purposes, Individual A reports \$43,000 of business income from a business located in Illinois. The income from the Illinois business is not subject to Wisconsin income taxation. Individual A has no trade or business activities in Wisconsin.

Is Individual A subject to the temporary recycling surcharge?

Answer 1: No. Individual A is not subject to the temporary recycling surcharge because he is not doing business in Wisconsin.

Facts and Question 2: Individual B, a Wisconsin resident, reports \$75,000 of net business income on the federal income tax return, Form 1040, filed with his 1993 Wisconsin income tax return, Form 1. The business is located in Iowa; it has no activity in Wisconsin. Since Individual B is a Wisconsin resident, the income from the business is taxable for Wisconsin income tax purposes.

Is Individual B subject to the temporary recycling surcharge?

Answer 2: No. Individual B is not subject to the temporary recycling surcharge because he is not doing business in Wisconsin.

Facts and Question 3: Corporation A, which is incorporated outside Wisconsin but licensed to do business in Wisconsin, has no business activity in Wisconsin during 1993. However, it transacts business outside Wisconsin. Corporation A is required to file a 1993 Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin, but it has no Wisconsin franchise or income tax liability.

Is Corporation A subject to the temporary recycling surcharge?

Answer 3: No. Corporation A is not subject to the temporary recycling surcharge because it is not engaged in business in Wisconsin.

Note: The treatment is the same for regular (C) corporations and tax-option (S) corporations.

Facts and Question 4: Corporation B is incorporated outside Wisconsin but licensed to do business in Wisconsin. It sells tangible personal property. During 1993 its activity in Wisconsin does not exceed the solicitation of orders, which orders are approved outside the state and are filled by delivery from a point outside the state. Corporation B is required to file a 1993 Wisconsin franchise or income tax return since it is licensed to do business in Wisconsin, but it has no Wisconsin franchise or income tax liability.

Is Corporation B subject to the temporary recycling surcharge?

Answer 4: No. Corporation B is not subject to the temporary recycling surcharge because its activity in Wisconsin is protected by Public Law 86-272. Under Public Law 86-272, a state may not impose its income tax or franchise tax measured by net income on a business that is incorporated in another state and sells tangible personal property if the *only* activity of that business is the solicitation of orders by its salespersons or representatives, which orders are sent

outside the state for approval or rejection and are filled by delivery from a point outside the state.

Note: The treatment is the same for regular (C) corporations and tax-option (S) corporations.

Facts and Question 5: Corporation C, which is incorporated in Wisconsin, has no business activity in Wisconsin during 1993. However, Corporation C does transact business outside Wisconsin. Corporation C is required to file a 1993 Wisconsin franchise or income tax return since it is organized under Wisconsin law, but it has no Wisconsin franchise or income tax liability.

Is Corporation C subject to the temporary recycling surcharge?

Answer 5: No. Corporation C is not subject to the temporary recycling surcharge because it is not engaged in business in Wisconsin.

Note: The treatment is the same for regular (C) corporations and tax-option (S) corporations.

Facts and Question 6: Corporation D is incorporated in Wisconsin. It sells tangible personal property. During 1993 its activity in Wisconsin does not exceed the solicitation of orders by its salespersons in the state, which orders are approved outside the state and are filled by delivery from a point outside the state. However, this activity constitutes nexus in Wisconsin. Corporation D is required to file a 1993 Wisconsin franchise or income tax return since it is organized under Wisconsin law and, therefore, Public Law 86-272 does not apply. Corporation D is subject to Wisconsin franchise or income tax on the net income attributable to Wisconsin.

Is Corporation D subject to the temporary recycling surcharge?

Answer 6: Yes. Corporation D is subject to the temporary recycling surcharge because it is engaged in business in Wisconsin and that activity is not protected by Public Law 86-272.

Note: The treatment is the same for regular (C) corporations and tax-option (S) corporations. □



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:

Individual Income Taxes

Modifications — mutual fund distributions
Wisconsin alternative minimum taxable income

W9339005, July 7, 1993
(p. 34)

✳ W9339005, July 7, 1993

Type Tax: Individual Income Taxes

Issue: Modifications — mutual fund distributions; Wisconsin alternative minimum taxable income

Statutes: Sections 71.05(6)(a)1 and (6)(b)1, and 71.08(1), Wis. Stats. (1991-92)

This letter responds to your request for a private letter ruling on behalf of ABC Company, in regard to the application of Wisconsin income tax to the Wisconsin shareholders of a mutual fund investing in obligations of the United States government, certain United States possessions and territories, and certain Wisconsin agencies and political subdivisions.

Facts

ABC Company serves as investment advisor to a number of open-end and closed-end investment companies. ABC Company proposes to sponsor a new open-end investment company, or mutual fund, called ABC Mutual Funds, to be organized as a non-Wisconsin corporation. ABC Mutual Funds will be registered with the Securities and Exchange Commission under the Investment Company Act of 1940 as an open-end management investment company.

ABC Mutual Funds will be a series fund offering (initially) three distinct series of shares. Each series of the fund is intended to qualify as a regulated investment company under Subchapter M of the Internal Revenue Code (IRC) of 1986, as amended. Each series will represent an

exclusive interest in a separate portfolio of securities consisting primarily of the obligations of one state, its political subdivisions, and agencies. One such series (hereinafter the "Fund") will invest primarily in certain obligations of Wisconsin agencies and political subdivisions and in the obligations of certain United States territories and possessions. It will also reserve the right to invest, for defensive purposes, in certain other securities, including obligations of the United States Treasury. All of the rulings requested relate solely to the shareholders of the Fund, who are expected to be individuals who are Wisconsin residents.

Ruling Requested

You request rulings confirming that dividends paid by the Fund that are attributable to interest income which is otherwise exempt from the Wisconsin income tax, will be excluded from the Wisconsin taxable income and the Wisconsin alternative minimum taxable income of shareholders.

Ruling

1. Dividends paid by the Fund that are attributable to interest earned on obligations of the United States government or its territories and possessions, will be excluded from the Wisconsin taxable income of the Fund shareholders subject to Wisconsin personal income tax.
2. Dividends paid by the Fund that are attributable to interest earned on obligations of the State of Wisconsin or Wisconsin agencies

or political subdivisions, the interest on which is expressly exempted from Wisconsin personal income tax under state statute, will be excluded from the Wisconsin taxable income of the Fund shareholders subject to Wisconsin personal income tax.

3. Dividends paid by the Fund that are attributable to interest earned on obligations of the United States and its territories and possessions and on obligations of the State of Wisconsin or Wisconsin agencies or political subdivisions, the interest on which is exempt from Wisconsin personal income tax under state statute, will be excluded from the Wisconsin alternative minimum taxable income of individuals and fiduciaries.

Analysis

- I. Exclusion From Gross Income for Mutual Fund Dividends Attributable to Interest on Obligations of the U.S. Government, U.S. Possessions and Territories, and Certain Wisconsin Obligations

The Wisconsin adjusted gross income of individuals and fiduciaries is based on their federal adjusted gross income, with certain adjustments. Secs. 71.01(13) and 71.05, Wis. Stats. (1991-92). Wisconsin individuals must generally add back to federal adjusted gross income any interest received on municipal bonds that was excluded from federal gross income (subject to exclusions otherwise provided for interest earned on specified types of Wisconsin bonds and bonds issued by U.S. territories and possessions). Sec. 71.05.(6)(a)1, Wis. Stats. (1991-92). Conversely, Wisconsin residents may subtract from federal adjusted gross income any interest included therein that is exempt from state taxation under

federal law. Sec. 71.05(6)(b)1, Wis. Stats. (1991-92).

A rule promulgated by the Wisconsin Department of Revenue lists a number of federal and state securities, the interest on which is excludable from the Wisconsin income of individuals and fiduciaries. Rule sec. Tax 3.095, Wis. Adm. Code. "Federal securities" that are exempt from tax ("Federal Securities") are defined as "securities which are direct and primary obligations of the United States and securities the interest of which federal law prohibits states from taxing." In addition to direct obligations of the United States Treasury, the listed securities include bonds issued by Guam (Rule sec. Tax 3.095(2)(t)), Puerto Rico (Rule sec. Tax 3.095(2)(z)), various agencies and political subdivisions of Puerto Rico (Rule sec. Tax 3.095(2)(x) through (zh)), and the U.S. Virgin Islands (Rule sec. Tax 3.095(2)(zq) and (zr)).

In addition, the same rule lists certain bonds issued by agencies or political subdivisions of the State of Wisconsin, the interest on which is exempt from the Wisconsin personal income tax. These include certain higher education bonds issued by the State of Wisconsin, certain bonds issued by the Wisconsin Housing and Economic Development Authority, Wisconsin Housing Finance Authority bonds, and public housing authority bonds and redevelopment authority bonds issued by Wisconsin municipalities. Rule sec. Tax 3.095(4)(b) through (e) and (g) through (h). (These bonds will be referred to collectively as "Exempt Wisconsin Bonds.")

Neither the statutes nor the rule state specifically whether interest on Federal Securities and Exempt Wisconsin Bonds is exempt from the Wisconsin personal income tax when received by taxpayers in the form of dividends

from a mutual fund investing in such securities. This question has been answered, however, in the case of U.S. Treasury securities, in *Capital Preservation Fund, Inc. v. Wisconsin Department of Revenue*, 145 Wis. 2d 841, 429 N.W.2d 551 (Ct. App. 1988). There, the Wisconsin Court of Appeals held that dividends paid by a mutual fund attributable to interest earned by the fund on direct obligations of the U.S. government were exempt from the Wisconsin personal income tax. The Court's holding was based on 31 U.S.C. § 3124(a), which generally prohibits states from imposing an income tax on interest on U.S. government obligations.

Although the decision in *Capital Preservation Fund* did not address the taxation of interest on obligations of U.S. territories and possessions, the holding of that case has been extended to such interest income, since such interest is exempted from state taxation under federal statutory provisions comparable to 31 U.S.C. § 3124(a). The department has set forth this position in the instructions for the 1992 individual income tax forms. Furthermore, the form instructions also confirm that the pass-through exemption treatment allowed for U.S. Treasury securities in *Capital Preservation Fund* also applies to Exempt Wisconsin Bonds.

In summary, the flow-through of tax-exempt status to shareholders of a mutual fund applies to all interest which either (1) federal law specifically prohibits states from taxing, or (2) Wisconsin law specifically provides as tax-exempt.

- II. Exclusion From Wisconsin Alternative Minimum Taxable Income of Mutual Fund Dividends Attributable to Interest on U.S. Bonds, Bonds Issued by U.S. Possessions and Territories, and Exempt Wisconsin Bonds

Wisconsin imposes an alternative minimum tax ("AMT") on individuals, trusts, and estates whose regular tax liability, as computed under sec. 71.02, Wis. Stats. (1991-92), is less than their AMT as computed under sec. 71.08, Wis. Stats. (1991-92). Wisconsin alternative minimum taxable income ("AMTI") is computed by starting with federal AMTI as defined in IRC sec. 55(b)(2). Generally, federal AMTI does not include interest on municipal bonds (including bonds issued by U.S. possessions and territories) because such interest is excludable from federal gross income under IRC sec. 103(a) and is not required to be added back to federal AMTI (with one exception discussed below).

Section 71.08(1)(a), Wis. Stats. (1991-92), provides that, with some exceptions, federal AMTI is to be adjusted by the adjustments provided by sec. 71.05(6) to (21), Wis. Stats. (1991-92) - the same adjustments that

are made to federal adjusted gross income in calculating Wisconsin regular taxable income. The only relevant adjustment is the adjustment under sec. 71.05(6) (b)1, Wis. Stats. (1991-92), which requires the subtraction of interest on U.S. government obligations.

Federal adjusted gross income does not include interest on bonds issued by U.S. possessions and territories or Exempt Wisconsin Bonds, and no adjustments are required by sec. 71.05(6) to (21), Wis. Stats. (1991-92), to add such income to federal AMTI when computing Wisconsin AMTI.

In one narrow category of cases, federal AMTI does include interest paid on municipal bonds. This category is that of "specified private activity bonds" issued by states or by U.S. territories and possessions, the interest on which is defined as an item of tax preference under IRC

sec. 57(a)(5). IRC sec. 57(a)(5)(B) also provides that, under regulations to be prescribed by the Secretary of the Treasury, any "exempt-interest dividends" paid by a mutual fund under IRC sec. 852(b)(5)(A) will be treated for this purpose as interest on a specified private activity bond to the extent it is paid from interest earned by the mutual fund on such a bond.

However, under sec. 71.08(1)(b), Wis. Stats. (1991-92), the interest on "specified private activity bonds" under IRC sec. 57(a)(5) is subtracted from the federal AMTI that is used to compute Wisconsin AMTI. Therefore, even if any bond issued by a U.S. territory or possession or Exempt Wisconsin Bond held by the Fund were considered to be a "specified private activity bond" under IRC sec. 57(a)(5), the interest on such a bond would not be included in Wisconsin AMTI. □