



Wisconsin TAX BULLETIN

New Wisconsin Tax Laws

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

These provisions are contained in the following Acts:

1993 Act 199 - Published 4/20/94	1993 Act 312 - Published 4/28/94
1993 Act 204 - Published 4/20/94	1993 Act 332 - Published 4/29/94
1993 Act 205 - Published 4/20/94	1993 Act 378 - Published 5/4/94
1993 Act 226 - Published 4/22/94	1993 Act 408 - Published 5/5/94
1993 Act 232 - Published 4/22/94	1993 Act 420 - Published 5/6/94
1993 Act 246 - Published 4/22/94	1993 Act 437 - Published 5/9/94
1993 Act 259 - Published 4/25/94	1993 Act 471 - Published 5/12/94
1993 Act 263 - Published 4/25/94	1993 Act 472 - Published 5/12/94
1993 Act 308 - Published 4/28/94	

The description for each provision indicates the Act which contains the law change, the sections of the statutes affected, and the effective date of the new provision.

Wisconsin Tax Bulletin
Published quarterly by
 Wisconsin Department of Revenue
 Income, Sales, and
 Excise Tax Division
 P.O. Box 8933
 Madison, WI 53708-8933

Subscriptions available from
 Wisconsin Department of
 Administration
 Document Sales
 P.O. Box 7840
 Madison, WI 53707-7840

Annual cost \$7.00

Provision	Effective Date	Page
A. Individual and Fiduciary Income Taxes		
1. Internal Revenue Code Reference Updated for 1994 for Individuals, Estates, and Trusts	Taxable years beginning on or after January 1, 1994	6
2. Federal Laws Enacted During 1993 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning after December 31, 1988 and before January 1, 1994	6
3. Addition Modification Created for Certain Moving Expenses	Expenses incurred on or after January 1, 1994	6
4. Definition of Gross Income Clarified	Taxable years beginning on or after January 1, 1994	7

Provision	Effective Date	Page
5. Fiduciaries May Not Deduct Real Estate Taxes Paid by a Cooperative Housing Corporation	Taxable years beginning on or after January 1, 1994	7
6. Tenant-Stockholder's Share of Real Estate Taxes Not Allowed for Itemized Deduction Credit	Taxable years beginning on or after January 1, 1994	7
7. Interest Income From Local Exposition District Bonds Exempted From Tax	April 26, 1994	7
8. Treatment of Partnership Agreements Clarified	April 21, 1994	7
9. Estimated Tax Provisions Amended	Taxable years beginning on or after January 1, 1994	8
10. State Historic Rehabilitation Credit Revised	Taxable years beginning on or after January 1, 1994	8
 B. Corporation Franchise or Income Taxes		
1. Internal Revenue Code References Updated for 1994	Taxable years beginning on or after January 1, 1994	9
2. Federal Laws Enacted During 1993 Apply Simultaneously for Wisconsin Purposes	Taxable years beginning after December 31, 1988, and before January 1, 1994	9
3. Disallowance of State Tax Deduction Clarified	May 10, 1994	10
4. Corporations Having a Federal Extension Allowed an Extra 30 Days to File Wisconsin Tax Returns	Taxable years beginning on or after January 1, 1993	10
5. Definition of "Return" Modified for Estimated Tax Purposes	Taxable years beginning on or after January 1, 1994	10
6. Urban Transit Company Tax Extended	Taxable years beginning on or after January 1, 1995	10
7. Income of Local Exposition Districts Exempted from Tax	April 26, 1994	10
8. Interest Income From Local Exposition District Bonds Exempted From Tax	April 26, 1994	10
9. Development Opportunity Zones Created	April 23, 1994	10

Provision	Effective Date	Page
C. Sales and Use Taxes		
1. Buyer May File Claim for Refund of Sales and Use Taxes	For claims for refund filed on or after September 1, 1994	11
2. Seller Required to Return Refunded Tax and Interest to Buyer	For claims for refund filed on or after September 1, 1994	13
3. Penalties for Filing Incorrect Claims for Refund of Sales or Use Tax	For claims for refund filed on or after September 1, 1994	13
4. Direct Pay Allowed for Eligible Businesses	Taxable years beginning on or after January 1, 1995	13
5. Exemption for Meals, Food, or Beverages Sold by Community-Based Residential Facilities	June 1, 1994	14
6. Real Property Definition for Property Tax Doesn't Apply for Sales and Use Tax	April 29, 1994	15
7. Limit Seller's Liability When Department Is Unable to Collect From Purchaser	April 29, 1994	15
8. \$10 Fee Waived if Late Filing Because of Death	For notices mailed on or after May 6, 1994	15
9. Allow Assessments in the Alternative	April 29, 1994	15
10. Require Payment of All Tax Delinquencies for Seller's Permit Renewal	July 1, 1994	16
11. Include Fees and Surcharges in Amount Used to Determine if Seller's Permit Renewed	July 1, 1994	16
12. Exempt Sales to Local Exposition Districts	April 26, 1994	16
13. Exempt Charges Imposed by a Local Exposition District for Copies of Records	April 26, 1994	16
14. Waste Treatment Facility Exemption for Local Exposition District	April 26, 1994	17

Provision	Effective Date	Page
D. Farmland Preservation Credit		
1. Credit Increased From 95% to 100% for Farmland Covered by Town Exclusive Agricultural Use Zoning	Taxable years beginning on or after January 1, 1994	17
2. Credit Increased From 70% to 80% for Farmland Subject to an Agreement	Taxable years beginning on or after January 1, 1994	17
E. Excise Taxes		
1. Adopt Income Tax Provisions for Claims for Refund of Certain Excise Taxes	For refund claims received on or after April 21, 1994	17
2. Motor Vehicle Fuel Tax — Various Provisions Needed to Correct and/or Implement Changes Included in 1993 Act 16	June 1, 1994	17
3. Bed and Breakfast Establishments Exempt From Alcohol Beverage Licensing	April 23, 1994	18
4. Increase Penalties for Sale of Alcohol Beverages to Underage Persons	May 13, 1994	18
5. Applicants for Retail Alcohol Beverage Licenses Required to Complete Responsible Beverage Server Training	Applications filed on or after November 1, 1994	19
6. Prohibit Wholesale and Retail Fermented Malt Beverage Ownership Interests	May 5, 1994	19
7. Prohibit Sale of Individual Cigarettes	April 29, 1994	19
8. Amusement Device Permit Eliminated	April 29, 1994	19
F. Local Exposition District Taxes		
1. Creation of Local Exposition District	April 26, 1994	19
2. Authorize Department of Revenue to Administer and Distribute Local Exposition District Taxes	April 26, 1994	20
3. Room Tax	Determined by local exposition district enabling resolution	20

Provision	Effective Date	Page
4. Food and Beverage Tax	Determined by local exposition district enabling resolution	22
5. Rental Car Tax	Determined by local exposition district enabling resolution	23
6. Refunds of Local Exposition District Taxes	April 26, 1994	24
7. Registering to Collect Local Exposition District Taxes	Determined by local exposition district enabling resolution	24
8. Discontinuation of Local Exposition District Taxes	April 26, 1994	24
9. Certain Sales and Use Tax Provisions Apply for Local Exposition District Taxes	April 26, 1994	24
G. Other		
1. Claim for Refund or Credit Required to be Filed on Form Prescribed by Department	For claims for refund or credit filed on or after November 1, 1994	26
2. Retention of Machine Readable Records	Various	26
3. Service of Assessment Via Publication	April 21, 1994	26
4. Notice Requirements Modified for Continuous Levies	April 21, 1994	26
5. Refund Setoff Provisions Expanded	May 10, 1994	27
6. Department Permitted to Enter Into Contracts to Collect Delinquent Taxes	April 21, 1994	27
7. Affidavit Requirement Modified Upon Transfer of Decedent's Property	For transfers because of deaths occurring on or after January 1, 1992	27
8. Enrollment Cards and Medicare Assignment Information	April 21, 1994	27

A. Individual and Fiduciary Income Taxes

1. Internal Revenue Code Reference Updated for 1994 for Individuals, Estates, and Trusts (1993 Act 437, repeal sec. 71.01(6)(a), amend sec. 71.01(6)(h) and (7r) and create sec. 71.01(6)(i), effective for taxable years beginning on or after January 1, 1994.)

For taxable years that begin on or after January 1, 1994, "Internal Revenue Code" for individuals, estates, and trusts (except nuclear decommissioning trust or reserve funds) means the federal Internal Revenue Code as amended to December 31, 1993, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

The following provisions of federal Public Law 103-66, although enacted before the December 31, 1993 date prescribed by Wisconsin law, do not apply for Wisconsin purposes:

- a. Section 13215 of Public Law 103-66 relating to the taxation of up to 85% of social security benefits.
- b. Section 13113 of Public Law 103-66 relating to the exclusion for 50% of the gain from the sale or exchange of qualified small business stock held for more than five years.

For property placed in service in taxable years beginning on or after January 1, 1994, individuals and fiduciaries may compute depreciation or amortization under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1993, at the taxpayer's option.

2. Federal Laws Enacted During 1993 Apply Simultaneously for Wisconsin Purposes (1993 Act 437, amend sec. 71.01(6)(d), (e), (f), (g), and (h), effective for taxable years beginning after December 31, 1988 and before January 1, 1994.)

Except as indicated below, the federal Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66), which was enacted on August 10, 1993, applies for Wisconsin income tax purposes at the same time as for federal purposes. For example,

the increase from \$10,000 to \$17,500 in the amount of property that can be expensed under section 179 applies for both federal and Wisconsin purposes to taxable years beginning on or after January 1, 1993.

The following six provisions of federal Public Law 103-66 do not apply for Wisconsin:

- a. The extension for the period July 1, 1992, through December 31, 1993, of section 127 of the Internal Revenue Code relating to the exclusion from gross income for up to \$5,250 of educational assistance benefits furnished by an employer under an educational assistance program.
- b. The extension for the period July 1, 1992, through December 31, 1993, of section 162(L) of the Internal Revenue Code relating to the deduction for 25% of the amounts paid for health insurance costs by self-employed individuals.
- c. The repeal of the tax preference (for alternative minimum tax purposes) for contributions of tangible personal property made after June 30, 1992, and contributions of other property made after December 31, 1992.
- d. The 50% exclusion of gain realized on the disposition of qualified small business stock issued after August 10, 1993, and the treatment of the exclusion as a tax preference for alternative minimum tax purposes.
- e. The exclusion for certain income realized from the discharge of qualified real property indebtedness occurring after December 31, 1992.
- f. The increase in exemption amounts for alternative minimum tax purposes for taxable years beginning on or after January 1, 1993.

3. Addition Modification Created for Certain Moving Expenses (1993 Act 437, create sec. 71.05(6)(a)18, effective for expenses incurred on or after January 1, 1994.)

For federal tax purposes, moving expenses incurred on or after January 1, 1994, are allowed as a deduction when computing federal adjusted gross income.

Certain moving expenses are not allowed as a deduction for Wisconsin tax purposes. The following moving expenses must be added back to federal adjusted gross income when computing Wisconsin taxable income:

- Moving expenses that result in the taxpayer changing his or her domicile from Wisconsin to another state.
- Moving expenses incurred by a nonresident of Wisconsin, unless such move is to Wisconsin and the taxpayer changes his or her domicile to Wisconsin as a result of the move.

4. Definition of Gross Income Clarified (1993 Act 204, amend sec. 71.03(1), effective for taxable years beginning on or after January 1, 1994.)

The definition of "gross income", as that term relates to income from the sale of property, is clarified by deleting the phrase "gains derived from dealings in property."

As a result of this change, "gross income" from the sale of property is defined as the gross selling price without reduction for the cost of the asset sold, expenses of sale, or any other amounts.

5. Fiduciaries May Not Deduct Real Estate Taxes Paid by a Cooperative Housing Corporation (1993 Act 204, amend sec. 71.05(6)(a)13, effective for taxable years beginning on or after January 1, 1994.)

Fiduciaries use federal taxable income as the starting point to determine their Wisconsin taxable income. This provision requires any deduction reflected in federal taxable income for a fiduciary's tenant-stockholder share of real estate taxes paid or incurred by a cooperative housing corporation to be added back to income for Wisconsin purposes.

6. Tenant-Stockholder's Share of Real Estate Taxes Not Allowed for Itemized Deduction Credit (1993 Act 204, amend sec. 71.07(5)(a)2, effective for taxable years beginning on or after January 1, 1994.)

An individual who is a tenant-stockholder of a cooperative housing corporation may not use his

or her share of the real estate taxes the corporation paid or incurred on the property in the computation of the itemized deduction credit.

7. Interest Income From Local Exposition District Bonds Exempted From Tax (1993 Act 263, create sec. 71.05(1)(e), effective April 26, 1994.)

Interest income received on bonds issued by a local exposition district under Subchapter II of Chapter 229, Wis. Stats., is exempt from Wisconsin income tax.

8. Treatment of Partnership Agreements Clarified (1993 Act 204, amend sec. 71.04(3)(c)(intro.), effective April 21, 1994.)

This amendment clarifies that for purposes of determining the situs of partnership income of partners, a partner shall disregard all provisions in partnership agreements that do any of the following:

- a. Characterize the consideration for payments to the partner as services or the use of capital.
- b. Allocate to a partner, as income from or gain from sources outside Wisconsin, a greater proportion of the partner's distributive share of partnership income or gain than the ratio of partnership income or gain from sources outside Wisconsin to partnership income or gain from all sources.
- c. Allocate to a partner a greater proportion of a partnership item of loss or deduction from sources in Wisconsin than the partner's proportionate share of total partnership loss or deduction.
- d. Determine a partner's distributive share of an item of partnership income, gain, loss, or deduction for federal income tax purposes if the principal purpose of that determination is to avoid or evade the tax under Chapter 71, Wis. Stats.

9. Estimated Tax Provisions Amended (1993 Act 204, amend sec. 71.09(13)(a)2 and repeal and recreate sec. 71.09(1)(am), effective for taxable years beginning on or after January 1, 1994.)

- a. For estimated tax purposes, "return" is defined as a return that would show the tax properly due.

Under prior law, "return" was defined several ways, depending on whether the return was timely filed, the percentage of the actual tax due that was paid with the return that was filed, and on how much underpayment interest was due.

The prior law definition of "return" did not provide for refunding underpayment interest previously paid if a taxpayer's income was reduced as a result of an amended return or credit adjustment. The department was also limited as to when it could assess additional underpayment interest if a taxpayer's income was increased as a result of an amended return or audit adjustment. The new definition of "return" will permit refunds or assessments of underpayment interest based on the taxpayer's correct tax liability, regardless of whether the correct tax liability is determined on the original return, an amended return, or by audit adjustments.

- b. The safe-harbor rule for avoiding underpayment interest by making estimated tax payments based on the tax shown on the return for the preceding year is clarified for married persons as follows:

- (1) If a husband and wife who filed separate returns for the preceding taxable year file a joint return, the tax shown on the return for the preceding year is the sum of the taxes shown on the separate returns of the husband and wife.
- (2) If a husband and wife who filed a joint return for the preceding taxable year file separate returns, the tax shown on the return for the preceding year is the husband's or wife's proportion of that tax based on what their respective tax liabilities for that year would have been had they filed separately.

10. State Historic Rehabilitation Credit Revised (1993 Act 471, repeal sec. 71.07(9r)(j)1; renumber sec. 71.07(9r)(k) to 71.07(9r)(k)(intro.) and amend as renumbered; amend sec. 71.07(9r)(a) and (b) 2 and 3.a; and create sec. 71.07(9r)(k)1 to 5, effective taxable years beginning on or after January 1, 1994.)

The state historic rehabilitation credit is modified as follows:

- a. The state historic rehabilitation credit may be credited against taxes otherwise due under sec. 71.02, Wis. Stats. Under prior law, the statutory reference was to Chapter 71.
- b. The cost of preservation or rehabilitation of historic property includes architectural fees and costs incurred in preparing nomination forms for listing in the National Register of Historic Places in Wisconsin or the State Register of Historic Places, if the nomination is made within 5 years prior to submission of a preservation or rehabilitation plan.
- c. "Historic property" includes outbuildings that contribute to the significance of the historic property. An outbuilding of an otherwise eligible property must be certified by the State Historic Preservation Officer as contributing to the historic significance of the property.
- d. The property may qualify for the credit if it is determined by the State Historical Society to be eligible for listing on the National Register of Historic Places in Wisconsin or the State Register of Historic Places.
- e. If, within 5 years after the date on which the preservation or rehabilitation work is completed, the person either sells or conveys the property by deed or land contract or the State Historical Society certifies to the Department of Revenue that the historical property has been altered to the extent it does not comply with the standards, the person shall add a percentage of the credit to his or her tax liability.

The applicable percentages are:

- 100% if the sale, conveyance or noncompliance occurs during the first year after

the date on which the preservation or rehabilitation is completed.

- 80% if the sale, conveyance or noncompliance occurs during the 2nd year after the date on which the preservation or rehabilitation is completed.
- 60% if the sale, conveyance or noncompliance occurs during the 3rd year after the date on which the preservation or rehabilitation is completed.
- 40% if the sale, conveyance or noncompliance occurs during the 4th year after the date on which the preservation or rehabilitation is completed.
- 20% if the sale, conveyance or noncompliance occurs during the 5th year after the date on which the preservation or rehabilitation is completed.

B. Corporation Franchise or Income Taxes

1. **Internal Revenue Code References Updated for 1994 for Corporations, Tax-Option (S) Corporations, Insurance Companies, Nonprofit Organizations, Regulated Investment Companies, Real Estate Investment Trusts, and Real Estate Mortgage Investment Conduits** (1993 Act 437, repeal secs. 71.22(4)(a), 71.26(2)(b)1, 71.34(1g)(a), and 71.42(2)(a), amend secs. 71.22(4)(h) and (4m)(f), 71.26(2)(b)8 and (3)(y), 71.34(1g)(h), 71.365(1m), 71.42(2)(g), and 71.45(2)(a)13, and create secs. 71.22(4)(i) and (4m)(g), 71.26(2)(b)9, 71.34(1g)(i), and 71.42(2)(h), effective for taxable years beginning on or after January 1, 1994).

For taxable years that begin on or after January 1, 1994, "Internal Revenue Code" for corporations, tax-option (S) corporations, insurance companies, nonprofit organizations, regulated investment companies (RICs), real estate investment trusts (REITs), and real estate mortgage investment conduits (REMICs) means the federal Internal Revenue Code as amended to December 31, 1993, with the exceptions indicated below. The Internal Revenue Code applies for Wisconsin purposes at the same time as for federal purposes.

- a. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies, for property placed in service in taxable years beginning on or after January 1, 1994, depreciation or amortization may be computed under either the federal Internal Revenue Code in effect for the taxable year for which the return is filed or the federal Internal Revenue Code as amended to December 31, 1993, at the taxpayer's option.
- b. For corporations (except nonprofit organizations, RICs, REITs, and REMICs), the Internal Revenue Code is modified by sec. 71.26(3), Wis. Stats.
- c. For tax-option (S) corporations, IRC sec. 1366(f), relating to the reduction in passthroughs for taxes at the S-corporation level, is modified by substituting the built-in gains tax under sec. 71.35, Wis. Stats., for the taxes under IRC secs. 1374 and 1375.
- d. For insurance companies, the Internal Revenue Code excludes IRC sec. 847, relating to an additional deduction for insurers required to discount unpaid losses.
- e. For RICs, REITs, and REMICs, property depreciated for taxable years 1983 to 1986 under the Internal Revenue Code as amended to December 31, 1980, must continue to be depreciated under the Internal Revenue Code as amended to December 31, 1980. Additions or subtractions must be made to reflect differences between the depreciation or adjusted basis for federal and Wisconsin tax purposes of property disposed of during the taxable year.

2. **Federal Laws Enacted During 1993 Apply Simultaneously for Wisconsin Purposes** (1993 Act 437, amend secs. 71.22(4)(d), (e), (f), (g), and (h) and (4m)(b), (c), (d), (e), and (f), 71.26(2)(b)4, 5, 6, 7, and 8, 71.34(1g)(d), (e), (f), (g), and (h), and 71.42(2)(c), (d), (e), (f), and (g), effective for taxable years beginning after December 31, 1988, and before January 1, 1994).

Except as indicated below, the federal Omnibus Budget Reconciliation Act of 1993 (Public Law 103-66) applies for Wisconsin franchise and

income tax purposes at the same time as for federal purposes. For example, the increase in the section 179 expense deduction for small businesses applies for both federal and Wisconsin purposes for taxable years beginning on or after January 1, 1993.

Section 13150 of Public Law 103-66, relating to the exclusion from gross income of tax-option (S) corporations for income from discharge of qualified real property business indebtedness, does not apply for taxable years beginning after December 31, 1992, and before January 1, 1994.

3. Disallowance of State Tax Deduction Clarified (1993 Act 437, amend secs. 71.26(3)(g), 71.34(1)(ag), and 71.45(2)(a)5, effective May 10, 1994).

This provision clarifies that corporations (except nonprofit organizations, RICs, REITs, and REMICs), tax-option (S) corporations, and insurance companies may not claim a deduction for state value-added taxes, single business taxes, or taxes on or measured by all or a portion of net income, gross income, gross receipts, or capital stock.

4. Corporations Having a Federal Extension Allowed an Extra 30 Days to File Wisconsin Tax Returns (1993 Act 199, amend secs. 71.24(7) and 71.44(3), effective for taxable years beginning on or after January 1, 1993).

If a corporation receives a federal extension of time to file its federal income tax return, this automatically extends the time for filing the corresponding Wisconsin return to 30 days after the federal due date, provided a copy of the federal extension is filed with the Wisconsin return. For example, if a corporation has a federal extension until September 15, its Wisconsin franchise or income tax return is due on October 15.

5. Definition of "Return" Modified for Estimated Tax Purposes (1993 Act 204, repeal and recreate sec. 71.29(1)(a), effective for taxable years beginning on or after January 1, 1994).

For purposes of determining whether the correct amount of estimated tax has been paid, "return" means a return that would show the tax properly due.

Under prior law, "return" was defined several ways, depending on whether the return was filed timely or late, on what percentage of the actual tax due was paid with the return that was filed, and on how much underpayment interest was due on the return filed.

6. Urban Transit Company Tax Extended (1993 Act 246, amend sec. 71.38, effective for taxable years beginning on or after January 1, 1995).

The special tax under sec. 71.39, Wis. Stats., has been extended to urban transit companies operating entirely within towns. Under sec. 71.39, corporations receiving 50% or more of their gross income from the urban mass transportation of passengers, as defined in sec. 71.38, are subject to a 50% income tax in lieu of the regular corporation franchise or income tax.

7. Income of Local Exposition Districts Exempted From Tax (1993 Act 263, create sec. 71.26(1)(bm), effective April 26, 1994).

The income of a local exposition district created under Subchapter II of Chapter 229, Wis. Stats., is exempt from Wisconsin franchise and income taxation. See Part F on page 19 for more information about local exposition districts.

8. Interest Income From Local Exposition District Bonds Exempted From Tax (1993 Act 263, create secs. 71.26(1)(h) and 71.45(1s), effective April 26, 1994).

Interest income received on bonds issued by a local exposition district under Subchapter II of Chapter 229, Wis. Stats., is exempt from Wisconsin franchise and income taxes.

9. Development Opportunity Zones Created (1993 Act 232, renumber and amend sec. 71.28(4)(am) and create sec. 71.28(1di)(i), (1dj)(i), (1dL)(i), (1ds)(i), and (4)(am)2, effective April 23, 1994).

Development opportunity zones are created in the cities of Beloit and West Allis. Corporations (except insurance companies) conducting economic activities in a development opportunity zone may qualify for the development zone investment, jobs, location, research, and sales tax credits.

C. Sales and Use Taxes

1. Buyer May File Claim for Refund of Sales and Use Taxes (1993 Act 437, amend secs. 77.59(2), (5) and (6)(intro.), and 77.60(1)(a) and renumber sec. 77.59(4)(intro.) to 77.59(4)(a) and sec. 77.59(4)(a) to 77.59(4)(b) and amend sec. 77.59(4)(a) as renumbered, effective for claims for refund filed on or after September 1, 1994.)

a. Conditions for Buyer to File Claim for Refund

A buyer may file a claim for refund of sales and use tax paid to a seller under any of the following 4 conditions:

(1) Seller has ceased operating business

If the buyer also paid sales or use tax in error to sellers who have *not* ceased business, only the seller may file a claim for refund with the Department of Revenue for such tax, unless the buyer meets one of the other conditions described in (2), (3), or (4).

(2) Buyer is being field audited

If the buyer being field audited paid sales or use tax to sellers in error pertaining (1) to periods being field audited and (2) to any periods *not* included in the field audit but still open to adjustment, the buyer may file with the Department of Revenue a claim for refund which includes both periods — those periods included and not included in the field audit. However, the claim relating to the period being field audited must be filed by the buyer with the Department of Revenue prior to the Department of Revenue's issuance of a notice of determination regarding the field audit.

(3) Periods covered in the claim for refund are within the statute of limitations for buyer, but are closed to seller

If the buyer also paid sales or use tax to sellers in error which pertains to a period which is within the statute of limitations for both the buyer and seller, only

the seller may file a claim for refund with the Department of Revenue for such tax, unless the buyer meets one of the other conditions described in (1), (2), or (4).

(4) The claim for refund totals \$50 or more of tax

The \$50 or more of tax means that the total tax relating to all transactions contained in the claim for refund filed with the Department of Revenue is \$50 or more.

Note: The requirement in Condition (4) that the total tax must be \$50 or more does not apply to Conditions (1), (2), and (3) above.

b. Other Provisions Relating to Buyer Claims for Refund

(1) Statute of limitations for buyer filing a claim for refund

Four Years: A buyer has 4 years from the unextended due date of the buyer's franchise or income tax return to file a claim for refund (or if exempt, within 4 years of the 15th day of the 4th month of the year following the close of the buyer's calendar or fiscal year). (See exception below.)

Example: Buyer erroneously paid \$100 of sales tax to seller in January, 1994. Buyer files its corporate franchise tax return on a calendar year basis. Since the \$100 of sales tax was paid in the 1994 calendar year, buyer has 4 years from March 15, 1995 (the unextended due date of the 1994 return) to file a claim for refund for the \$100.

Exception: If the time for issuing an audit determination is extended by agreement between the taxpayer (buyer) and the Department of Revenue, the buyer may, during the extended time period, file a claim for refund of sales and use taxes erroneously paid to a seller during the period being audited.

Example: A buyer is field audited for the years 1989-1992. The 1989 year is open to adjustment until March 15, 1994 (4 years from the unextended due date of the 1989 return). The buyer and the department agree in writing to extend to June 1, 1994, the time period in which the department may make a field audit determination. The buyer discovers that it paid sales or use tax in error to a seller in 1989. The buyer has until June 1, 1994 (the extended date for making an audit determination) to file a claim for refund with the Department of Revenue of the tax paid in error in 1989.

- (2) Rate of interest and date for computing interest on buyer claims for refund

Interest on refunds will be computed at 9% per annum, from the last day of the month following the month in which the tax was paid by the buyer to the seller, to the date the refund is paid.

Example: If a buyer paid \$50 tax to the seller in January, 1994, interest at 9% per annum will be computed from February 28, 1994 to the date the refund is paid.

- (3) Buyer and seller may not both obtain refunds of tax

Refunds will not be allowed to both the buyer and seller for the tax on the same transaction. If refund claims for the same transaction are filed by both the seller and buyer, the Department of Revenue may pay either claim.

- (4) Offsetting buyer's refund against any debts subject to attachment

If the refund is to be paid to a buyer, the department may set off amounts in the manner in which it sets off income tax and franchise tax refunds under sec. 71.93, and may set off amounts for child support or maintenance, or both, in the manner in which it sets off income taxes under secs. 46.255 and 71.93(3), (6) and (7).

- (5) Buyer overpayments discovered in audits

If the Department of Revenue audits a buyer and the buyer erroneously overpaid tax to a seller during the audit period, the buyer may file a claim for refund for the tax paid in error. The auditor will include this overpayment in the audit determination.

Example: Sales tax of \$1,000 was incorrectly paid in 1994 by a buyer to a seller on custom software. A field audit of the buyer is being conducted for 1994-1997. The audit adjustments result in additional tax of \$2,500 for each of the 4 years (exclusive of \$1,000 overpayment to seller). The buyer's claim for refund of \$1,000 tax incorrectly paid to the seller in 1994 will reduce the additional tax due from the buyer for 1994 from \$2,500 to \$1,500 (\$2,500 - \$1,000).

- (6) Field audit determination made prior to buyer's claim for refund

If a sales or use tax field audit determination has been issued to the buyer covering the period in which the buyer erroneously paid sales or use tax to a seller, the buyer may not file a claim for refund for such period after the date of the audit determination, for sales or use tax erroneously paid to the seller.

Example: A buyer is field audited for sales and use tax for years 1994-1997 and an audit determination for \$1,000 was received by the buyer on June 10, 1998. Buyer erroneously paid sales tax of \$200 to a seller in 1995, however, this overpayment was not addressed in the audit determination of June 10, 1998. The buyer may not file a claim for refund for the \$200 with the Department of Revenue.

- (7) Office audit determination made prior to buyer's claim for refund

If a sales or use tax office audit determination has been issued to the buyer covering a period in which the buyer

erroneously paid sales or use tax to a seller, the buyer may still file a claim for refund for sales or use tax erroneously paid to the seller for such period, provided the transaction on which the refund of sales or use tax is being claimed was not adjusted in the office audit determination.

Example: An office audit determination covering the January, 1994 monthly sales and use tax return was received by a buyer on July 1, 1994 for failing to report use tax of \$50 on a desk purchased from an Ohio retailer. Buyer erroneously paid sales tax of \$100 to a seller in January 1994 on the purchase of a manufacturing machine. The buyer may file a claim for refund of the \$100 of tax paid to the seller, provided the claim is filed within 4 years of the unextended due date of the buyer's Wisconsin income or franchise tax return, because this item was not adjusted in the office audit determination.

(8) Form to use for filing a claim for refund

A claim for refund by a buyer must be filed on a form prescribed by the Department of Revenue and shall be signed by the buyer.

The Department of Revenue also has authority to require the seller's signature on the prescribed form, unless the Department of Revenue waives this requirement.

2. Seller Required to Return Refunded Tax and Interest to Buyer (1993 Act 437, create sec. 77.59(4)(c), effective for claims for refund filed on or after September 1, 1994.)

If a seller files a claim for refund for sales or use tax and receives a refund of tax that the seller has collected from buyers, the seller shall return the tax and related interest to the buyers from whom the tax was collected.

The seller shall return to the Department of Revenue any part of a refund that the seller does not return to a buyer. Penalties may apply to the

seller if the seller does not return the tax and interest as required by sec. 77.59(4)(c), Wis. Stats.

3. Penalties for Filing Incorrect Claims for Refund of Sales or Use Tax (1993 Act 437, create sec. 77.60(12), effective for claims for refund filed on or after September 1, 1994.)

Negligence Penalty: A person who negligently files an incorrect and excessive claim for a refund of sales or use tax under sec. 77.59, Wis. Stats., is subject to a penalty of 25% of the difference between the amount claimed and the amount that should have been claimed.

Fraud Penalty: A person who fraudulently files an incorrect claim for a refund of sales or use tax under sec. 77.59, Wis. Stats., is subject to a penalty of 100% of the difference between the amount claimed and the amount that should have been claimed.

Note: "Person," as used in sec. 77.60(12), Wis. Stats., includes a buyer or a seller who files an incorrect claim for refund.

4. Direct Pay Allowed for Eligible Businesses (1993 Act 437, create sec. 77.52(17m), effective for taxable years beginning on or after January 1, 1995.)

a. *What Is Direct Pay?*

Under the direct pay method, a purchaser who has a direct pay permit may purchase tangible personal property or taxable services without sales or use tax, even though no exemption applies. The Department of Revenue may promulgate a rule which specifies the types of tangible personal property or services which do not qualify for purchase without tax using a direct pay permit.

Furnishing Seller With Evidence of Direct Pay Purchases

When making a purchase without sales or use tax under the direct pay method, the holder of the direct pay permit must furnish the seller with either:

- (1) a copy of the direct pay permit, or

- (2) a statement that the buyer holds a direct pay permit, the permit number, and the date the permit was issued.

Purchaser's Payment of Use Tax on Taxable Property or Services

The holder of a direct pay permit is liable for use tax when it stores, uses, or consumes the property or service in a taxable manner and must report use tax on the purchase price of the property or service on its sales and use tax return.

b. *Requirements for Obtaining a Direct Pay Permit.*

The Department of Revenue will issue a direct pay permit to an applicant, at the beginning of the applicant's taxable year, if the following seven requirements are fulfilled:

- (1) because of the nature of the applicant's business, issuing the permit will significantly reduce the work of administering the sales and use taxes;
- (2) the applicant's accounting system will clearly indicate the amount of tax the applicant owes;
- (3) the applicant makes enough taxable purchases to justify the expense of regular audits by the Department of Revenue;
- (4) the applicant is not liable under ch. 71, 72, 76, 77, 78, or 139, Wis. Stats., for delinquent taxes (including costs, penalties, surcharges, and interest) of \$400 or more if any part of the tax is delinquent for at least 5 months;
- (5) it is in the state's best interests to issue the permit;
- (6) the applicant purchases enough tangible personal property under circumstances that make it difficult to determine whether the property will be subject to sales or use tax; and
- (7) the applicant holds a seller's permit under sec. 77.52(7), Wis. Stats., or a use tax registration certificate under sec. 77.53(9), Wis. Stats.

c. *How to Apply for a Direct Pay Permit.*

A person may apply for a direct pay permit by submitting to the Department of Revenue a completed form prescribed by the department and \$5.

d. *Direct Pay Permit Revocable and Not Transferable or Assignable.*

A holder of a direct pay permit may not transfer or assign it. The Department of Revenue may revoke a direct pay permit if the holder misuses it or the Department of Revenue determines that revocation is in the state's best interests.

e. *Recordkeeping Requirements for Holder of Direct Pay Permit*

A holder of a direct pay permit is required to keep a record of all retailers from whom it made a purchase for which it used a direct pay permit.

5. *Exemption for Meals, Food, or Beverages Sold by Community-Based Residential Facilities* (1993 Act 332, amend sec. 77.54(20)(c)4, effective June 1, 1994.)

Sales of meals, food, food products, or beverages by a community-based residential facility, which are served at the community-based residential facility, are exempt from Wisconsin sales or use tax.

A "community-based residential facility" is defined in sec. 50.01(1g), Wis. Stats. (1991-92), as a place where 3 or more unrelated adults reside in which care, treatment, or services above the level of room and board, but not including nursing care, are provided to persons residing in the facility as a primary function of the facility, with certain exceptions.

6. Real Property Definition for Property Tax Doesn't Apply for Sales and Use Tax (1993 Act 308, amend sec. 70.03, effective April 29, 1994.)

Section 70.03, Wis. Stats., prior to being amended, defined the terms "real property," "real estate," and "land" when used in chs. 70, 71, 72, 73, 74, 75, 76, 77, 78, and 79 of the Wisconsin Statutes.

The amendment to sec. 70.03, Wis. Stats., deletes the reference to ch. 77. Chapter 77 of the Wisconsin Statutes relates to sales and use taxes.

7. Limit Seller's Liability When Department Is Unable to Collect From Purchaser (1993 Act 308, amend sec. 77.52(15), effective April 29, 1994.)

If a person purchases tangible personal property without Wisconsin sales or use tax by giving the seller a resale certificate, and the purchaser subsequently uses the property in a taxable manner, the seller may be held liable for the tax owed by the purchaser if:

- a. The Department of Revenue is unable to collect the use tax from the purchaser, and
- b. The seller provided incorrect information about the transaction to the department (e.g., seller misinformed the department as to whether it had a resale certificate on file for the purchaser).

Previously, the department was authorized to collect the tax from the seller if just condition a. above was met. Condition b. was added as a result of the amendment to sec. 77.52(15), Wis. Stats.

Example: Seller B sells to Purchaser A tangible personal property, which Purchaser A will resell. Purchaser A gives Seller B a resale certificate, therefore, no Wisconsin sales or use tax is charged to Purchaser A. Seller B accepts the resale certificate in good faith.

Purchaser A is audited by the Department of Revenue. The department determines that some of the tangible personal property purchased by

Purchaser A from Seller B was used by Purchaser A in a taxable manner.

When the department contacts Seller B about the sales to Purchaser A, Seller B informs the department, verbally or in writing, that it does not have a resale certificate on file for Purchaser A. As a result of the information from Seller B, the department concludes the audit without assessing Purchaser A for the tangible personal property used in a taxable manner.

Upon subsequent audit of Seller B, the department learns that 1) Seller B did in fact have a resale certificate on file for Purchaser A and 2) the information given previously by Seller B to the department was incorrect.

The department is prohibited from collecting the use tax due from Purchaser A because of the statute of limitations. However, because both conditions in a. and b. above were met, the department may assess Seller B for sales tax on the sale of the tangible personal property to Purchaser A that was purchased without tax with a resale certificate and used in a taxable manner.

8. \$10 Fee Waived if Late Filing Because of Death (1993 Act 408, amend sec. 77.60(2)(intro.), effective for notices mailed on or after May 6, 1994.)

The \$10 late filing fee will not be imposed on a sales and use tax return that is filed late because of the death of the person required to file the return.

9. Allow Assessments in the Alternative (1993 Act 308, create sec. 77.59(9m), effective April 29, 1994.)

If the department determines that Wisconsin sales or use tax is owing and that the liability may be owed by more than one person, the department may assess the entire amount to each person, specifying that it is assessing in the alternative. Also, if the department determines that a liability exists and it may be sales tax or it may be use tax, the department may make an assessment for both sales and use taxes, specifying that it is assessing in the alternative.

Example 1: The department audits an antique dealer and determines that sales of antiques made

on behalf of the dealer at an antique mall were subject to Wisconsin sales or use tax. Neither the dealer nor the mall charged sales or use tax on these sales. The antique dealer believes that the antique mall was the retailer of the antiques and is liable for sales tax. The department believes the antique dealer was the retailer liable for sales tax.

The department may assess both the antique dealer and antique mall, specifying an assessment in the alternative. Once a final determination is made as to who is the retailer responsible for the tax, one of the assessments will be cancelled.

Example 2: The department audits a contractor. The contractor installed equipment that was affixed to real estate. The department believes the equipment is still tangible personal property after installation. The contractor believes the equipment becomes real property after installation. The contractor did not pay Wisconsin sales or use tax on its purchase of the equipment.

The department may make an assessment in the alternative for 1) sales tax on the sale and installation of the equipment, and 2) use tax on the purchase of the equipment installed. Once a final determination is made as to whether the equipment is tangible personal property or real property after it is installed, one of the assessments will be cancelled.

10. Require Payment of All Tax Delinquencies for Seller's Permit Renewal (1993 Act 308, amend sec. 77.52(10)(c), effective July 1, 1994.)

If a person's seller's permit has not been renewed because of delinquent tax liabilities, the permit will be renewed after payment of the following:

- a. Delinquent amounts due under chs. 72, 76, 77, 78, and 139, Wis. Stats., and
- b. Delinquent amounts due under ch. 71, Wis. Stats., that relate to the trade or business for which the seller's permit was issued.

Previously, only delinquent sales and use taxes, including related costs, penalties, and interest, had to be paid for a seller's permit to be renewed.

11. Include Fees and Surcharges in Amount Used to Determine if Seller's Permit Renewed (1993 Act 308, amend sec. 77.52(10)(b), effective July 1, 1994.)

Seller's permits are automatically renewed on the day the permit expires, unless all the following conditions are met:

- a. The permittee has a delinquent liability in respect to any tax, fee, or surcharge under ch. 71, 72, 76, 77, 78, or 139, Wis. Stats., including costs, penalties, and interest thereon.
- b. The delinquent liability is \$400 or more.
- c. Any part of the liability is delinquent for 5 months or longer.

Previously, under a. above, fees and surcharges (e.g., temporary recycling surcharge) were not included in determining whether a delinquency was \$400 or more.

12. Exempt Sales to Local Exposition Districts (1993 Act 263, create sec. 77.54(9a)(g), effective April 26, 1994.)

A sales and use tax exemption is provided for sales of tangible personal property and taxable services to a local exposition district under subch. II of ch. 229, Wis. Stats.

13. Exempt Charges Imposed by a Local Exposition District for Copies of Records (1993 Act 263, amend sec. 19.32(1), effective April 26, 1994.)

Section 77.54(32), Wis. Stats., provides a sales and use tax exemption for charges, including search charges, imposed by an "authority" defined in sec. 19.32(1), Wis. Stats., for copies of a record under sec. 19.35(1), Wis. Stats.

The definition of "authority" in sec. 19.32(1) is amended to include a local exposition district under subch. II of ch. 229, Wis. Stats.

14. Waste Treatment Facility Exemption for Local Exposition District (1993 Act 263, amend sec. 40.02(28), effective April 26, 1994.)

Section 77.54(26), Wis. Stats., provides a sales and use tax exemption for tangible personal property which becomes a component part of a waste treatment facility of the State of Wisconsin or any agency thereof, or any political subdivision of the State of Wisconsin or agency thereof, as provided in sec. 40.02(28), Wis. Stats.

The amendment to sec. 40.02(28), Wis. Stats., adds a local exposition district under subch. II of ch. 229, Wis. Stats., to those entities included in sec. 40.02(28), Wis. Stats. As a result, tangible personal property becoming a component part of a waste treatment facility of a local exposition district will qualify for exemption from Wisconsin sales or use tax.

D. Farmland Preservation Credit

1. Credit Increased From 95% to 100% for Farmland Covered by Town Exclusive Agricultural Use Zoning (1993 Act 246, amend sec. 71.60(1)(c)6, effective for taxable years beginning on or after January 1, 1994.)

For farmland located in an area zoned for exclusive agricultural use under a certified town ordinance, and in a county that has adopted a certified agricultural preservation plan, the farmland preservation credit is 100% of the credit calculated by using the statutory formula.

Under prior law, the level of credit for such farmland was only 95% of the formula amount.

2. Credit Increased From 70% to 80% for Farmland Subject to an Agreement (1993 Act 420, amend sec. 71.60(1)(c)4 and 5, effective for taxable years beginning on or after January 1, 1994.)

For farmland subject to a farmland preservation agreement or a transition area agreement, which is in an area that is not zoned for exclusive agricultural use under a certified county, city, or village ordinance, or which is in a county that has not adopted a certified agricultural preservation plan, the farmland preservation credit is 80% of the credit calculated by using the statutory formula.

Under prior law, the level of credit for such farmland was only 70% of the formula amount.

E. Excise Taxes

1. Adopt Income Tax Provisions for Claims for Refund of Certain Excise Taxes (1993 Act 205, amend secs. 78.68(10), 139.092, and 139.365, effective for refund claims received on or after April 21, 1994.)

Section 71.75(7) relating to the time within which the Department of Revenue must act on a claim for refund or credit in the income tax law, also applies for purposes of the motor vehicle fuel tax, alternate fuels tax, general aviation fuel tax, beverage taxes, and cigarette taxes.

The Department of Revenue must act on any claim for refund within one year after receipt of the claim. Failure to act within that time shall have the effect of allowing the claim unless the taxpayer, prior to the expiration of the one-year period, has consented in writing to an extension of the one-year time period.

2. Motor Vehicle Fuel Tax — Various Provisions Needed to Correct and/or Implement Changes Included in 1993 Act 16 (1993 Act 437)

a. Interest Imposition Changed (Amend secs. 78.68(1) and (2)(a), effective June 1, 1994.)

Interest on motor vehicle fuel taxes which are not timely paid will be imposed from the date taxes are due. Prior to this change, interest was to be computed from the due date of the motor vehicle fuel tax report, rather than from the due date for payment of the tax.

b. Motor Fuel Exemption Annual Report Eliminated (Repeal sec. 78.12(3m) and amend sec. 78.01(2)(e), effective June 1, 1994.)

Persons who make tax-free purchases of gasoline for nonhighway use in mobile machinery and equipment are no longer required to file annual reports with the department itemizing tax-free gasoline purchases and describing fuel usage. Gasoline can still be purchased tax-free by such persons via an exemption certificate (MF-209) prescribed by the department.

- c. Definition of Motor Fuel Corrected for Retailers' Refund (Amend secs. 78.20(1m), (2), (3), (4) and (5), effective June 1, 1994.)

The obsolete term "motor fuel" which appeared in sec. 78.20 is changed to "gasoline." 1993 Act 16 repealed the definition of motor fuel which applied to gasoline only, and replaced it with "motor vehicle fuel" which includes all gasoline and diesel fuel. Therefore, sec. 78.20 has been revised to allow the retailers' refund for gasoline only.

In addition, the exception relating to motor fuel wholesalers which appeared in sec. 78.20(1m) is deleted because licenses are no longer issued to such wholesalers.

- d. Create Penalty for Misuse of Dyed Diesel Fuel (Create sec. 78.155, effective June 1, 1994.)

A penalty is imposed on (1) any person who sells dyed diesel fuel to a buyer who the person knows (or has reason to know) will use the dyed fuel in a taxable manner, and (2) any person who uses dyed diesel fuel in a taxable manner. The penalty is the greater of \$1,000 or twice the applicable tax on such diesel fuel. A \$1,000 penalty is also imposed on retailers who do not conspicuously label fuel pumps or other delivery facilities that dispense dyed diesel fuel.

- e. Penalty Added for Late Filing of Reports by Transporters (Create sec. 78.78(3), effective June 1, 1994.)

A \$10 late-filing fee is imposed upon transporters who do not timely file the required monthly report. A report is considered timely filed when it is mailed in a properly addressed envelope with first class postage and is officially postmarked on or before the due date, and received by the department within five days after the due date.

- f. Include Alternate Fuel in Formula for Computing the Annual Fuel Tax Rate Adjustment (Amend sec. 78.015(3), effective June 1, 1994.)

1993 Act 16, which changed the terms of "motor fuel" and "special fuel" to "motor

vehicle fuel" and "alternate fuel," inadvertently omitted alternate fuel gallons from the annual recomputation formula. This change corrects the omission.

- g. Refund Assignment Reference Corrected (Amend sec. 78.75(2), effective June 1, 1994.)

Section 78.75(2) states in part that "the right of any person to a refund under this chapter shall not be assignable..." This provision conflicts with sec. 78.01(2r) which permits a refund claim to be assigned. Therefore, the word "chapter" in sec. 78.75(2) is changed to "section."

- h. Refund Allowed to Wholesale Distributors for Unrecovered Taxes (Amend sec. 78.01(2s), effective June 1, 1994.)

Wholesale distributors may file a refund claim with the Department of Revenue to recover motor vehicle fuel taxes owed them by another wholesale distributor or retail dealer from whom they are unable to collect payment.

3. **Bed and Breakfast Establishments Exempt From Alcohol Beverage Licensing** (1993 Act 226, create sec. 125.06(12), effective April 23, 1994.)

No alcohol beverage license or permit is required for bed and breakfast establishments (as defined under sec. 50.50(1)) which provide complimentary glasses of wine to customers.

4. **Increase Penalties for Sale of Alcohol Beverages to Underage Persons** (1993 Act 472, amend sec. 125.07(1)(b)1 and 2 and create sec. 125.07(1)(b)5, effective May 13, 1994.)

The penalties for persons who commit two or more offenses are increased by providing for fines and/or allowing for imposition of jail sentences. In addition, the penalties increase based on the number of previous violations. Previous violations are redefined to include violations committed within 30 months of the current violation, an expansion from the 12-month period under prior law.

5. **Applicants for Retail Alcohol Beverage Licenses Required to Complete Responsible Beverage Server Training** (1993 Act 259, amend secs. 125.04(5)(c) and (d)3(intro.), 125.045(3), 125.17(6)(a)(intro.), 125.19(2), 125.275(2), 125.28(2), 125.30(3), 125.52(3), 125.54(2), 125.58(2), 125.60(2), 125.61(2), 125.62(2), and 125.63(2), and create sec. 125.04(5)(a)5, effective for applications filed on or after November 1, 1994.)

Applicants for retail alcohol beverage licenses are required to complete a responsible beverage server training course that conforms to curriculum guidelines specified by the Board of Vocational, Technical, and Adult Education or a comparable training course approved by the Department of Revenue or the Educational Approval Board. This requirement does not apply if the applicant held, within the past two years, a retail alcohol beverage license/permit or a manager's or operator's license.

6. **Prohibit Wholesale and Retail Fermented Malt Beverage Ownership Interests** (1993 Act 378, renumber sec. 125.25(2) to 125.25(2)(a) and sec. 125.275(2) to 125.275(2)(a), renumber sec. 125.26(2) to 125.26(2)(a) and amend as renumbered, repeal and recreate sec. 125.28(2), and create secs. 125.25(2)(b), 125.26(2)(b)2, 125.275(2)(b) and 125.29(4), effective May 5, 1994.)

No person may simultaneously hold or have an ownership interest in both a wholesaler's license and any of the following licenses or permits: (1) a Class "A" license; (2) a Class "B" license; (3) a Class "B" permit; or (4) an industrial permit. (*Exception:* A brewer may hold a Class "B" license and a wholesaler's license at the same time.) Persons who, as of May 5, 1994, hold or have ownership interests in both wholesale and Class "A", Class "B" or industrial licenses or permits are not subject to this restriction.

7. **Prohibit Sale of Individual Cigarettes** (1993 Act 312, amend sec. 134.66(4)(a)1 and create sec. 134.66(1)(hm) and (2)(e), effective April 29, 1994.)

Cigarette retailers are prohibited from selling cigarettes in a form other than a package or container on which a stamp is affixed under sec.

139.32(1). Violators may be subject to penalties of up to \$500, and suspension of cigarette and tobacco product licenses or permits.

8. **Amusement Device Permit Eliminated** (1993 Act 308, repeal sec. 125.20, effective April 29, 1994.)

The requirement that certain persons obtain a permit from the Department of Revenue before setting up coin-operated cigarette machines, jukeboxes or amusement devices on premises licensed for alcohol beverages is repealed.

F. Local Exposition District Taxes

1. **Creation of Local Exposition District** (1993 Act 263, create subch. II of ch. 229, effective April 26, 1994).

Creation and Dissolution

Creation One or more sponsoring municipalities may create a local exposition district for various purposes, including acquiring, constructing, equipping, maintaining, improving, operating, and managing an exposition center and exposition center facilities.

Dissolution Subject to providing for the payment of its bonds, including interest on the bonds, and the performance of its other contractual obligations, a district may be dissolved by the joint action of the district's board of directors and sponsoring municipality.

Jurisdiction

A local exposition district's jurisdiction is the sponsoring municipality's geographical area, except that, if the sponsoring municipality is a 1st class city, the district's jurisdiction is that city and each city and village that is wholly or partly contained within the most populous county in which that city is located. No territory may be included within the jurisdiction of more than one district.

Authority to Impose Taxes

A local exposition district has authority to impose a room tax under sec. 66.75(1m)(a), Wis. Stats., a food and beverage tax under sec. 77.98, Wis. Stats., and a rental car tax under sec.

77.99, Wis. Stats. These taxes are called local exposition district taxes.

To impose these taxes, the district must adopt a resolution. A certified copy of the resolution to impose the local exposition district taxes must be delivered to the Secretary of Revenue at least 120 days before its effective date.

Note: As of May 13, 1994 (the date this Bulletin was sent to the printer), no district had adopted a resolution to impose the local exposition district taxes. If a district adopts such a resolution, the Department of Revenue will attempt to notify retailers through various means, including the *Wisconsin Tax Bulletin* and *Sales and Use Tax Report*.

See Parts F.3. through F.9. on pages 20 to 24 for more information regarding the local exposition district taxes.

2. **Authorize Department of Revenue to Administer and Distribute Local Exposition District Taxes** (1993 Act 263, create secs. 20.566(1)(gg), 20.835(4)(gg), 66.75(1m)(c)1 and 3, 77.982(1) and (3) and 77.991(1) and (3), effective April 26, 1994).

The Department of Revenue is responsible for administering the local exposition district taxes. The Department of Revenue has authority to conduct audits, make assessments, issue refunds, impose interest and penalties, etc. See Part F.9. on page 24 for more information.

Ninety-seven percent of the taxes collected by the Department of Revenue from the three local exposition district taxes will be distributed to the local exposition district no later than the end of the month following the end of the calendar quarter in which the amounts were collected. The taxes distributed shall be increased or decreased to reflect subsequent refunds, audit adjustments, and all other adjustments.

The remaining 3% will be retained by the Department of Revenue to cover the cost of administering the taxes.

A district that receives a report from the Department of Revenue detailing the distribution of taxes collected is subject to the duties of confi-

dentiality to which the Department of Revenue is subject to under sec. 77.61(5), Wis. Stats.

3. **Room Tax** (1993 Wisconsin Act 263, create sec. 66.75(1e) and (1m)(b); renumber sec. 66.75(1) to sec. 66.75(1m)(a) and amend sec. 66.75(1m)(a) as renumbered; and amend sec. 66.75(2) and (3)).

Effective Date of Room Tax

The effective date of the room tax is determined by the local exposition district in an enabling resolution. A certified copy of the resolution must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the room tax.

Imposition of Basic Room Tax

The basic room tax may be imposed on the privilege of furnishing, at retail, rooms or lodging to transients by hotelkeepers, motel operators, and other persons furnishing accommodations that are available to the public, irrespective of whether membership is required for use of the accommodations.

"Transient" means any person residing for a continuous period of less than one month in a hotel, motel, or other furnished accommodations available to the public. Hotel and motel are defined in sec. 77.52(2)(a)1, Wis. Stats.

The basic room tax may not exceed 3%. However, a majority of the authorized members of the local exposition district board may vote that, if the balance in a special debt service reserve fund of the district is less than the requirement under sec. 229.50(5), Wis. Stats., the basic room tax imposed by the district is 3% of the total room charges beginning on the next January 1, April 1, July 1, or October 1 after the payment.

Imposition of Additional Room Tax

If the district's only sponsoring municipality is a 1st class city, the district may adopt a resolution to impose an additional room tax. The additional tax is equal to the percentage of room tax imposed by the sponsoring municipality on the date on which the sponsoring municipality agreed to stop imposing and collecting its own room tax as a means of creating the local exposition district.

The additional room tax imposed applies only within the borders of the sponsoring municipality and may be used for any lawful purpose of the district.

If a district stops imposing and collecting a room tax, the district's sponsoring municipality may impose and collect a room tax on the date on which the district stops imposing and collecting its room tax.

Exemptions From Room Tax

The following are exempt from both the basic room tax and the additional room tax:

- a. Sales for resale
- b. Sales to the federal government
- c. Sales to persons listed in sec. 77.54(9a), Wis. Stats. This includes:
 - (1) Wisconsin or any agency thereof
 - (2) Any county, city, village, town, or school district in Wisconsin
 - (3) A county-city hospital established under sec. 66.47, Wis. Stats.
 - (4) A sewerage commission organized under sec. 144.07(4), Wis. Stats., or a metropolitan sewerage district organized under secs. 66.20 to 66.26 or 66.88 to 66.918, Wis. Stats.
 - (5) Any other unit of Wisconsin government or any agency or instrumentality of one or more units of Wisconsin government
 - (6) Any corporation, community chest fund, foundation, or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, or for the prevention of cruelty to children or animals, except hospital service insurance corporations under sec. 613.80(2), Wis. Stats., no part of the net income of which inures to the benefit of any private stockholder, shareholder, member, or corporation
 - (7) A local exposition district under subch. II of ch. 229, Wis. Stats.

Exchange of Information

As a means of enforcing the collection of any room tax imposed by a district, the district may exchange audit and other information with the Department of Revenue. The district shall provide by resolution for the confidentiality of information obtained from the Department of Revenue, but shall provide exceptions for persons using the information in the discharge of duties imposed by law or of the duties of their office or by order of a court.

The district may provide for the publishing of statistics classified so as not to disclose the identity of particular returns.

The district shall provide that persons violating the resolution for confidentiality may be required to forfeit not less than \$100 nor more than \$500.

Enforcement of Room Tax by Local Exposition District

A local exposition district may do any of the following with respect to its room tax:

- a. Whenever the district has probable cause to believe that the correct amount of room tax has not been assessed or that the tax return is not correct, inspect and audit the financial records of any person subject to the room tax to determine whether or not the correct amount of room tax is assessed and whether or not any room tax return is correct.
- b. Enact a schedule of forfeitures, not to exceed 5% of the room tax, to be imposed on any person subject to the room tax who fails to comply with a request to inspect and audit the person's financial records.
- c. Determine the room tax according to its best judgement if any person required to make a return fails, neglects, or refuses to do so for the amount, in the manner and form and within the time prescribed by the district.
- d. Require each person who is subject to the room tax to pay an amount of taxes that the district determines to be due under c. above, plus interest at the rate of 1% per month on the unpaid balance. No refund or modification of the payment determined may be granted until the person files a correct room

tax return and permits the district to inspect and audit his or her financial records pertaining to the furnishing of accommodations.

- e. Enact a schedule of forfeitures, not to exceed 25% of the room tax due for the previous year or \$5,000, whichever is less, to be imposed for failure to pay the room tax.

Also see Parts F.6. through F.9. on pages 24 to 26 for other provisions, including sales and use tax provisions of ch. 77, Wis. Stats., that apply to the local exposition district taxes.

4. Food and Beverage Tax (1993 Act 263, create secs. 77.98, 77.981, and 77.982(2)).

Effective Date of Food and Beverage Tax

The effective date of the food and beverage tax is determined by the local exposition district in an enabling resolution. A certified copy of the resolution must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the food and beverage tax.

Imposition

A local exposition district tax of 0.25% may be imposed upon gross receipts from the retail sale of products that are subject to tax under sec. 77.54(20)(c)1 to 3, Wis. Stats. The tax applies to sales made in the district's jurisdiction, which is discussed in Part F.1 on page 19.

Sales subject to the food and beverage tax include:

- a. Sales of meals, food, food products, and beverages sold by any person, organization, or establishment for direct consumption on the premises.
- b. Sales by any person, organization, or establishment of the following items for off-premises consumption:
 - (1) Meals and sandwiches, whether heated or not
 - (2) Heated food and heated beverages
 - (3) Soda fountain items such as sundaes, milk shakes, malts, ice cream cones, and sodas

- (4) Candy, chewing gum, lozenges, popcorn, and confections

Gross receipts subject to the food and beverage tax include cover, minimum, entertainment, service or other charges made to patrons or customers.

Note: According to sec. 77.981, Wis. Stats., the district, by a vote of a majority of the authorized members of its board of directors, may impose the tax at the rate of 0.5% of the gross receipts. A majority of the authorized members of the district's board of directors may vote that, if the balance in a special debt service reserve fund of the district is less than the requirement under sec. 229.50(5), Wis. Stats., the tax rate is 0.5%. The 0.5% rate shall be effective on the next January 1, April 1, July 1, or October 1, and this tax is irrevocable if any bonds issued by the district and secured by the special debt service reserve fund are outstanding.

Exemptions From Food and Beverage Tax

The following sales of food products and beverages are exempt from the food and beverage tax:

- a. Sales for resale
- b. Meals, food, food products, or beverages furnished in accordance with any contract or agreement by a public or private institution of higher education (sec. 77.54(20)(c)5, Wis. Stats.)
- c. Meals, food, food products and beverages sold by hospitals, sanatoriums, nursing homes, retirement homes, or day care centers registered under ch. 48, Wis. Stats., and served at a hospital, sanatorium, nursing home, retirement home, or day care center (sec. 77.54(20)(c)4, Wis. Stats.)
- d. Meals, food, food products, or beverages sold to the elderly or handicapped by persons providing "mobile meals on wheels" (sec. 77.54(20)(c)4, Wis. Stats.)
- e. Sales that Wisconsin is prohibited from taxing under the constitution or laws of the United States or the constitution of Wisconsin (sec. 77.54(1), Wis. Stats.)

- f. Sales by any public or private elementary or secondary schools exempt from Wisconsin income or franchise taxes under ch. 71, Wis. Stats., including school districts (sec. 77.54(4), Wis. Stats.)
- g. Occasional sales as defined in sec. 77.51(9), Wis. Stats. (sec. 77.54(7)(a), Wis. Stats.)
- h. Occasional sales by a neighborhood association, church, civic group, garden club, social club, or similar nonprofit organization not involving "entertainment," if the organization is not engaged in a trade or business and is not required to have a seller's permit (sec. 77.54(7m), Wis. Stats.)
- i. Sales of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious, or charitable purposes (sec. 77.54(9), Wis. Stats.)
- j. Sales to persons under sec. 77.54(9a), Wis. Stats. For a list of these persons, see Part F.3., Exemptions From Room Tax, Item c on page 21.

Situs

For purposes of imposing the food and beverage tax, all retail sales of food and beverages are completed at the time when, and place where, the seller or the seller's agent transfers possession to the buyer or the buyer's agent. When determining situs, a common carrier or the U.S. Postal Service is the agent of the seller, regardless of any f.o.b. point and regardless of the method by which freight or postage is paid.

Also see Parts F.6. through F.9. on pages 24 to 26 for other provisions, including sales and use tax provisions of ch. 77, Wis. Stats., that apply to the local exposition district taxes.

5. Rental Car Tax (1993 Act 263, create sec. 77.99).

Effective Date of Rental Car Tax

The effective date of the rental car tax is determined by the local exposition district in an

enabling resolution. A certified copy of the resolution must be delivered to the Secretary of Revenue at least 120 days prior to the effective date of the rental car tax.

Imposition

A local exposition district tax of 3% may be imposed on the gross receipts received by a lessor or renter from the rental, for 30 days or less, of Type 1 automobiles without drivers within the district's jurisdiction. The renter shall collect the rental car tax from the person to whom the passenger car is rented.

A "Type 1 automobile" is defined in sec. 340.01(4)(a), Wis. Stats., as a motor vehicle designed and used primarily for carrying persons but which does not come within the definition of motor bus, motorcycle, moped, or motor bicycle.

Note: A majority of the district's authorized board of directors may vote to increase the tax rate to 4% if the state makes a payment to restore the district's special debt service reserve fund under sec. 229.50(7), Wis. Stats.

Exemptions From Rental Car Tax

The following are exempt from the rental car tax:

- a. Rerentals
- b. Rentals of service or repair replacement vehicles
- c. Rentals that Wisconsin is prohibited from taxing under the constitution or laws of the United States or the constitution of Wisconsin (sec. 77.54(1), Wis. Stats.)
- d. Rentals by any public or private elementary or secondary schools exempt from Wisconsin income or franchise taxes under ch. 71, Wis. Stats., including school districts (sec. 77.54(4), Wis. Stats.)
- e. Occasional sales as defined in sec. 77.51(9), Wis. Stats. (sec. 77.54(7)(a), Wis. Stats.)

- f. Occasional sales by a neighborhood association, church, civic group, garden club, social club, or similar nonprofit organization not involving "entertainment," if the organization is not engaged in a trade or business and is not required to have a seller's permit (sec. 77.54(7m), Wis. Stats.)
- g. Sales of tickets or admissions to public and private elementary and secondary school activities, where the entire net proceeds therefrom are expended for educational, religious, or charitable purposes (sec. 77.54(9), Wis. Stats.)
- h. Sales to persons under sec. 77.54(9a), Wis. Stats. For a list of these persons, see Part F.3., Exemptions From Room Tax, Item c on page 21.

Situs

Rentals of Less Than One Month For purposes of imposing the rental car tax, the lease or rental of a Type 1 automobile is considered to take place at the location where the automobile comes into the lessee's possession. Therefore, if a lessee takes possession of the automobile in a local exposition district, the lease or rental is subject to the local rental car tax for that district.

Rentals of One Month or More (but not more than 30 days) For purposes of imposing the rental car tax, the lease or rental of a Type 1 automobile is considered to take place at the location where the automobile will be customarily kept. Therefore, if a lessee will customarily keep the automobile in a local exposition district, the lease or rental is subject to the local rental car tax for that district.

Also see Parts F.6. through F.9. on pages 24 to 26 for other provisions, including sales and use tax provisions of ch. 77, Wis. Stats., that apply to the local exposition district taxes.

6. Refunds of Local Exposition District Taxes (1993 Act 263, create secs. 66.75(1m)(c)3, 77.982(3), and 77.991(3), effective April 26, 1994).

Refunds of the local exposition district taxes will be paid at the rate of 9% per year.

7. Registering to Collect Local Exposition District Taxes (1993 Act 263, create secs. 66.75(1m)(c)5, 77.982(4), and 77.991(4)).

Persons who are subject to the local exposition district taxes shall register with the Department of Revenue. A person who fails to register, including any person authorized to act on behalf of a corporation, partnership, or other person who is required to register, is guilty of a misdemeanor.

8. Discontinuation of Local Exposition District Taxes (1993 Act 263, create secs. 66.75(1m)(c)4, 77.983, and 77.992).

Retailers and the Department of Revenue may not collect the local exposition district taxes for any district:

- a. After the calendar quarter during which all bonds issued by the district under subch. II of ch. 229, Wis. Stats., during the first 60 months after April 26, 1994, and any debt issued to fund or refund those bonds are retired, or
- b. For more than 2 years if bonds have not been issued during that time.

However, the Department of Revenue may collect from retailers taxes that accrued before that calendar quarter, or before the end of that 2-year period, and interest and penalties that relate to those taxes.

If taxes are collected and no bonds are issued, the district may use the revenue for any lawful purpose.

9. Certain Sales and Use Tax Provisions Apply for Local Exposition District Taxes (1993 Act 263, create secs. 66.75(1m)(c)2, 77.982(2), and 77.991(2)).

The chart on pages 25 and 26 shows the various Wisconsin Statutes that apply to some or all of the local exposition district taxes. After the statutory citation is a brief description of the provision. The chart indicates whether the Wisconsin statute applies (yes) or does not apply (no) to the particular local exposition district tax.

Wisconsin Statute	Relating to	Does Statute Apply?		
		Room Tax	Food/Bev. Tax	Rental Car Tax
77.51(4)(a)	Definition of gross receipts	no	yes	yes
77.51(4)(b)1, 2, and 4	Amounts not included in gross receipts	no	yes	yes
77.51(4)(c)1 to 3	Amounts included in gross receipts	no	yes	yes
77.51(4)(d)	Use of accrual method for reporting gross receipts	no	yes	yes
77.51(14)(a)	Sale at retail includes sale at an auction	no	yes	yes
77.51(14)(b)	Sale at retail includes sales by social clubs and fraternal organizations to their members or others	no	yes	yes
77.51(14)(c)	Sale at retail includes transfer of property where seller retains the title as security for the payment of the price	yes	yes	yes
77.51(14)(d)	Sale at retail includes drop shipments	no	yes	yes
77.51(14)(f)	Sale at retail includes furnishing, preparing, or serving of food, meals, confections, or drinks for consideration.	yes	yes	yes
77.51(14)(j)	Sale at retail includes leases	yes	yes	yes
77.51(14)(k)	Sale at retail includes sale to a purchaser of property used or consumed by some other person that was transferred without valuable consideration	no	yes	yes
77.51(14g)	Transactions which are not sales	yes	no	no
77.52(3)	Collecting tax from consumer or user	yes	yes	no
77.52(4)	Retailer cannot advertise that it will assume or absorb tax	yes	no	yes
77.52(6)	Liability for sales tax on worthless accounts	yes	yes	yes
77.52(13)	Burden of proof on seller if no exemption certificate taken in good faith	no	yes	yes
77.52(14)	Effect and content of exemption certificates	no	yes	yes
77.52(18)	Successor's liability	yes	yes	yes
77.52(19)	Authorizing department to promulgate rules regarding temporary sales and sales from a mobile location	no	yes	no
77.58(1) to (5)	Filing returns, due dates, and payment of tax due	yes	yes	yes
77.58(7)	Extension of time to file	yes	yes	yes
77.59	Authority to audit, statute of limitations for making determinations of tax liability and filing claims for refund, offsets of refunds against tax due, appeals, and authority to issue estimated assessments	yes	yes	yes
77.60	Interest and penalties and officer liability	yes	yes	yes
77.61(2)	Authority to require security in connection with holding a permit	yes	yes	yes
77.61(5)	Confidentiality of sales and use tax information	yes	yes	yes

Wisconsin Statute	Relating to	Does Statute Apply?		
		Room Tax	Food/Bev. Tax	Rental Car Tax
77.61(8)	Refunds of less than \$2	yes	yes	yes
77.61(9)	Keeping adequate records	yes	yes	yes
77.61(12)	Testifying and producing records	yes	yes	yes
77.61(13)	Staying proceedings for assessments or collection of taxes	yes	yes	yes
77.61(14)	Timely service of documents and payments	yes	yes	yes
77.62	Collection of delinquent taxes	yes	yes	yes
77.72(1)	Situs for property in general	no	yes	yes
77.72(2)(a)	Situs for leased or rented moving property	no	no	yes
77.73	Jurisdiction to tax	no	yes	yes

G. Other

1. **Claim for Refund or Credit Required to be Filed on Form Prescribed by Department** (1993 Act 205, amend sec. 71.75(6), effective for claims for refund or credit filed on or after November 1, 1994.)

A claim for refund or credit of income taxes, franchise taxes or surtaxes must be filed with the Department of Revenue in the manner, and on a form, prescribed or approved by the department.

2. **Retention of Machine Readable Records** (1993 Act 205, amend secs. 71.80(9) and 77.61(4)(a), see effective dates below.)

For taxable years beginning on or after January 1, 1994, the Department of Revenue may require any person who keeps records in machine-readable form for federal income tax purposes to keep those records in the same form for Wisconsin income and franchise tax purposes.

Effective April 21, 1994, the department may also require sales and use tax records to be kept in machine-readable form.

3. **Service of Assessment Via Publication** (1993 Act 205, amend sec. 71.74(11), effective April 21, 1994.)

If the taxpayer is a corporation and the Department of Revenue is unable to notify the taxpayer personally or by mail of additional assessment, the department may serve the notice of additional assessment by publication in the official state newspaper.

Under prior law, notice was required to be served by publication in a *local* newspaper.

4. **Notice Requirements Modified for Continuous Levies** (1993 Act 205, amend sec. 71.91(6)(f)1, effective for a levy served on or after day after April 21, 1994.)

In the case of a continuous levy on commissions, wages, or salaries, the Department of Revenue may mail the notice of seizure to the taxpayer's last known address.

Under prior law, notice regarding seizure was required to be personally served on the taxpayer.

- 5. Refund Setoff Provisions Expanded** (1993 Act 437, renumber sec. 71.93(1)(a) to 71.93(1)(a)(intro.) and amend as renumbered, amend sec. 71.93(2) and create sec. 71.93(1)(a)3, effective May 10, 1994.)

The Wisconsin Department of Health and Social Services may certify certain public assistance overpayments to the Department of Revenue for setoff against state tax refunds, even though such overpayments have not been reduced to a judgment. Previously, only amounts which had been reduced to a judgment by a court could be certified for setoff.

This change applies to the following types of public assistance overpayments:

- a. General relief overpayments.
- b. Overpayments arising from an overissuance of food coupons under the food stamp program.
- c. Overpayments of aid to families with dependent children.
- d. Incorrect medical assistance payments.

- 6. Department Permitted to Enter Into Contracts to Collect Delinquent Taxes** (1993 Act 205, amend secs. 20.566(1)(hm), 25.40(1)(b), and 73.03(28), effective April 21, 1994.)

The Department of Revenue is permitted to enter into contracts to collect delinquent Wisconsin

taxes owed by residents and nonresidents. Under prior law, the department could enter into contracts only to collect delinquent taxes from nonresidents.

- 7. Affidavit Requirement Modified Upon Transfer of Decedent's Property** (1993 Act 205, amend sec. 867.03(2), effective for transfers because of deaths occurring on or after January 1, 1992.)

When property of decedents is transferred by affidavit, a copy of the affidavit is no longer required to be sent to the Department of Revenue.

- 8. Enrollment Cards and Medicare Assignment Information** (1993 Act 205, amend secs. 16.009(2)(k) and (m), 16.009(2)(n)1 as affected by 1993 Act 16, and 71.55(10)(b)1.b. and (c)2, effective April 21, 1994.)

The Department of Revenue is required to issue enrollment cards and information about voluntary acceptance of Medicare assignment to persons age 65 or older who are eligible for homestead credit. Because the maximum income limitation for homestead credit is increased periodically, the cross-references to the homestead credit law are changed to a general statute provision so that the cross-references will not need to be changed every time the maximum income limitation for homestead credit is increased.