



# Wisconsin TAX BULLETIN



## Voluntary Disclosure

See article on page 2.

## Preparers — Don't Forget About Use Tax!

When preparing individual income tax returns this tax season, don't forget to ask your clients if they made any out-of-state purchases subject to use tax. A line is included on the individual income tax returns (Forms 1, 1A, WI-Z, and 1NPR) to make the reporting of use tax easier for individuals. This line, "Sales/Use Tax Due on Out-of-State Purchases," should be mentioned to each of your customers.

The Department of Revenue has been contacting thousands of individuals regarding use tax. A common complaint the department receives is "Why didn't my preparer tell me about use tax? My preparer is supposed to know about these taxes, not me!"

Help your clients by informing them about taxes that apply to them, including **use tax**. ☐

## Package WI-X Available for 1994

Package WI-X contains actual size copies of most 1994 Wisconsin individual and fiduciary income tax, corporation franchise and income tax, partnership, estate tax, motor vehicle fuel tax, sales and use tax, and withholding tax forms.

If you have not yet ordered your 1994 Package WI-X, send your request and \$7 per copy to Wisconsin Department of Revenue, Shipping and Mailing Section, P.O. Box 8903, Madison, WI 53708-8903. ☐

## Reminder: Use Your Label

Preparers and taxpayers, remember to apply the preprinted address label to the completed tax return you submit to the department. Use the address label, even if 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.

Use of the label speeds processing of the tax return and reduces errors. 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. ☐

## Some Taxpayers Receive a Postcard Instead of Forms

Approximately 620,000 individuals recently received a postcard instead of a 1994 Wisconsin income tax booklet. The postcards were sent to those individuals who used a paid preparer in filing their 1993 return.

**Taxpayers:** The postcard includes a removable name and address label. Take it to your preparer so the preparer can apply the label to your tax return.

**Preparers:** If any of your clients received a postcard, make sure you apply the name and address label to the 1994 Wisconsin return you prepare for your client. ☐

## Reminder: Certain Information Returns Are Due January 31

Various Wisconsin information returns or the federal counterpart forms are required to be filed by January 31 with the Wisconsin Department of Revenue. Others are due March 15 or April 15 (April 17 in 1995).

For information about the Wisconsin information return requirements, refer to the copy of Wisconsin Publication 117, *Guide to Wisconsin Information Returns*, on pages 29 and 30 of this Bulletin. ☐

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### Wisconsin Tax Bulletin

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## Voluntary Disclosure: File Now or Pay More Later

If an individual, partnership, or corporation hasn't filed the required Wisconsin tax returns, but now wants to comply with the tax laws, what should that person do? If a person waits until a letter is received from the Wisconsin Department of Revenue, the person could be subject to costly civil and criminal penalties. For example, failure to file a corporation franchise/income tax return with

intent to evade the tax may result in a civil penalty equal to 100% of the tax and criminal penalties.

Don't wait for a contact from the Department of Revenue. A better alternative is to voluntarily disclose to the Department of Revenue the non-filing of prior years' returns and request that a settlement agreement be executed. The information on pages 31 to 37 of this Bulletin describes the department's policy relating to voluntary disclosure and the procedures for persons to follow. □

## Reporting Lump-Sum Distributions

The instructions for 1994 Wisconsin Forms 1, 1NPR, and 2 refer to a lump-sum distribution reported on line 12 or 35 of federal Form 4972.

Federal Form 4972 has been revised so that line 35 is no longer used for reporting the taxable amount of a lump-sum distribution. Therefore, the reference in the Forms 1, 1NPR, and 2 instructions to line 35 of federal Form 4972 should be ignored.

The amount of lump-sum distribution to be reported on Form 1, 1NPR, or 2 is the taxable amount from line 12 of federal Form 4972, plus any capital gain reported on line 8 of Form 4972. □

## Recycling Surcharge Rates Unchanged

The temporary recycling surcharge rates remain unchanged for taxable years beginning on or after January 1, 1995, and before January 1, 1996.

Wisconsin law requires the Department of Revenue annually, in December, to establish annual recycling surcharge rates for taxable years beginning on or after the following January 1 to generate sufficient revenue to fund the appropriations from the recycling fund for the following fiscal year. The annual surcharge rates must be approved by the Legislature's Joint Committee on Finance. □

## Information Returns to Be Sent to Federal Retirees

During January 1995, Form 1099-G and/or 1099-INT information returns will be mailed by the department to many federal retirees who are receiving refunds of Wisconsin income tax

they paid on their federal retirement income for tax years 1984 through 1988. Refunds to these individuals are being made in six installment payments. Two installment payments were made in 1994.

Federal law requires the department to provide information returns (1099-Gs) for refunds of Wisconsin income tax which aggregate \$10 or more in any taxable year. Information returns (1099-INTs) reporting payments of interest by the department are required when the aggregate amount is \$600 or more in any taxable year.

The interest portion of the refund the federal retirees receive is includable in both federal and Wisconsin taxable income.

The tax portion of the refund is not includable in Wisconsin taxable income. However, the tax portion may be includable in federal taxable income. The determination of whether the tax portion is includable in income for federal purposes must be made on a case-by-case basis.

The Internal Revenue Service (IRS) has developed special worksheets for each of the tax years 1984 to 1988, which may be used to help determine whether a state income tax refund must be included in federal taxable income. These special worksheets for computing the taxable portion may be obtained from the IRS. □

## Forest County Adopts County Tax

Effective April 1, 1995, the county sales and use tax will be adopted by Forest County. This brings to 47 the number of counties that have adopted the ½% county tax.

The January 1995 *Sales and Use Tax Report*, a copy of which appears on

pages 39 to 42 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. □

## Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division.

### Madison — Main Office

Area Code (608)

Appeals . . . . .	266-0185
Audit of Returns: Corporation, Individual, Homestead . . . . .	266-2772
Beverage . . . . .	266-6701
Cigarette, Tobacco Products . . . . .	266-8970
Copies of Returns: Homestead . . . . .	266-2890
Individual . . . . .	266-1266
All Others . . . . .	266-0678
Corporation Franchise and Income . . . . .	266-1143
Delinquent Taxes . . . . .	266-7879
Estimated Taxes . . . . .	266-9940
Fiduciary, Estate . . . . .	266-2772
Forms Request: Taxpayers . . . . .	266-1961
Practitioners . . . . .	267-2025
Homestead Credit . . . . .	266-8641
Individual Income . . . . .	266-2486
Motor Vehicle Fuel . . . . .	266-3223
Refunds . . . . .	266-8100
Sales, Use, Withholding . . . . .	266-2776
TDD . . . . .	267-1049

### District Offices

Appleton . . . . .	(414) 832-2727
Eau Claire . . . . .	(715) 836-2811
Milwaukee: General . . . . .	(414) 227-4000
Refunds . . . . .	(414) 227-4907
TDD . . . . .	(414) 227-4147

## Focus on Publications: Filing Claims for Refund of Sales or Use Tax

Beginning September 1, 1994, buyers may file claims for refund directly with the Department of Revenue, for sales or use tax paid to a seller in error. Sellers receiving refunds of sales or use tax collected from customers must return the refund (tax and interest) to the customer.

A new publication, Publication 216 (*Filing Claims for Refund of Sales or Use Tax*), explains who may file a claim for refund of Wisconsin sales or use tax and also includes information relating to forms, time limitations for filing, interest, and penalties.

A copy of Publication 216 appears on pages 43 to 60 of this Bulletin. ☐

## Electronic Filing and Endangered Resources Team Up

The Wisconsin Department of Revenue (WDOR) and the Department of Natural Resources' Bureau of Endangered Resources (BER) are joining forces to educate the public about the benefits of electronic filing, and to remind filers that donations to the Endangered Resources Fund can be made on Wisconsin electronic returns. Promotions will include radio and television advertising, posters, desk signs, and buttons for electronic filers' offices, nature centers and stores, WDOR/BER offices, and a wide variety of other media.

Participants in the Wisconsin electronic filing program will be invited to join in the campaign in one or both of the following ways.

1. WDOR will furnish to electronic filers on request, tapes of radio commercials advertising electronic filing and endangered resource-

es donations. Electronic filers can purchase their own air time, on whatever radio station(s) they prefer. They may also add their "tag" to the commercial. Tags are limited to the firm's name, address, telephone number, and/or hours of operation.

2. Electronic filers and software companies are working together to collect funds to purchase air time for commercials advertising electronic filing and endangered resources donations. The commercials will air primarily in the Madison — Milwaukee — Fox Valley areas.

If you'd like a taped commercial or want more information on how you can help promote electronic filing and endangered resources donations, please call or write:

Carolyn Larson, Coordinator  
Wisconsin Electronic Filing  
P.O. Box 8977  
Madison, WI 53708-8977  
Phone: (608) 264-6886

— or —

Mary Kay Sherer  
Bureau of Endangered Resources  
P.O. Box 7921  
Madison, WI 53707-7921  
Phone: (608) 266-5243 ☐

## Reminder: Quick Refunds Available for Individuals

The Department of Revenue will continue its Quick Refund Program for 1994 individual income tax returns processed in 1995. 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 department receives the return. The return is checked for computation and other errors at a later date and, if neces-

sary, 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 1994 Form WI-Z, Form 1A, or Form 1, including all attachments, on or before April 3, 1995.
- 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 1995 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 1.8 million refunds were issued in 1994, and over 470,000 of those were quick refunds. ☐

## 1994 Federal and Wisconsin Individual Income Tax Differences

There are a number of differences between the Wisconsin and federal tax treatment of income, deductions, or credits. The chart on the next page was prepared as a quick reference guide to some of the federal and Wisconsin individual income tax differences for 1994. It is not intended to include all differences.

## 1994 Federal and Wisconsin Individual Income Tax Differences

*Note: This chart is not intended to include all differences.*

Provision	Federal Tax Treatment	Wisconsin Tax Treatment
1. Capital gains and losses:		
Net long-term capital gains	Taxable	40% taxable
Net capital losses	Up to \$3,000 may be used to offset ordinary income (\$1,500 if MFS)	Up to \$500 may be used to offset ordinary income
2. Child and dependent care expenses	Credit based on expenses	No credit or deduction
3. Child's income reported by parent	Permitted: income taxed at parent's rate	Not permitted: return must be filed for child
4. Disability income	Credit may be allowed	Exclusion up to \$5,200
5. Earned income credit	Credit allowed to individuals without children	Credit allowed only to individuals with qualifying children
6. Farm losses	Deductible unless passive loss limits apply	Federal passive loss limits apply. Also Wisconsin limit based on nonfarm income with carryover of unused losses.
7. Farmland preservation and farmland tax relief credit received	Treated as a recovery of real estate tax	100% taxable
8. Foreign income taxes	Deduction or credit allowed	No credit or deduction
9. Interest from U.S. Government securities	Taxable	Not taxable
10. Itemized deductions	Allowed as a subtraction from adjusted gross income	Certain itemized deductions are used to compute various credits
11. Job credit	Credit allowed: wage expense reduced by credit	No credit (except in development zones): wage expense allowed
12. Lump-sum distribution from qualified retirement plan	5- or 10-year averaging may be allowed	No averaging available, fully taxable
13. Medical care insurance costs	No separate deduction as of December 1, 1994	Subtraction for 50% of medical care insurance cost paid by (1) a self-employed person or (2) an employee whose employer does not contribute toward the cost
14. Personal exemptions	\$2,450 for taxpayer, spouse, and each dependent	\$50 credit for each dependent
15. Person age 65 or over	Increased standard deduction	\$25 credit
16. Railroad Retirement Board benefits	May be taxable	Not taxable
17. Rent paid for home	None	Credit may be allowed
18. Retirement income from:		
Wisconsin state and local retirement systems	May be taxable	Generally same as federal, except benefits received from an account established before January 1, 1964, are exempt
Federal retirement systems	May be taxable	Generally same as federal, except benefits received from an account established before January 1, 1964, are exempt
19. Small business stock	No exclusion for 1994	Gain from sale of qualified small business stock acquired on or after January 1, 1986 and held 5 years is not taxable
20. Social security benefits	Up to 85% may be taxable	Up to 50% may be taxable
21. State and municipal bond interest	Exempt	Generally taxable; limited exceptions
22. State income tax refunds	May be taxable	Not taxable
23. Unemployment compensation	Taxable	All, a portion, or none may be taxable

## Letter to Nonresidents Who Transferred Wisconsin Real Estate

During January and February 1995, letters are being mailed to approximately 7,000 nonresident individuals who transferred Wisconsin real estate during 1994. The letter notifies sellers that they may have an income tax filing requirement with Wisconsin, due to the transfer of the Wisconsin property.

The letter explains that individuals who sell or transfer Wisconsin real estate need to report that transaction to the Department of Revenue, whether they were full-year residents, part-year residents, or nonresidents of Wisconsin. The letter also explains what forms and documentation the department needs so the individuals may avoid future requests for information.

See page 38 of this Bulletin for a copy of the letter being mailed by the Department of Revenue. ☐

## Filing Refund Claims for Income or Franchise Taxes

A new law, 1993 Wisconsin Act 205, provides that a claim for refund or credit of income or franchise taxes or homestead credit must be filed with the Department of Revenue in the manner, and on a form, prescribed by the department. This provision became effective November 1, 1994. (Note: This new law does not apply to sales and use tax claims for refund.)

The department is in the process of revising various administrative rules to implement the new law. Until the administrative rule revisions become effective (which is expected in 6 to 8 months), the guidelines shown below

should be followed when filing a claim for refund.

If the original form filed with the department consisted of the form listed in the first column, a claim for refund or credit should be filed on the form listed in the second column.

Original Form	Claim For Refund/Credit
Form 1, 1A, or WI-Z	Form 1X
Form 1NPR	Form 1NPR marked "AMENDED RETURN"
Form 1 or 1A with Schedule H (homestead)	Form 1X, plus corrected Schedule H if appropriate
Form 1 with Schedule FC (farmland preservation)	Form 1X, plus corrected Schedule FC if appropriate
Form 1NPR with Schedule H or FC	Form 1NPR marked "AMENDED RETURN," plus corrected Schedule H or FC if appropriate
Schedule H without a tax return	Schedule H marked "AMENDED"
Form 2	Form 2 marked "AMENDED RETURN"
Form 3	Form 3 marked "AMENDED RETURN"
Form 3S	Form 3S with "AMENDED RETURN" box checked
Form 4	Form 4X
Form 4I	Form 4I marked "AMENDED RETURN"
Form 4T	Form 4T marked "AMENDED RETURN"
Form 5	Form 4X
Form 5S	Form 5S marked "AMENDED RETURN"
Form 6	Form 6 marked "AMENDED RETURN"
Form 7	Form 7 marked "AMENDED RETURN"
Form W706	Form W706 marked "AMENDED RETURN"
Form 1CNP	Form 1CNP marked "AMENDED RETURN"
Form 1CNS	Form 1CNS marked "AMENDED RETURN"

Until the administrative rule revisions become effective, the department will also accept a claim for refund or credit filed in the form of a letter. The letter should include the taxpayer's name, mailing address, and identifying number, the period to which the claim relates, and a statement of the specific grounds upon which the claim is based. (Note: Claims filed by letter will result in delays in issuing the refund.)

Regardless of whether a claim is submitted on an amended form or by letter, the claim should **not** be attached to or filed with an original Wisconsin tax return (for example, a taxpayer's amended 1993 Wisconsin income tax return should not be filed with the taxpayer's original 1994 income tax return). The claim for refund or credit should be mailed to Wisconsin Department of Revenue, P.O. Box 8991, Madison, WI 53785. (Exception: If the claim is based on an IRS adjustment of a federal return, it should be mailed to Wisconsin Department of Revenue, P.O. Box 8906, Madison, WI 53708-8906.) ☐

## 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. Complete the Schedule EICW when claiming the earned income credit. This schedule is new for 1994 returns.
11. 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 renter's school property tax credit). ☐

## **Wisconsin Tax Bulletin Annual 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* 88 (July 1994), pages 37 to 61, and includes information for issues 1 (October 1976) to 85 (January 1994). ☐



## **Need a Speaker?**

Are you planning a 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 sales/use, income, and corporate tax laws.
- How sales tax affects contractors, landscapers, manufacturers, non-profit organizations, or businesses in general.
- What to expect in an audit.
- Common errors discovered in audits.
- Homestead credit.
- Farmland preservation credit.

To arrange for a speaker, please write to Wisconsin Department of Revenue, Speakers Bureau, P.O. Box 8933, Madison, WI 53708-8933, or call (608) 266-1911. ☐

## **Form 1099-Gs and 1099-INTs Mailed to Taxpayers**

Federal law requires that the Department of Revenue provide 1994 information returns (Form 1099-Gs) to persons who received a Wisconsin income tax refund in 1994 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 (Form 1099-INTs) be provided to persons who received \$600 or more of interest on refunds issued by the Department of Revenue.

The department is mailing approximately 11,000 Form 1099-INTs and 580,000 Form 1099-Gs during December of 1994 and January of 1995. (See a related article titled "Information Returns to Be Sent to Federal Retirees" on page 3 of this Bulletin.)

Regardless of whether a taxpayer is sent a Form 1099-INT, the taxpayer must report all interest received in 1994 as income on his or her 1994 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 Tax 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 61 and 62 of this Bulletin. ☐

## Question and Answer

**Q** I am single and my earned income is under \$9,000. I qualify to claim the federal earned income credit even though I do not have a qualifying child. Do I also qualify for the Wisconsin earned income credit?

**A** No, you do not qualify for the Wisconsin earned income credit. You must have at least one qualifying child to claim the Wisconsin credit.

**Q** I reported a loss from farming on my 1994 tax return. Neither my spouse nor I have any other earned income. We do have a qualifying child. May we claim the Wisconsin earned income credit even though we do not have taxable earned income?

**A** You may claim the Wisconsin earned income credit only if you elected to compute your federal self-employment tax (federal Schedule SE) under the farm optional method. The amount of income subject to the federal self-employment tax under the farm optional method is considered earned income when computing the Wisconsin earned income credit.

**Q** I won \$250 from the Wisconsin lottery. However, during the year I also spent \$300 on losing lottery tickets. Do I have to report the \$250 on my income tax return?

**A** Yes. All lottery winnings (and any other gambling winnings) must be reported as income. Gambling losses that do not exceed your gambling winnings (i.e., those allowable as an itemized deduction under federal law) may be used in computing the Wisconsin itemized deduction credit.

**Q** I am a partner in a partnership which operates in Wisconsin and another state. Since I am a full-year Wisconsin resident, I have to pay Wisconsin income tax on my entire

share of the partnership's income, regardless of where it is earned. The other state in which the partnership operates requires the partnership to pay an income tax at the entity level.

May I claim a tax credit on my Wisconsin individual income tax return for my share of the income tax that the partnership paid to the other state?

**A** No. Partners may not claim a credit for income taxes that the partnership paid to another state. Wisconsin resident partners may claim a credit only for net income taxes that they pay to another state on their share of partnership income which is also considered taxable income for Wisconsin purposes. Credit is allowed for net income taxes paid by the partners either on their individual income tax returns or on a combined or composite individual income tax return filed by the partnership on their behalf.

**Note:** If the partnership is subject to an entity-level income tax and that tax is deductible in computing the partnership's federal ordinary income or loss, the tax is also deductible in computing the partner's Wisconsin ordinary income or loss.

**Q** I am a nonresident of Wisconsin. During 1994 I sold a vacant lot located in Wisconsin for \$6,000. The gain on the sale of the lot is \$900. Am I required to file a 1994 Wisconsin income tax return?

**A** Yes. A nonresident or part-year resident of Wisconsin is required to file a Wisconsin income tax return if his or her gross income from Wisconsin sources is \$2,000 or more during the taxable year. In this case, gross income from Wisconsin sources is \$6,000 (the selling price of the lot).

**Q** How long will it take to get my individual income tax refund?

**A** The answer depends on how you filed your return. If you filed your return electronically, you should receive your refund in about one week. If you qualified and requested a Quick Refund, you should receive your refund within two weeks. All other refunds should be received within six to eight weeks.

**Q** What are some reasons why a refund may be delayed?

**A** Delays in issuing refunds are generally due to:

- errors made in filling out the tax return
- the refund is required to be offset against debts owed the department or other state agencies
- the taxpayer claimed a Quick Refund but did not qualify
- the return was filed after April 3 (the large volume of returns received by the department during April delays processing of returns).

**Q** How do I contact the department about my refund?

**A** If you must contact the Department of Revenue about your refund, please wait at least 10 weeks after filing your return. You may direct questions about refunds to Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903, or you may call the automated refund research system at (608) 266-8100. When calling, be sure to have your social security number and the dollar amount of your refund available.

- Touch-tone service is available 24 hours a day, 7 days a week.
- Rotary or pulse dial service is available Monday through Friday during regular office hours (7:45 a.m. to 4:15 p.m.). □



## Topical and Court Case Index Available

Are you looking for an easy way to locate reference material to research a Wisconsin tax question? The *Wisconsin Topical and Court Case Index* will help you find reference material to research 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 vehicle fuel, alternate 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, subscribe to the *Wisconsin Topical and Court Case Index*. The annual cost is \$18, plus sales tax. The \$18 fee includes a volume published in December, and an addendum published in May.

To order your copy, complete the order blank on page 63 of this Bulletin. The order blank may also be used for subscribing to the *Wisconsin Tax Bulletin* and for ordering the Wisconsin Administrative Code. ☐

## Department Offers Taxpayer Assistance

During the filing season of January through April 17, 1995, 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., Rm. 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	8:00-4:30
* 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	914 Quay St.	(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	300D 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	1340 E. Green Bay St., Ste. 2	(715) 526-5647	7:45-4:30
Sheboygan	504 S. 14th St.	(414) 459-3101	7:45-4:30
Superior	1225 Tower Ave., Ste. 315	(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

\* Open During noon hour

(a) Open Monday, Tuesday, and Wednesday

## Incomplete Returns Sent Back to Taxpayers

Many tax returns and credit claims are sent back to taxpayers each year because of missing schedules or information. In the 1994 processing season (1993 returns and claims) the department sent back 97,500 individual income tax returns, 4,000 corporation franchise and income tax returns, 400 partnership returns, 39,000 homestead credit claims, and 2,300 farmland preservation credit claims. Common reasons for sending back returns and claims 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 credit for 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)

- Copies of all property tax bills or correct year's tax bills not attached.
- Ownership not verified, when other owners listed on tax bill.
- Zoning certificate missing land conservation committee signature.
- Copy of **executed** farmland preservation agreement not attached.
- Zoning certificate incorrect or incomplete.
- Closing agreement for sale or purchase of land not attached.
- Prior year's property tax payment not verified, when tax bill indicates delinquent taxes.
- Farmland preservation agreement expired, and extension agreement not attached.

- Calculation of farmland tax relief credit not explained.

### 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 Income or Franchise Tax Returns

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

### Errors Discovered in Processing Returns

Common errors discovered in processing 1993 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.
- School property tax credit. Over 37,000 returns were adjusted for errors in claiming this credit. Over 80% of the errors were in looking up the credit on the tables.
- Itemized deduction credit. This credit was adjusted on over 33,000 returns. About two-thirds of the adjustments were for errors in the standard deduction amount.

- Incomplete returns. In addition to the 97,500 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 37,000 taxpayers.
- Social security claimed as Wisconsin tax withheld.

### Audit Adjustments

Errors discovered in auditing Wisconsin tax returns and credit claims by the department's auditors resulted in the collection of \$146.8 million in taxes, excess credits, penalties, and interest in the fiscal year ending June 30, 1994. This includes sales and use taxes of \$62.8 million, income taxes (including credits) of \$47.3 million, corporation taxes of \$28.7 million, and other taxes (inheritance, alcohol, tobacco, fuel, etc.) of \$8 million. The most common errors, by type of tax or credit, are described below.

#### *Individual and Fiduciary Income Taxes*

- Taxable unemployment compensation or social security computed incorrectly.
- IRA penalty, distribution, or deduction omitted or claimed incorrectly.
- Dependent credit claimed for taxpayer and/or spouse.
- Earned income credit claimed in error.
- Amended Wisconsin return not filed to report IRS adjustments.

- Interest, dividends not reported.
- Municipal interest not added to Wisconsin income.
- Capital gain or loss reported incorrectly (\$500 loss limitation, 60% exclusion, cost basis).
- Credit for tax paid to another state based on withholding rather than net tax actually paid.
- Incorrect filing status used.
- Incorrect farm loss limitation.
- Office-in-home deduction claimed incorrectly.
- Nonbusiness travel and entertainment expenses claimed.
- Gross receipts underreported.
- Incorrect tax-option (S) corporation income (return of capital, loss limitations, loans to corporation).

#### *Corporation Franchise and Income Taxes*

- Officers'/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.
- 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.
- Gross receipts underreported.

#### *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*

- Property taxes computed incorrectly.
- Gross pension, depreciation, deferred compensation, and capital gain exclusion not included in household income.
- Total household income computed incorrectly.
- Incorrect credit percentage claimed.
- Taxes claimed for land not covered by zoning certificate or agreement. □

## 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 Wisconsin Department of Revenue, Shipping and Mailing Section, P.O. Box 8903, Madison, WI 53708-8903 (telephone (608) 266-1961).

Number	Title of Publication (and last revision date)
102	Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/94)
103	Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (10/94)
104	Wisconsin Taxation of Military Personnel (8/94)
109	Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1994 (10/94)
111	How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (3/94)
112	Wisconsin Estimated Tax for Individual, Estates, Trusts, Corporations, Partnerships (12/92)
113	Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (11/94)
114	Wisconsin Taxpayer Bill of Rights (11/94)
117	Guide to Wisconsin Information Returns (9/94)
120	Net Operating Losses for Individuals, Estates, and Trusts (11/94)
200	Sales and Use Tax Information for Electrical Contractors (7/94)

201	Wisconsin State and County Sales and Use Tax Information (9/94)
202	Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (7/94)
203	Sales and Use Tax Information for Manufacturers (12/94)
205	Do You Owe Wisconsin Use Tax? (Individuals) (5/94)
206	Sales Tax Exemption for Nonprofit Organizations (9/90)
207	Sales and Use Tax Information for Contractors (7/94)
210	Sales and Use Tax Treatment of Landscaping (5/94)
211	Sales and Use Tax Information for Cemetery Monument Dealers (10/91)
212	Businesses: Don't Forget About Use Tax (9/94)
213	Travelers: Don't Forget About Use Tax (3/94)
214	Do You Owe Wisconsin Use Tax? (Businesses) (9/93)
216	Filing Claims for Refund of Sales or Use Tax (12/94)
400	Wisconsin's Temporary Recycling Surcharge (12/94)
405	Wisconsin Taxation of Native Americans (10/94)
410	Local Exposition Taxes (11/94)
500	Tax Guide for Wisconsin Political Organizations and Candidates (12/94)
501	Field Audit of Wisconsin Tax Returns (12/92)
502	Directory of Free Publications (12/94)
503	Wisconsin Farmland Preservation Credit (12/94)

504	Directory for Wisconsin Department of Revenue (12/94)
505	Taxpayers' Appeal Rights of Office Audit Adjustments (6/92)
506	Taxpayers' Appeal Rights of Field Audit Adjustments (11/91)
507	How to Appeal to the Tax Appeals Commission (8/92)
508	Wisconsin Tax Requirements Relating to Nonresident Entertainers (8/94)
509	Filing Wage Statements and Information Returns on Magnetic Media (3/94)
600	Wisconsin Taxation of Lottery Winnings (11/93)
601	Wisconsin Taxation of Pari-Mutuel Wager Winnings (3/94)
700	Speakers Bureau presenting ... (2/93)
W-166	Wisconsin Employer's Withholding Tax Guide (9/90) □

## Tax-Cheating Charges Abound

A Racine man, John R. Balestrieri, was charged in September 1994, with three counts of felony theft of state sales taxes, by the Racine County District Attorney's office. Balestrieri, operator of the Flower Shop, allegedly collected but did not remit to the state, \$11,714 in sales taxes between January 1992 and March 1994. He also allegedly stopped filing sales tax returns after August 1993 and has not filed corporate tax returns. He was previously convicted in 1990 and 1993 for operating a business after revocation of his state sales tax permit.

If convicted on all counts, Balestrieri could face over 20 years in prison and up to \$30,000 in fines.

In October 1994, two Milwaukee-area gasoline suppliers were charged in Dane County Circuit Court, with four counts each of felony theft of state motor fuel tax money. Paul C. Kramer, 53, East Troy, and Patrick S. Gedig, 47, Franklin, were charged with participating in an invoicing scheme that allegedly misappropriated over \$935,000 in state tax monies by early 1990. Kramer ran Ohio Fuel & Supply Company, and Gedig was president of United Petroleum Corporation, which supplied fuel to Kramer. The two devised a phony invoicing scheme so Kramer could collect excess tax money, which was not paid to the state.

Kramer was also charged with five additional counts of theft. He allegedly stole another \$197,000 in fuel taxes collected in late 1990 and early 1991.

If convicted on all charges, Kramer faces up to 90 years in prison and up to \$90,000 in fines. Gedig pled guilty to the charges in December 1994 and faces a maximum prison sentence of 20 years and fines up to \$20,000. Gedig's sentencing was deferred until after the trial of Kramer, the co-defendant.

In November 1994, stockbroker William C. Seitz, 48, Madison, was sentenced in Dane County Circuit Court, on two counts of failure to file state income tax returns. He had been charged in April 1994, with failing to file 1990, 1991, and 1992 state tax returns. Seitz was ordered to pay fines and court costs of \$740 and was placed on 24 months probation. He must perform 100 hours of community service and was ordered to make restitution and provide information to the Department of Revenue.

Seitz allegedly had gross income of over \$104,000 in 1990 to 1992 and has not filed income tax returns since

1978. Tax liens in excess of \$86,000 have been filed against him.

Failure to timely file a Wisconsin income tax return is a crime punishable by up to nine months imprisonment and a fine of up to \$10,000. In addition to the criminal penalties, Wisconsin law provides for substantial civil penalties on the civil tax liability. Assessment and collection of the taxes, interest, and penalties follows criminal conviction.

Updated information is available on two cases reported in the previous issue (see the article titled "Tax Evasion is Costly" in *Wisconsin Tax Bulletin* 89, October 1994, page 7).

La Crosse dentist Frederick G. Kriemelmeyer was sentenced in September 1994 for failing to file 1990 to 1992 Wisconsin income tax returns. As previously reported, he was placed on three years probation and was ordered to pay over \$14,000 in fines, court costs, and prosecution costs, to file 1987 to 1993 state tax returns and pay all state income taxes, and to disclose his assets. In addition, Kriemelmeyer was ordered to serve three months in the La Crosse County jail.

As previously reported, Patricia G. Hass, 46, La Crosse, was found guilty in July 1994, of filing false and fraudulent 1988, 1988 amended, and 1989 income tax returns, having failed to report nearly \$100,000 of income she had embezzled from Olsten Temporary Services, a temporary employment agency she operated. She was sentenced in October 1994 to up to five years in prison. The sentence was stayed, and she was placed on seven years probation. Under the probation terms, Hass was ordered to serve four months in the La Crosse County jail, make restitution of all tax, interest, and penalties due, pay prosecution costs, including

the Public Defender's expenses, and provide 560 hours of community service. □

## How to Obtain Wisconsin Tax Forms

Small supplies of Wisconsin tax forms can be obtained from any Department of Revenue office. Requests will be generally limited to 6 copies of any single form, and a total of 29 forms. This is necessary to maintain a supply of forms for others.

Tax preparers requiring larger supplies of Wisconsin tax forms should use a forms order blank (Form P-744). The Form P-744 may be requested by writing to Forms Order Unit, Wisconsin Department of Revenue, P.O. Box 8903, Madison, WI 53708-8903; by faxing your request to (608) 267-0834; or by phoning (608) 266-1961 in Madison.

When requesting forms using a Form P-744, the original order blank must be sent to the department, not a copy. For processing purposes, the entire form must be submitted.

In addition, most Wisconsin libraries have a copy of Wisconsin Package WI-X which contains copies of most Wisconsin tax forms. Reproductions of forms may be made from Package WI-X, with the exception of the forms marked "DO NOT PHOTO-COPY." □

## 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 homestead credit claim filed by April 15 of any year is normally not available for copying until September 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 53708-8903. When tax returns are available, copies are generally mailed within one week to 10 days after the request is received.

*In-Person Requests:* Make your request at the Department of Revenue, Audit Bureau, 4638 University Avenue, Room 132, Madison, Wisconsin. Office hours are 7:45 a.m. to 4:30 p.m. Proper identification (for example, a driver's license) is required.

### Questions

If you have questions about obtaining copies of tax returns, you may call the Department of Revenue in Madison, at (608) 267-1266. □

## A Shared Future: What Our Goals Mean to You

*Note: The following article was submitted by John T. Ader, Director, Milwaukee District, Internal Revenue Service.*

I appreciate this opportunity to share information and some thoughts with you. We work very closely with Secretary Mark Bugher and the Wisconsin Department of Revenue on many projects. We share common interests and concerns. We are truly partners in tax administration. Those of you in the professional tax community are our partners as well.

### Quality & Productivity through Electronic Filing

Throughout the country, both private and public sector organizations are searching for ways to improve the productivity and quality of their work, while at the same time enhancing service to their customers. Our customers, the American taxpayers,

expect a higher level of service in almost everything we do. They have a right to expect a tax system that is both effective and responsive.

Under our Business Vision, we are moving towards an electronic environment for filing returns. Electronically filed returns are processed faster and are less prone to errors that can delay the processing of the return. During the last filing season, only .6% of electronic returns had errors, compared with 17% of paper returns.

To realize our Business Vision, we must make all of our Tax Systems Modernization (TSM) programs a reality. To effectively administer the tax law, today and in the future, the IRS must take advantage of modern technology. In short, we need to construct our own "on-ramp" to the "information superhighway."

The IRS and the Wisconsin Department of Revenue were among the first in the nation to work together on a joint electronic filing initiative. This initiative allows taxpayers to file their federal and state tax returns simultaneously, and the taxpayers and practitioners in Wisconsin are opting for this streamlined processing. During the 1994 filing season, roughly 45% of the Wisconsin taxpayers who filed their federal tax returns electronically also filed their state returns electronically.

I truly believe that, by the year 2000, the vast majority of our business will be done electronically. If you are not yet part of the electronic filing system, I strongly urge you to join us now. Our Electronic Filing Coordinator Gerri Ness would be happy to tell you more about the program. You can reach her at (414) 297-3385.

### Ensuring Taxpayer Privacy

Ensuring taxpayer privacy presents another significant challenge as the

Service modernizes. We are meeting this challenge with an aggressive program to guarantee the privacy of taxpayer information today and in the future. We are developing safeguards, and we are committed to making those safeguards work. IRS Commissioner Margaret Milner Richardson recently named Rob Veeder as the Service's Privacy Advocate. In that role, he is responsible for developing and implementing a Service-wide Privacy Program that puts the IRS at the forefront of the privacy issue in both the public and private sectors.

### Increasing Compliance

IRS and WDOR are also facing a much older challenge — that of ensuring compliance with the tax laws. IRS estimates that the current overall compliance rate is about 83 percent. That means that about 17 percent of the tax dollars due each year are not collected. That is simply not acceptable — especially when you realize that each percentage point in the compliance rate represents approximately \$7-10 billion in annual revenue — revenue that, if collected, would be available with no changes in the tax law or tax rates. Our stated goal is to raise the compliance level to 90 percent.

Achieving voluntary compliance is the thrust of the Service's Compliance 2000 strategy, which combines traditional enforcement efforts with other initiatives, such as taxpayer outreach and education, Market Segment Specialization Programs and Audit Technique Guides, and our Nonfiler Program.

### A Tax Partnership

The IRS's relationship with the Wisconsin Department of Revenue is a model of joint tax administration. Through our cooperative efforts, both Wisconsin and the IRS have made strides toward our goal of transform-

ing tax administration at both the federal and state levels to a system that works better and costs less.

I know that these joint efforts will continue to help us provide more efficient tax administration to the citizens of Wisconsin. □

## Manufacturer's Property Tax Assessment Changes Made

*Note: Information for this article was provided by the department's State and Local Finance Division, which administers the assessment of manufacturing property.*

### Filing Penalty Now Payable to the Department

The manufacturer's property tax filing penalty has been removed from the property tax bill, beginning in 1995, as a result of an amendment to sec. 70.995(12)(c), Wis. Stats. The penalty is payable directly to the Department of Revenue (DOR), within 30 days of the mailing date of the penalty notice. Delinquent penalties will be processed through DOR's Delinquent Tax Collection System.

### Leased Personal Property Will Be Assessed to the Lessee

Manufacturer's leased personal property will be assessed to the lessee for 1995. In the past, the department assessed leased equipment to either the lessor or the lessee, dependent on the lessor's preference. DOR's Manufacturing Assessment Section surveyed lessors, manufacturers, and local assessors, and about 80% were in favor of assessing all leased equipment only to the lessee. Advantages of lessee assessment include:

- manufacturers don't have to pay a sales tax on property taxes;
- manufacturers can identify when equipment qualifies as exempt

manufacturing machinery and equipment (M&E) better than the lessor;

- fewer assessments and tax bills for DOR, municipalities, and lessors; and
- cost savings to DOR and municipalities.

Lessors will still be required to file their self-reporting form (ML-form) to assist DOR in discovering leased equipment.

#### **Some Low-Value Leased Items Returned to Local Assessment**

In general, personal property leased to, rented to, or loaned to a Wisconsin manufacturer is assessed by DOR. However, sec. 70.995(4), Wis. Stats., gives DOR discretion in determining what unit of tangible personal property should be assessed. Vending machines located at manufacturers have always been assessed by the local assessor. DOR has created a list of low value items located at manufacturers that will be assessed by municipal assessors. These items have no likelihood of qualifying as exempt M&E. The items include pagers, water bottle services, plant rentals, travel reservation terminals, telephone equipment, etc. Manufacturers should continue to list these leases on their self-reporting forms (MP-form) for discovery purposes. □

#### **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, 1995, or at the stage in which action occurred during the period from October 2, 1994, to January 1, 1995.

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 for Publication of Notice**

- 2.03 Corporation returns-R&R
- 2.04 Information returns and wage statements-R&R
- 2.08 Returns of persons other than corporations-R&R
- 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns-R&R
- 2.39\* Apportionment method-A  
\*hearing held 12/12/94
- 11.04 Constructing buildings for exempt entities-A
- 11.13 Direct pay-NR
- 11.14 Exemption certificates, including resale certificates-A

#### **Rules Adopted But Not Yet Effective**

- 2.97 Earned income credit eligibility-NR

#### **Rules Adopted and in Effect (date of adoption December 1, 1994)**

- ch. 4 (title) MOTOR VEHICLE AND GENERAL AVIATION FUEL TAXATION-A
- 4.01 Portable motor equipment-A
- 4.02 Resellers' personal claims for refund-A
- 4.03 Public highways closed to public travel-A
- 4.04 No printing on back of original invoice-R
- 4.05 Taxicabs-A

- 4.10 Motor vehicle fuel tax liability-NR
- 4.11 Tax exemption for dyed diesel fuel-NR
- 4.12 Uncollected motor vehicle fuel taxes and repossessions-NR
- 4.50 Assignment, use and reporting of document number-A
- 4.51 Measuring withdrawals-A
- 4.52 Separate schedules-A
- 4.53 Certificate of authorization-A
- 4.54 Security requirements-A
- 4.55 Ownership and name changes-A
- 4.65 Motor vehicle fuel tax refunds to vendors and tax deductions for suppliers-NR
- 4.75 Payment of motor vehicle fuel tax-NR

#### **Emergency Rule (effective November 14, 1994)**

- 11.13 Direct pay-NR □

#### **Recently Adopted Rules Summarized**

Listed below is a summary of recent revisions to administrative rules, including rules in Chapter Tax 4, relating to motor vehicle and general aviation fuel taxation, and sec. Tax 11.13, relating to direct pay permits for sales and use tax. In addition to the summary, the text of sec. Tax 11.13 is reproduced.

**Ch. Tax 4 Motor vehicle and general aviation fuel taxation.** Chapter Tax 4 is revised, effective December 1, 1994. The title is amended to include the words "general aviation," since the rules encompass general aviation fuel taxation. Every subsection except Tax 4.04 is amended to reflect proper



format, grammar, and punctuation. Notes in Tax 4.53 and 4.55 are revised to reflect the proper address and telephone number for obtaining forms. In addition, Tax 4.02, 4.03, 4.05, 4.50, 4.51, 4.53, and 4.54(1) and (2)(a)3 are further amended to reflect changes made to ch. 78, Wis. Stats., by 1993 Wisconsin Act 16, effective April 1, 1994.

Tax 4.04, relating to double-face carbons, is repealed because it is obsolete.

Tax 4.10, 4.11, 4.12, 4.65, and 4.75 are created to reflect changes made to ch. 78, Wis. Stats., by 1993 Wisconsin Act 16, effective April 1, 1994, and 1993 Wisconsin Act 437, effective June 1, 1994.

**Tax 11.13 Direct pay.** Tax 11.13 is created as an emergency rule, effective November 14, 1994. Tax 11.13 addresses the use of direct pay permits, effective for taxable years beginning on or after January 1, 1995, per the creation of sec. 77.52(17m), Wis. Stats., by 1993 Wisconsin Act 437. It also addresses the issuance of direct pay permits and the types of purchases not eligible for exemption from sales and use tax under the direct pay provisions. The text of Tax 11.13 is as follows:

**Tax 11.13 DIRECT PAY.** (s. 77.52(17m), Stats.) (1) **GENERAL.** (a) The holder of a direct pay permit shall be allowed to purchase tangible personal property and taxable services, except those in sub. (5)(a) and (b), without Wisconsin sales or use tax.

(b) The purchaser shall report Wisconsin use tax on the sales price of tangible personal property or taxable services purchased without tax using a direct pay permit if the property or service is subject to Wisconsin sales or use tax. The tax shall be reported on the taxpayer's Wisconsin sales tax return for the period in which the property or service is first stored, used or consumed in Wisconsin in a taxable manner.

**Note:** Sales price, for purposes of this paragraph, has the meaning specified in s. 77.51(15), Stats.

(2) **ISSUANCE.** (a) The department shall issue a direct pay permit to those persons who meet the qualifications set forth in s. 77.52(17m)(b), Stats.

**Note:** The issuance of direct pay permits is effective for taxable years beginning on or after January 1, 1995.

(b) Persons who wish to obtain a direct pay permit shall apply with the department using the form prescribed by the department. A \$5 fee is required upon application.

**Note:** Application for direct pay is made using form S-101, application for direct pay permit. Form S-101 is available by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

(c) A direct pay permit may only be issued effective with the beginning of the applicant's taxable year for Wisconsin franchise or income tax purposes.

**Example:** A taxpayer's taxable year begins July 1 for Wisconsin franchise or income tax purposes. The taxpayer files an application for a direct pay permit with the department on January 1, 1995. The taxpayer is issued a direct pay permit which is effective for purchases made on or after July 1, 1995.

(3) **REVOCATION OR CANCELLATION.** (a) A direct pay permit issued by the department may be used indefinitely until it is revoked by the department or cancelled by the holder.

(b) A permit shall be cancelled by the holder by mailing the permit to the department for cancellation. A letter shall be enclosed with the permit, indicating the holder's intention to cancel the permit.

**Note:** The permit to be cancelled and letter should be mailed to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902.

(c) The cancellation of a direct pay permit shall become effective on the last day of the holder's taxable year in which the permit is received by the department.

(4) **USING DIRECT PAY.** (a) A person shall provide one of the following to a retailer when purchasing without tax using a direct pay permit:

1. A copy of its direct pay permit.
2. A written statement containing all of the following:
  - a. The name and address of the purchaser.
  - b. An indication that the purchaser is purchasing without Wisconsin sales or use tax using a direct pay permit.
  - c. The purchaser's direct pay permit number.
  - d. The effective date of the direct pay permit.
  - e. The signature of the purchaser.

(b) If a purchaser uses its direct pay permit to purchase tangible personal property or taxable services without Wisconsin sales or use tax, all subsequent purchases by the purchaser from that retailer, except those in sub. (5)(a) and (b), shall be made without Wisconsin sales or use tax using the direct pay permit.

(c) It is necessary only to provide the documentation in par. (a) to a retailer at the time the purchaser begins purchasing without tax from that retailer using a direct pay permit. The retailer shall keep the information provided by the purchaser under par. (a) on file as proof that all subsequent purchases by the purchaser are made without tax. It is not required that the purchaser provide to a retailer the information in par. (a) each time a sale is made by the retailer to the purchaser.

(d) A direct pay permit shall be used for all purchases from a retailer even though a resale certificate, manufacturer's exemption certificate, certificate of exemption or other exemption requiring different documentation may apply.

**Example:** On July 1, 1995, Company A begins using its direct pay permit when purchasing tangible personal property from Company B. All purchases of tangible personal property or taxable services, except those described in sub. (5)(a) and (b), by Company A from Company B on or after July 1, 1995, must be made without sales or use tax using the direct pay permit. A resale certificate, manufacturer's exemption

certificate, or certificate of exemption should not be used when purchasing without tax if a retailer has a direct pay permit on file for the purchaser.

(5) **SERVICES AND PROPERTY NOT SUBJECT TO DIRECT PAY.** (a) **Services.** Gross receipts subject to tax from sales of services under the following Wisconsin statutes are subject to Wisconsin sales or use tax, regardless of whether the purchaser holds a direct pay permit:

1. Section 77.52(2)(a)1, Stats., relating to furnishing rooms or lodging.

2. Section 77.52(2)(a)2, Stats., relating to admissions to amusement, athletic, entertainment or recreational events, devices or facilities.

3. Section 77.52(2)(a)5, Stats., relating to telecommunications services.

4. Section 77.52(2)(a)9, Stats., relating to parking.

5. Section 77.52(2)(a)12, Stats., relating to cable television system services.

6. Section 77.52(2)(a)20, Stats., relating to landscaping services.

(b) **Property.** Gross receipts from the sale, lease or rental of the following tangible personal property are subject to Wisconsin sales or use tax, even though the purchaser holds a direct pay permit:

1. Tangible personal property transferred to a purchaser in connection with the sale of landscaping services subject to tax under s. 77.52(2)(a)20, Stats.

2. Motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles or aircraft.

3. Food, food products and beverages described in s. 77.54(20)(b), Stats.

4. Meals, food, food products and beverages subject to tax under s. 77.54(20)(c), Stats.

(c) **Exemptions.** Although not eligible to be purchased without Wisconsin sales or use tax using a direct pay permit, the taxable services and tangible personal property described in sub. (5)(a) and (b) may be purchased without Wisconsin sales or use tax if a resale, farm-

ing, manufacturing or other exemption applies. Documentation required to purchase without tax, as provided in s. Tax 11.14, is required.

(6) **SELLER'S LIABILITY.** A retailer is not liable for sales or use tax on gross receipts from the sale of tangible personal property or taxable services, except those described in sub. (5)(a) and (b), to a person who has provided the retailer with the appropriate information under sub. (4)(a), until the retailer has been notified by the person or the department that the person's direct pay permit has been:

(1) **Revoked.** A direct pay permit is considered revoked on the date the holder receives the department's notice of revocation.

(2) **Cancelled.** A direct pay permit is not considered cancelled until the last day of the person's taxable year in which the permit is received by the department. □



## 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

Credits — taxes paid to other states

Income attribution

Penalties — fraud

*Paul G. and Judith I. Beck*  
(p. 19)

Nonresidents — allocation of income

*Thomas J. Flynn* (p. 19)

Tax Appeals Commission — class action claims

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

### Corporation Franchise and Income Taxes

Apportionment — air carriers — interstate

*United Parcel Service Co.* (p. 20)

Extension of time — additional assessments and refunds

*Paramount Farms Incorporated*  
(p. 22)

### Sales and Use Taxes

Construction contractors — use tax

*Oscar J. Druml* (p. 22)

Exemptions — common or contract carrier vehicles

Government purchases

Use tax — liability of user

*R-K Towing, Inc.* (p. 23)

Rebates

Sovereign immunity

*John Grall, et al.* (p. 24)

### Temporary Recycling Surcharge

Temporary recycling surcharge — constitutionality

*Love, Voss & Murray* (p. 25)

## INDIVIDUAL INCOME TAXES

**— Credits — taxes paid to other states; Income attribution; Penalties — fraud.** *Paul G. Beck and Judith I. Beck vs. Wisconsin Department of Revenue* (Court of Appeals, District I, October 7, 1994).

This is an appeal from an order of the Circuit Court for Milwaukee County, which dismissed the taxpayers' petition for review of a Wisconsin Tax Appeals Commission decision, because it was not timely filed. The Commission ruled in a decision dated February 23, 1993, that the taxpayers were entitled to credit for taxes paid to Illinois, that income paid to their minor daughters was properly attributable to the taxpayers, that estimated taxes and a doomsday payment paid in the names of the daughters may be credited to the taxpayers, and that a 50% penalty imposed against the taxpayers was proper. See *Wisconsin Tax Bulletin* 82 (July 1993), page 16, for a summary of the Commission decision.

The Court of Appeals concluded that the Circuit Court's dismissal of the late-filed petition for review was proper.

The taxpayers appealed the Court of Appeals decision to the Wisconsin Supreme Court, which denied the petition for review. □

**— Nonresidents — allocation of income.** *Thomas J. Flynn vs. Wisconsin Tax Appeals Commission* (Circuit Court for Dane County, February 25, 1994). The Circuit Court noted in its decision that the respondent should have been Wisconsin Department of Revenue rather than Wisconsin Tax Appeals Commission.

This is a judicial review of a decision by the Wisconsin Tax Appeals Com-

mission (Commission). See *Wisconsin Tax Bulletin* 85 (January 1994), page 17, for a summary of that decision. The issues are:

- A. Whether the taxpayer's signing bonus was subject to Wisconsin tax.
- B. Whether the days spent pursuing off-season conditioning activities were duty days for purposes of apportioning income to Wisconsin.

The Commission held that the issue of the signing bonus was not timely raised, but alternately that the signing bonus was personal service income taxable in the same manner as salary. With respect to the off-season conditioning issue, the Commission held that the days spent outside Wisconsin in the off-season conditioning program were not duty days to be used in the formula for apportioning income taxable for Wisconsin tax purposes.

The Circuit Court affirmed the Commission on both issues, concluding as follows:

- A. The signing bonus was taxable as Wisconsin income. Wisconsin regulations (sec. Tax 2.31(4)(a), Wis. Adm. Code (1991)) in effect for the years at issue, 1984 and 1985, require that the signing bonus income be apportioned as Wisconsin income in the same manner as salary for personal services. The Court noted that sec. Tax 2.31, Wis. Adm. Code, was repealed effective July 1, 1993, for reasons not asserted to be connected with the issues of this case. It was not necessary to address the issue of whether the signing bonus issue was timely raised.

- B. The taxpayer's days spent at off-season conditioning were not

duty days for which he was compensated under his player contract. While the contract did require him to participate in the official pre-season training camp, club meetings, and practice sessions, the conditioning program was not a requirement. The contract required the taxpayer to maintain excellent physical condition, but it did not compensate him for his work in accomplishing that requirement, nor did it specify the means for conditioning.

The taxpayer has not appealed this decision. □

**— Tax Appeals Commission — class action claims.** *Wisconsin Department of Revenue vs. J. Gerard and Delores M. Hogan, et al.* (Circuit Court for Dane County, November 12, 1994). The sole remaining issue for the Circuit Court to decide in this case is whether the Tax Appeals Commission (Commission) had the authority to certify a class of Wisconsin taxpayers who paid tax on certain federal employees' retirement benefits (the class).

The Commission certified the class in October 1992 and granted summary judgment to the class on May 27, 1993 (see *Wisconsin Tax Bulletins* 80 (January 1993), page 19, and 82 (July 1993), pages 16 and 18, for summaries of those and related decisions). The department maintained that the Commission lacked statutory and other legal authority to certify a class action in tax cases. The department appealed the May 27, 1993 Commission decision regarding the class certification issue on July 29, 1993, after the Commission's June 29, 1993 denial of the department's petition for rehearing.

The Circuit Court dismissed the department's petition for review, deciding that the petition was not filed timely. The Court concluded that the Commission's actions of October 1992 and February 1993 were final and were required by statute to be appealed within 30 days in order to give the Circuit Court subject matter jurisdiction. The Court further concluded that the Commission's oral decision of May 27, 1993 had to be appealed within 30 days of the decision, and that the department's petition for rehearing was not authorized by statute. The appeal of July 29, 1993 was not timely.

In addition to dismissing the department's petition for review as untimely, the Circuit Court also remanded the matter to the Commission for further proceedings implementing and finalizing its summary judgment, including the issue of determination of appropriate attorney fees and costs to class counsel.

The department is appealing this decision to the Court of Appeals. □

## CORPORATION FRANCHISE AND INCOME TAXES

### — Apportionment — air carriers — interstate.

*United Parcel Service Co. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 30, 1994). This appeal challenges the validity of the express language of Wisconsin Administrative Code Rule Tax 2.46, enacted pursuant to sec. 71.25(10)(c), Wis. Stats. (1987-88), as applied to the taxpayer for the taxable years 1985 and 1986.

United Parcel Service Co. (UPSCO) is a Delaware corporation which, together with affiliated corporations, provides a nationwide and international air transportation service for small packages of not more than 70 pounds each. UPSCO is an air carrier authorized by the appropriate authorities of the United States government to provide air transportation throughout the United States. The parties agree that during the years at issue UPSCO transacted business within Wisconsin and derived income from such business activity.

As an air carrier, UPSCO is a "public utility" for purposes of the Wisconsin franchise tax. Section 71.25(10)(b), Wis. Stats. (1987-88). The department has adopted a specific rule regarding apportionment of the income of interstate air carriers. Wisconsin Administrative Code Rule Tax 2.46 provides that such income should be apportioned using a three-factor formula consisting of (1) the ratio of aircraft arrivals and departures; (2) the ratio of revenue tons handled in the state to total revenue tons; and

(3) the ratio of originating revenue within the state to total revenue.

The apportionment factors for the years at issue as reported by UPSCO were as follows:

	1985	1986	1987	1988
Arrivals and Departures	0.7074%	0.8167%	2.190790%	0.854274%
Revenue Tons	1.9334%	1.8727%	0.501680%	0.697180%
Originating Revenue	2.3638%	2.0588%	2.057230%	0.390908%
Apportionment Factor	1.6682%	1.5827%	1.583233%	0.647454%

For the years 1985 and 1986, UPSCO's records did not include information regarding Wisconsin and total revenue tons. Accordingly, in filing its Wisconsin tax returns for those years, UPSCO substituted a factor consisting of the number of packages originating in Wisconsin divided by the total number of packages. The department accepted the substitution of revenue pieces for revenue tons in 1985 and 1986.

The only adjustments at issue in this appeal are the adjustments to the arrivals and departures factor for the years 1985 and 1986.

During the years at issue, UPSCO operated seven different types of aircraft. These aircraft and their maximum payloads were as follows:

Fairchild Expediter	4,450 pounds
Boeing 727-100	45,830 pounds
Boeing 727-200	58,500 pounds
Boeing 757	86,000 pounds
Douglas DC8-71CF	94,000 pounds
Douglas DC8-73CF	110,000 pounds
Boeing 747-123BF	220,000 pounds

During the years 1985 through 1988, UPSCO's use of its various aircraft for flights to or from Wisconsin was as follows:

	1985	1986	1987	1988
Fairchild Expediter	5,457	4,808	2,136	508
Boeing 727-100	358	118	40	42
Boeing 727-200	0	346	118	6
Boeing 757	0	0	0	2
Douglas DC8-71CF	38	146	230	138
Douglas DC8-73CF	0	11	116	400
Boeing 747-123BF	0	0	12	0
Total Flights	5,853	5,429	2,652	1,096

During the same period, UPSCO's overall use of its various aircraft was as follows:

	1985	1986	1987	1988
Fairchild Expediter	20,110	25,708	19,218	16,126
Boeing 727-100	40,458	38,562	34,892	27,300
Boeing 727-200	*	10,522	12,886	12,070
Boeing 757	0	0	2,554	16,516
Douglas DC8-71CF	28,646	15,876	16,634	21,484
Douglas DC8-73CF	*	26,156	28,388	28,846
Boeing 747-123BF	<u>5,682</u>	<u>5,520</u>	<u>6,480</u>	<u>5,954</u>
Total Flights	94,896	122,344	121,052	128,296

\* The national figure for 1985 combines all 727s and all DC-8s.

In preparing its 1985 and 1986 tax returns, UPSCO calculated the arrivals and departures factor by dividing the actual Wisconsin and total takeoff and landing weight of aircraft by the actual total takeoff and landing weight of aircraft. UPSCO prepared the returns in this manner because it believed that a factor based on unweighted arrivals and departures distorted its Wisconsin business activity and income. In the 1985 return, an incorrect figure was used for Wisconsin takeoff and landing weight. Correcting that error, and carrying out the division to six decimal places, the arrival and departure factors sought by UPSCO are as follows:

	1985	1986
Wisconsin Takeoff and Landing Weight	18,794,259	32,002,297
Total Takeoff and Landing Weight	2,655,347,050	3,918,679,971
Ratio	0.707789 %	0.816660 %

In preparing its 1987 and 1988 tax returns, UPSCO did not weight the arrivals and departures factor by takeoff and landing weight because it did not believe that any distortion created by the unweighted factor was sufficient to justify a departure from the standard factor.

Pursuant to his interpretation of Tax 2.46, Wis. Adm. Code, the auditor removed takeoff and landing weight from the computation of these factors. Accordingly, the arrival and departure factors computed by the auditor were based on actual arrivals and departures in each year, as follows:

	1985	1986
Wisconsin Arrivals and Departures	5,853	5,429
Total Arrivals and Departures	94,896	122,344
Ratio	6.167805 %	4.437488 %

UPSCO's charges for transporting an air package are a function of the level of service, the weight of the package, and the destination. There are three levels of service: Next Day Air letters (limited to documents), Next Day Air packages (up to 70 pounds), and Second Day Air packages.

There is a single rate for Next Day Air letters anywhere in the United States. For Next Day Air packages, rates vary with weight. One rate schedule applies to all packages transported within the 48 continental states and Hawaii, another to packages to and from Puerto Rico and Alaska, and a third to packages to and from Japan. Similarly, for Second Day Air packages, rates vary with weight with one rate schedule applying to all packages transported within the 48 continental states, a second to packages to and from Alaska and Hawaii, and a third to packages to and from Japan.

The average weight of air packages picked up and delivered in any geographical region is uniform. Similarly, the distribution of the levels of service and the destinations of packages do not vary significantly by the geographical origin of packages. Accordingly, the dollar amounts that UPSCO receives from its customers, both overall and within any particular geographical area, is a function of the number of packages transported. Similarly UPSCO's expenses, both overall and within any particular geographical area, are a function of the number of packages transported.

The Commission concluded that Wisconsin Administrative Code Rule Tax 2.46 is a proper exercise of authority under sec. 71.25(10)(c), Wis. Stats. (1987-88). As applied to the taxpayer by the department, Tax 2.46 does not attribute income to Wisconsin which either is out of all appropriate proportion to the taxpayer's business transacted here or leads to a grossly distorted result.

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

**Extension of time — additional assessments and refunds.** *Paramount Farms Incorporated vs. Wisconsin Department of Revenue* (Circuit Court for Portage County, June 27, 1994). The question presented is whether an extension for assessing taxes for years 1976 to 1981 until "3 months after receiving the final results of the Internal Revenue Service's audit of these years" runs for 1976 and 1977 when the final audit for each year is received, or when the last of the audits for all of the included years is received. For a summary of the Wisconsin Tax Appeals Commission's decision, see *Wisconsin Tax Bulletin* 78 (July 1992), page 8.

The IRS sent a letter to the taxpayer on May 4, 1979, regarding the taxpayer's income tax returns for 1976 and 1977. Over the next three years there were various findings, protests, agreements, amendments, adjusted assessments, and other correspondence between the taxpayer and the IRS. On August 25, 1982, the taxpayer received a notice of audit from the Wisconsin Department of Revenue. On September 28, 1982, the taxpayer agreed with the IRS as to a 1976 and 1977 adjustment, and on the same day entered into an extension agreement for additional assessments with the Wisconsin Department of Revenue. By the terms of the extension, the taxpayer and the department agreed to extend the time for assessing taxes for the years of 1976 through 1981 until three months after receiving the final results of the Internal Revenue Service's audit of these years. On February 20, 1987, the Wisconsin Department of Revenue made its assessment. The final Internal Revenue Service audit was received on October 31, 1988.

The Tax Appeals Commission held that the extension agreement did not require the Wisconsin Department of Revenue to issue a piecemeal assess-

ment for any one of the six years involved when it had sufficient information to do so. Instead, the Commission held that the department could wait until receiving the final results of the federal audit for the entire period covered by the audit before acting.

The Circuit Court concluded that the Commission's findings are reasonable. Because the department made its assessment prior to the final results being provided, the assessment was timely. Therefore, the Circuit Court affirmed the Commission's decision.

The taxpayer has not appealed this decision. □

## SALES AND USE TAXES

**Construction contractors — use tax.** *Oscar J. Druml vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 8, 1994). The issue in this case is whether the taxpayer is exempt from sales and use tax under sec. 77.54(2) and (6)(b), Wis. Stats., on its purchases of materials and equipment.

During 1982 through 1986 ("the period under review"), the taxpayer had an integrated business in which he produced hollow core concrete slabs and incorporated the finished slabs in real property construction activities as a contractor. All concrete slabs produced by the taxpayer were utilized in the taxpayer's real property construction activities. No part of the taxpayer's concrete slab production activity was undertaken in order to resell the slabs at retail independent of the taxpayer's real property construction activities.

During the period under review, the taxpayer did not hold a Wisconsin seller's permit or charge sales tax to

customers, nor did he remit sales taxes directly to the department.

The taxpayer claimed he was a manufacturer of products which were sold to construction companies for their projects and as a manufacturer is exempt from sales tax.

The taxpayer disclosed the following:

- a) Masticord he purchased was used as packaging for delivery to customers.
- b) Concrete slab, beam, and column manufacture was the extent of any manufacturing activity conducted by the taxpayer.
- c) That steel wire, strand, and cable were utilized by him in the manufacture of concrete slabs as a reinforcement material. The taxpayer's claimed exemption on these materials is the ingredients and components exemption available to manufacturers under sec. 77.54(2), Wis. Stats.
- d) The taxpayer's sole use of the concrete mix, grout, and concrete was as a component in the taxpayer's manufacture of concrete slabs, beams, and columns.
- e) The taxpayer owned a tractor and purchased repair parts and services. The taxpayer claimed that the tractor was directly utilized in his manufacturing activity because the tractor was regularly used as a first site of storage.
- f) ½" steel "weld" plates were incorporated by the taxpayer in the manufacture of the concrete slabs, beams, and columns. The weld plates were subsequently modified by the taxpayer in the course of his real property construction activities.

- g) Some of the wood purchased by the taxpayer was used as forms in the making of concrete beams and slabs, but this wood did not lose its identity in this capacity or use.
- h) The taxpayer purchased grout which was used to fill in the ends of concrete slabs, beams, etc.
- i) The crane was not exclusively used in his manufacturing processes.
- j) Liquid and latex flooring material and purchase order sets were not entitled to exemption from sales tax.

The taxpayer claimed that certain radio equipment purchased by him is exempt from sales tax because the equipment is exclusively and directly used in a manufacturing process under sec. 77.54(6), Wis. Stats. The radio equipment consisted of a base station and several remote handsets which were used for communication among the taxpayer's employees during production of the concrete slabs and beams.

The Commission concluded that the taxpayer may not claim an exemption for packaging materials under sec. 77.54(6)(b), Wis. Stats., because all items transported with the aid of the claimed materials were used in the taxpayer's real property construction activities.

Similarly, materials or components which the taxpayer alleged to have been consumed in his production activities are not eligible for exemption under sec. 77.54(2), Wis. Stats., because none of the resulting components produced were "destined for sale," as the statute requires.

The radio equipment is not eligible for exemption because it was not directly used in a manufacturing process. The crane and tractor are not

eligible for exemption because the taxpayer admitted the absence of exclusive and direct use of the crane and tractor in a manufacturing process.

The taxpayer has not appealed this decision. ☐

**— Exemptions — common or contract carrier vehicles; Government purchases; Use tax — liability of user. *R-K Towing, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 20, 1994).** The issues in this case are:

- A. Whether the taxpayer was assessed additional sales and use taxes on certain purchases of office supplies from New England business Supply ("NEBS"), for which sales tax was remitted by the taxpayer at the time of the purchases.
- B. Whether the taxpayer was assessed additional sales and use taxes on certain purchases from All Color Sign/Arts, for which sales tax was remitted by the taxpayer at the time of the purchases.
- C. Whether the taxpayer's purchase of an engine from A-Able Butler Auto Salvage was a nontaxable purchase for resale.
- D. Whether interest may be assessed against the taxpayer to the extent that liabilities against it are affirmed.
- E. Whether the taxpayer is entitled to a credit for sales taxes collected and remitted by it on sales of towing services to the Cudahy Policy Department.

The taxpayer was engaged in business providing tow truck services for hire.

The taxpayer's towing services consisted primarily of towing disabled automobiles to third party repair shops or, in some instances, to a storage yard maintained at the taxpayer's place of business in Cudahy, Wisconsin, to be stored on a temporary basis. The taxpayer's president performed incidental private auto repair services for relatives and acquaintances at the taxpayer's place of business, but the taxpayer did not hold itself out to the public for business as an auto or truck repair service during the period under review.

The department conceded that the taxpayer's use of tow trucks in the provision of towing services qualified it as an exempt "contract carrier" as that term is used in sec. 77.54(5)(b), Wis. Stats. Accordingly, all lease payments on tow trucks as well as purchases of parts, repairs, accessories, attachments, and supplies relating to the taxpayer's tow trucks which were originally included in the measure of the department's assessment are exempt from sales or use tax.

The taxpayer conceded that its purchases of mobile communications equipment and remote paging services and equipment during the period under review were properly subject to sales or use tax.

The taxpayer produced a letter from NEBS, as support for the contention that the taxpayer paid sales tax on purchases from NEBS which were included in the measure of the department's use tax assessment. The letter indicates that "NEBS has charged, and R.K. Towing has paid 5.5% sales tax on all orders that have been shipped... All three invoices enclosed have been paid in full and include tax." The letter itself is not specific as to the date of the transactions addressed, nor has the taxpayer provided those invoices to which the letter makes reference.

The taxpayer produced a notation dated May 5, 1993 on a sales invoice form of All Color Sign/Arts to support the contention that the taxpayer had previously paid sales tax on purchases from All Color Sign/Arts which were included in the measure of the department's use tax assessment. The notation indicates "All signs bought from [All Color Sign/Arts] by R.K. Towing are charged sales tax." The notation contains no reference to specific invoices and indicates no time frame to which its assertion applies.

A notation found in the schedules supporting the department's assessment in this case indicates that a portion of the taxpayer's purchases from All Color Sign/Arts was attributable to lettering applied to the exterior of the taxpayer's tow trucks.

The taxpayer produced two invoices—the first, for the purchase of a "390 Motor and C.G. Trans." from A-Able Butler Auto Salvage; the second, a sales invoice of the taxpayer indicating full payment for repairs to a 1977 Pontiac Firebird — to support the contention that the motor purchased was incorporated in the invoiced repair. The taxpayer testified at the hearing that the motor purchased was not subsequently resold as a component of the taxpayer's sale of repair services but that another invoice, which was not produced, could corroborate the resale.

During the period under review, the taxpayer performed towing services at the request of certain municipalities, including some law enforcement agencies. During the hearing, the taxpayer introduced several invoices relating to services performed for the Cudahy Police Department.

The department offered a credit to the taxpayer based upon sales taxes collected and remitted on the taxpayer's

sales of towing services to the Cudahy Police Department.

The Commission concluded:

- A. The purchases from NEBS were subject to use tax. The transactions comprised purchases of tangible personal property which was subsequently stored, used, or otherwise consumed in Wisconsin and no sales tax was demonstrated to have been paid. The taxpayer did not present any source documents or testimony which demonstrated by clear and convincing evidence that any tax was previously paid on those purchases.
- B. The taxpayer is not liable for sales or use tax on purchases from All Color Sign/Arts which involved lettering on the taxpayer's tow trucks. Such purchases are exempt under sec. 77.54(5)(b), Wis. Stats.

The taxpayer's remaining purchases from All Color Sign/Arts, which do not relate to the contract carrier exemption, have been appropriately included in the department's assessment because the taxpayer has failed to demonstrate by clear and convincing evidence that tax was previously paid on those purchases.

- C. The taxpayer is liable for use tax assessed against it on its purchase of an engine from A-Able Butler Auto Salvage because the taxpayer failed to present clear and convincing evidence that the engine was resold or incorporated into a taxable service provided by the taxpayer to third parties.
- D. To the extent that this decision affirms the department's actions, as modified by stipulation, interest has been appropriately assessed on the remaining amounts of tax.

- E. The taxpayer is entitled to an offset for taxes collected and remitted on services provided to the Cudahy Police Department. The services are exempt from sales or use tax under sec. 77.54(9a), Wis. Stats., as a sale of taxable services to an "instrumentality of one or more units of government in this state."

Neither the taxpayer nor the department have appealed this decision. □

**Rebates; Sovereign immunity.** *John Grall, et al., vs. Mark Bugher, Secretary of the Wisconsin Department of Revenue* (Court of Appeals, District IV, December 16, 1993). This is an appeal from an order of the Circuit Court for Dane County. For a summary of that decision, see *Wisconsin Tax Bulletin* 81 (April 1993), page 12. The dispositive issue in this case is whether the department is immune from suit.

The taxpayers purchased new automobiles from Wisconsin dealers under a "manufacturer's rebate" program, and the state sales tax was applied to the full, undiscounted price of the vehicles. The taxpayers sued the department, claiming that the manufacturer's rebates should not have been subject to sales tax. They sought a refund of the additional sales taxes paid and a declaration that the department's taxing scheme, as it applies to automobile manufacturer's rebates, was unconstitutional and void.

The department argued that the case should be dismissed on the grounds that the claims were barred by principles of sovereign immunity. The taxpayers argued that immunity should not apply, asserting that a United States Supreme Court decision, *McKesson Corp. v. Division of Alcoholic Beverages & Tobacco*, (1990), states a "rule of federal law" that states must refund unconstitution-



ally collected taxes, and that this rule “overrides the State’s sovereign immunity defense” under the mandate of the supremacy clause of the United States Constitution. The taxpayers further argued that the Wisconsin Constitution itself “waives” immunity by consenting to suits such as this. They point to Article VIII, section 1, which provides that “[t]he rule of taxation shall be uniform.”

The Circuit Court dismissed the case, ruling that *McKesson* was inapplicable because the taxpayers — unlike the distributors in *McKesson* — were not the parties who paid the sales taxes to the state. Under sec. 77.52(1), Wis. Stats., the sales tax “is imposed upon all *retailers*” on “the *gross receipts* from the sale ...” (emphasis added).

The Court of Appeals concluded that the Circuit Court properly held that the *McKesson* case was inapplicable and properly dismissed the taxpayers’ claims on sovereign immunity grounds. It did not consider the “uniformity clause” to have waived the department’s immunity from this lawsuit. There is nothing in that clause even remotely authorizing suits against the state under the circumstances presented here.

The taxpayers have appealed this decision to the Wisconsin Supreme Court. □

## TEMPORARY RECYCLING SURCHARGE

### Temporary recycling surcharge — constitutionality.

*Love, Voss & Murray vs. Wisconsin Department of Revenue* (Circuit Court for Waukesha County, May 22, 1994). The taxpayer petitioned for judicial review of a Wisconsin Tax Appeals Commission decision and order dated February 8, 1994. The taxpayer claimed that the Wisconsin temporary recycling surcharge, subch. VII of ch. 77, Wis. Stats., is unconstitutional in that it gives different treatment to noncorporate farmers and all other noncorporate businesses. The taxpayer argued that the surcharge is a violation of the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution and Article I, Section 1, of the Wisconsin Constitution. For a summary of the Wisconsin Tax Appeals Commission’s decision, see *Wisconsin Tax Bulletin* 86 (April 1994), page 20.

In regards to challenges of a statute under the Equal Protection Clause, “[t]he general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest.” Further, in equal protection challenges, the petitioner has the burden of proving that there is abuse of legislative direction beyond a reasonable doubt.

The surcharge is designed to deal with the recycling of solid waste. The taxpayer argued that the surcharge rate should not be reduced for farmers as they significantly contribute to the pollution addressed by the surcharge in the form of toxic agricultural products. The taxpayer’s argument is not related to the solid waste problem addressed by the surcharge but to hazardous waste.

The department also submitted that the difference in the surcharge is in furtherance of a legitimate state interest in that it aids the protection and preservation of the family farm, which historically has been a recognized legitimate interest of the State of Wisconsin.

Additionally, the partial exemption for noncorporate farmers is sufficiently rationalized in the farmers’ inability to pass on the surcharge in the price of their product, as their prices are set by standards.

The Circuit Court concluded that the Wisconsin temporary recycling surcharge is constitutional as it rationally furthers a legitimate state interest.

The taxpayer has appealed this decision to the Court of Appeals. □



## 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:

### Corporation Franchise and Income Taxes

1. Wisconsin Treatment of Foreign Sales Corporations (p. 26)

### Sales and Use Taxes

2. Communication Cables and Networking (p. 27)

### CORPORATION FRANCHISE AND INCOME TAXES

#### 1 Wisconsin Treatment of Foreign Sales Corporations

**Statutes:** Sections 71.04(4) and 71.11(7r), Wis. Stats. (1985-86), and secs. 71.26(3)(j), (r), and (t) and 71.30(2) and (5), Wis. Stats. (1991-92)

**Note:** This tax release supersedes the tax release titled "Wisconsin Treatment of Foreign Sales Corporations and Domestic International Sales Corporations" that was published in *Wisconsin Tax Bulletin* 70 (January 1991), page 21.

**Background — Federal Law:** Beginning after December 31, 1984, the Tax Reform Act (TRA) of 1984 generally replaced the system of Domestic International Sales Corporations (DISCs) with a new system of Foreign Sales Corporations (FSCs). Under the FSC system, a portion of the foreign trade income of a FSC is exempt from federal tax at the corporate level, provided it is derived from the foreign presence and economic activity of the FSC.

To qualify as a FSC, a corporation must meet the requirements of section 922(a)(1) of the Internal Revenue Code (IRC), which are designed to ensure that it has adequate foreign presence. If a corporation meets all of the requirements, and makes an election that complies with the procedural requirements of sec. 927(f)(1), IRC, it will be treated as a FSC by the Internal Revenue Service. The requirements are:

1. It must be incorporated under the laws of a qualifying foreign country or U.S. possession [Treas. Reg. § 1.921-2(a), Q&A 1(i)].
2. It must have 25 or fewer shareholders at all times [Treas. Reg. § 1.921-2(a), Q&A 1(ii)].
3. It can have no preferred stock [Treas. Reg. § 1.921-2(a), Q&A 1(iii)].
4. It must maintain an office in a qualifying foreign country or any U.S. possession and must maintain a set of permanent account books at its foreign office. At a minimum, these records must consist of invoices, quarterly

income statements, and a year-end balance sheet [Treas. Reg. § 1.921-2(a), Q&A 1(iv)].

5. It must maintain certain tax and accounting records within the United States to facilitate audits [Treas. Reg. § 1.921-2(a), Q&A 1(v)].
6. It must have at least one director who is not a resident of the United States [Treas. Reg. § 1.921-2(a), Q&A 1(vi)].
7. It cannot be a member of a controlled group of corporations that also includes a DISC [Treas. Reg. § 1.921-2(a), Q&A 1(vii)].
8. It must file an election to be treated as a FSC [Treas. Reg. § 1.921-2(a), Q&A 1(viii)].

In addition, the FSC must meet (a) foreign management and (b) foreign economic process tests.

The foreign management requirement is met if the FSC performs all three of the following activities:

1. Holds all board of directors and shareholder meetings outside the United States [Treas. Reg. § 1.924(c)-1(b)];
2. Maintains its principal bank account outside the United States at all times during the taxable year [Treas. Reg. § 1.924(c)-1(c)]; and
3. Disburses all dividends, legal and accounting fees, and salaries of officers and directors from a bank account outside the United States [Treas. Reg. § 1.924(c)-1(d)].

The foreign economic process requirement is met if the following two elements are met by either the FSC directly or by a contractual agent on the FSC's behalf:

1. The FSC, or its agent, must participate outside the United States in one of the following:
  - a. The solicitation (other than advertising) of sales;
  - b. The negotiation of sales; or
  - c. The making of a contract relating to an export transaction (referred to as the "making a sale" test) [Treas. Reg. § 1.924(d)-1(c)].
2. The "foreign direct costs" incurred by the FSC must be at least 50% of the "total direct costs" incurred by the FSC in certain direct cost categories. The direct cost categories are:
  - a. Advertising and sales promotion;
  - b. Processing of customer orders and arranging for delivery of export property;
  - c. Transportation from the time of acquisition by the FSC;
  - d. Determination and transmittal of a final invoice or statement of account and the receipt of payment (billing and collection); and
  - e. Assumption of credit risk.

An alternative direct cost test is satisfied if the foreign direct costs incurred by the FSC are at least 85% of the costs attributable to activities in any two of the above five categories [Treas. Reg. § 1.924(d)-1(d)].

**Question:** What is the Wisconsin tax treatment of FSCs?

**Answer:** The Wisconsin Statutes provide no special tax treatment for FSCs. Section 71.26(3)(r) and (t), Wis. Stats. (1991-92), specifically excludes the federal tax treatment of FSCs.

The net income of a FSC is subject to taxation as a separate corporation if it has nexus in Wisconsin and is a viable corporation with substance.

In *Kimberly-Clark Corporation as successor to Kimtech Ltd. vs. Wisconsin Department of Revenue* (April 12, 1994), the Wisconsin Tax Appeals Commission concluded that Kimberly-Clark Sales Corporation (a FSC) was a separate corporation formed for substantial business reasons and which carried on substantial business activities. Kimberly-Clark Sales Corporation

- had its own officers and directors,
- had employees and offices, either directly or via service agreements,
- maintained substantial active bank accounts,
- conducted business activities in its own right,
- incurred and paid taxes, and
- paid its own organizational costs.

In both form and substance Kimberly-Clark Sales Corporation was a viable business enterprise. □

## SALES AND USE TAXES

**Note:** The following tax release interprets 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 January 1995 issue of the *Sales and Use Tax Report*. A copy can be found on pages 39 to 42 of this Bulletin.

## 2 Communication Cables and Networking

**Statutes:** Sections 77.51(2) and 77.52(2)(a)10, Wis. Stats. (1991-92)

**Wis. Adm. Code:** Section Tax 11.68(4)(b) and (6)(a)2, April 1994 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 tangible personal property in some instances and additions to real property in others. When the 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 tangible personal property.

Section Tax 11.68(6)(a)2, Wis. Adm. Code, provides that communication equipment remains tangible personal property when it is installed in non-residential buildings.

**Facts:** A contractor is in the business of installing communication systems in nonresidential buildings. Part of its business involves the following services:

- a. Installation of copper or fiber cable inside the walls. Work performed consists of physically installing telephone and computer outlet wiring, along with connecting and cross-connecting them to distribution cables.
- b. Cross-connecting or changing input/output ports at the wire distribution panel. This includes physically moving customer owned telephones and computer terminals from one outlet to another outlet.

**Question 1:** Is the computer cable installed inside the wall real or personal property for purposes of installation?

**Answer 1:** The computer cable inside the wall is tangible personal property for purposes of installation in a non-residential building. The computer cable serves the process being performed within the building rather than the real estate. Therefore, the charge for the sale and installation of the communication cable is subject to Wisconsin sales or use tax.

**Question 2:** Is computer cable inside the wall real or personal property for purposes of repair and maintenance?

**Answer 2:** The computer cable inside the wall is tangible personal property for purposes of repair and maintenance in a nonresidential building. Since the cable is tangible personal property for installation, it retains its character as tangible personal property for purposes of repair and maintenance. Therefore, the charge for the repair and maintenance of the cable is subject to Wisconsin sales or use tax.

**Caution:** Computer cable as mentioned above does not include electrical wiring.

**Question 3:** Is the charge for moving, dismantling, and reinstalling a computer or telephone and related

computer or telephone cable from one wall or floor outlet to another, subject to Wisconsin sales or use tax?

**Answer 3:** No. Although computers, telephones, and cable from a wall or floor outlet to the computer and/or telephone are tangible personal property in both residential and nonresidential buildings, the dismantling, moving, and reinstalling of tangible personal property is not a service subject to Wisconsin sales or use tax under sec. 77.52(2)(a), Wis. Stats. (1991-92).

See the tax release titled "Moving Machinery" in *Wisconsin Tax Bulletin* 3, for more information on moving services. □