



Wisconsin TAX BULLETIN



Filing Tax Returns

Professional Credentials May Be Withheld

The Department of Regulation and Licensing (DORL) may deny the renewal of credentials to applicants that owe delinquent Wisconsin taxes. "Credentials" are licenses, permits, or certificates of registration or certification issued by DORL.

The provision to deny renewals to delinquent taxpayers was included in the Budget Bill, 1995 Wisconsin Act 27. The law takes effect with credentials due for renewal beginning January 1, 1996.

DORL has over 264,000 credential holders. Most of these are renewed every two years, at various times over the biennium. Under the new procedure, renewal applications will be screened to identify applicants with state tax delinquencies. Those with delinquent liabilities will be allowed ten days to pay the amounts due. Applications will be denied by DORL if the delinquency is not resolved in that period. ☐

New "Stadium Tax"

Beginning January 1, 1996, there is a 0.1% stadium tax on the sale of and the storage, use, or consumption of tangible personal property and taxable services in the following 5 Wisconsin counties:

- Milwaukee
- Ozaukee
- Racine
- Washington
- Waukesha

The stadium tax was created for purposes of assisting the development of a professional baseball park in Wisconsin.

Important: The November 1995 *Sales and Use Tax Report* (4-95) was sent in early December 1995 to all persons registered for Wisconsin sales and use tax purposes. Information on page 6 of that *Tax Report*, regarding the bracket system used in collecting tax from customers, was incorrect. The December 1995 *Sales and Use Tax Report* (5-95), which appears on pages 41 to 47 of this Bulletin, replaces the November 1995 *Sales and Use Tax Report* (4-95). ☐

Use Tax Return Added to Partnership Booklet

The Form 3 Partnership Booklet for 1995 will contain a consumer use tax return (Form UT-5) and instructions. Partnerships are reminded that if they make purchases of taxable tangible personal property or taxable services

for storage, use, or consumption in Wisconsin without the payment of Wisconsin sales tax, they may owe Wisconsin use tax.

The instructions explain who must file, when and where to file the return, and how to calculate the partnership's use tax liability. ☐

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.

For information about the Wisconsin information return requirements, refer to the copy of Wisconsin Publication 117, *Guide to Wisconsin Information Returns*, on pages 49 and 50 of this Bulletin. ☐

Forms, Publications Now Available by Fax

Beginning January 31, 1996, anyone with a fax machine will be able to order and receive Wisconsin tax forms and publications by fax, using the department's new "Fax-a-form" system.

see Fax-a-Form, page 3

In This Issue

Articles —	Page		Page		Page
Professional Credentials . . .	1	Information Returns Sent		Tax Evasion	15
“Stadium Tax”	1	to Federal Retirees	7	How to Obtain Copies	16
Use Tax Return/Partnership . . .	1	Question and Answer	8	IRS District Directors	17
Information Returns Due . . .	1	1099-Gs, 1099-INTs Mailed . . .	9	Administrative Rules	18
Forms Available by Fax . . .	1	Business Tax Registration . . .	9	Recently Adopted Rules	19
Electronic Funds Transfer . . .	2	Incomplete Returns	11	Report on Litigation	22
Quick Refunds Available . . .	3	How to Obtain Forms	12	Tax Releases	30
Tips to Speed Refund	3	Petroleum Inspection Fees . . .	12	Private Letter Rulings	37
Use Your Label	4	Debts to Local Governments . . .	12	Attachments —	
Electronic Filing, Endangered		Withholding Update Sent . . .	12	December Tax Report	41
Resources	4	Recycling Rates	12	Petroleum Fee Notice	48
Federal/Wisconsin Differences . .	4	Avoid Errors on Returns . . .	12	Publication 117	49
Package WI-X Available . . .	6	Need a Speaker?	14	Publication 121	51
Reciprocity Publication . . .	6	Bulletin Index Available . . .	14	Withholding Tax Update	55
Taxpayer Assistance	6	Topical, Court Case Index . . .	14	Order Blank	57
Information, Inquiries? . . .	7	Publications Available	14		

Paying Taxes by Electronic Funds Transfer

The Department of Revenue offers electronic funds transfer (EFT) as a payment option for several types of state taxes. In addition, the department **requires** EFTs for payment of motor vehicle fuel tax and petroleum inspection fees.

The EFT payment option is available for payment of withholding tax; estimated tax for corporations, individuals, estates, and trusts; estimated temporary recycling surcharge for partnerships; excise taxes (beer, liquor/wine, cigarette, tobacco products); and general aviation and alternate fuel taxes.

EFT is a safe, fast, and efficient automated process for transferring tax payments to the department. It elimi-

nates the need for writing paper checks and filling out payment vouchers. The process can be as simple as making a toll free telephone call. The funds and tax payment information are transferred electronically through the Automated Clearing House (ACH) network, utilizing either the ACH Debit method or the ACH Credit method, with the funds getting deposited into the state treasury.

Wisconsin Publication 118, *Electronic Funds Transfer Guide*, provides general information about electronic funds transfers, specific ACH Debit and ACH Credit instructions, and a request form for EFT authorization. For a copy of Publication 118, or if you have further questions about EFT, you may call the department's EFT Information Line in Madison at (608) 264-9918, or you may write to:

Revenue Accounting — EFT Unit
Wisconsin Department of Revenue
P.O. Box 8912
Madison, WI 53708-8912.

Publication 118 can also be ordered by fax, using Fax-a-form (see the article titled “Forms, Publications Now Available by Fax,” beginning on page 1). □

Wisconsin Tax Bulletin

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

Subscriptions available from
Wisconsin Department of
Administration
Document Sales
P.O. Box 7840
Madison, WI 53707-7840
Annual cost \$7.00

Fax-a-Form (continued from page 1)**Fax-a-Form — What Is It?**

Fax-a-form is an automated system which enables taxpayers and practitioners to obtain forms and publications instantly via their fax machines.

How Does It Work?

- Call the Fax-a-form number, (608) 261-6229 (you must call from a fax telephone).
- Listen to the menu, then use the touch-tone keypad on your fax machine to enter the proper retrieval codes for the items desired.
- Receive the items you select, via your fax machine.

What's a Retrieval Code?

Each document offered by Fax-a-form has a number (a "retrieval code") assigned to it. A 4-page catalog is available, which lists all of the codes, and the number of pages for each document. You can have a catalog faxed to you by selecting that menu option when you call the Fax-a-form number. In addition, the retrieval codes for the most common forms are listed on the menu.

What's Available by Fax-a-Form?

All 1995 Wisconsin individual income, homestead credit, partnership, corporation, estate, fiduciary income, sales/use, and withholding tax forms (except a few forms which cannot be photocopied) are available, as well as the instructions for the forms. Amended individual income tax forms and instructions for 1993 and 1994 are also available. In addition, all publications published by the department are available (see the article titled "Tax Publications Available" on page 14 of this Bulletin for a listing of publications).

When Can Fax-a-Form Be Used?

Beginning January 31, 1996, Fax-a-form can be used any time, day or night, 365 days a year.

How Much Does It Cost to Use?

The Department of Revenue does not charge a fee for using the Fax-a-form service. Your only costs are the normal long-distance phone charges if applicable, plus your other fax machine operating costs.

Any Questions?

Contact the Fax-a-form system coordinator, at the following address, if you have any questions:

Wisconsin Department of Revenue
Fax-a-Form System Coordinator
Attn: Michael Banks
P.O. Box 8903
Madison, WI 53708-8903. ☐

Reminder: Quick Refunds Available for Individuals

The Department of Revenue will continue its Quick Refund Program for 1995 individual income tax returns processed in 1996. 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 necessary, an adjustment notice is mailed at that time.

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

- File a signed and completed 1995 Form WI-Z, Form 1A, or Form 1, including all attachments, on or before April 1, 1996.

- 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 1996 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 53787-0001.

Approximately 1.8 million refunds were issued in 1995, and over 470,000 of those were quick refunds. ☐

Tips to Speed Refund Processing

You can avoid delays in the processing of a Wisconsin income tax return by following these tips:

- Use the department-printed name and address label. If the information on the label is wrong, draw a line through the incorrect information and print the correct information clearly on the label.
- Make sure entries are made on the correct lines.
- Print words and numbers legibly.
- Attach the correct withholding statement(s) (Form W-2, W-2G, or 1099-R) to the return.
- Claim only Wisconsin tax withheld from the withholding statement(s). Many taxpayers mistakenly use the

federal tax or social security tax withheld or tax withheld for another state.

- Attach the necessary supporting schedules.
- 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.
- Attach a complete copy of the federal income tax return and schedules to the Wisconsin Forms 1 and 1NPR.
- Complete the married couple credit schedule when claiming this credit. Many taxpayers claim the credit but don't complete the schedule showing their computation.
- Attach a completed rent certificate if you are a renter claiming home-
stead credit (a rent certificate is not necessary if you are claiming only the renter's school property tax credit). ☐

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 you are 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. ☐

Electronic Filing and Endangered Resources Team Up

Many thanks to all electronic filers, for reminding your clients to donate to the Endangered Resources Fund. Their donations were higher, on average, than clients of preparers who did not file electronically. The Endangered Resources Fund is the major source of income for the Department of Natural Resources' Bureau of Endangered Resources (BER). All donations (up to \$500,000) are matched — so gifts are worth double to BER.

The Wisconsin Department of Revenue (DOR) and BER are once again joining forces to promote the benefits of electronic filing, and to remind filers to donate to the Endangered Resources Fund on their Wisconsin electronic returns.

Promotions will be radio ads, posters, and a variety of other media. These promotions, funded 50% by BER, are designed to encourage taxpayers to come to you for electronic filing services.

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

1. DOR will furnish to electronic filers on request, tapes of radio commercials advertising electronic filing and endangered resources 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 invited to contribute to the purchase of air time for

commercials advertising electronic filing and endangered resources donations. The commercials will air primarily in the Madison, Milwaukee, and Fox Valley areas. Every dollar contributed to this advertising fund will be matched by BER. To contribute, send a check or money order payable to "Wisconsin Natural Resources Foundation, Inc." to Wisconsin Natural Resources Foundation, Inc., P.O. Box 129, Madison, WI 53701. Make a notation on the check that it is for ERF/ELF. ***Please do NOT make checks payable to the Department of Revenue or send them to DOR.***

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. ☐

1995 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 1995. It is not intended to include all differences.

1995 Federal and Wisconsin Individual Income Tax 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 with or 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. Jobs credit	As of 11/1/95, credit allowed for person who began work before 1/1/95: 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	Subtraction for 30% of medical care insurance cost paid by a self-employed person	Subtraction for 50% of medical care insurance cost paid by an employee whose employer does not contribute toward the cost and 100% of cost paid by a self-employed person
14. Personal exemptions	\$2,500 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 for certain persons
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 1995	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

Package WI-X Available for 1995

Package WI-X contains actual size copies of most 1995 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 1995 Package WI-X, send your request and \$7 per copy, plus sales tax, to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903. □

New Reciprocity Publication

A new publication, Wisconsin Publication 121, *Reciprocity*, provides information on reciprocity and its effect on residents and nonresidents of Wisconsin.

Wisconsin has reciprocity agreements with five states: Illinois, Indiana, Kentucky, Michigan, and Minnesota. As a result of these agreements,

- (1) Wisconsin generally will not tax the personal service income (for example, salaries, wages, commissions, and fees earned by an employee) of individuals who are domiciled in these states and who are employed in Wisconsin, and
- (2) Illinois, Indiana, Kentucky, Michigan, and Minnesota generally will not tax the personal service income of individuals who are domiciled in Wisconsin and who are employed in these states.

A copy of Publication 121 is reproduced on pages 51 to 54 of this Bulletin. □

Department Offers Taxpayer Assistance

During the filing season of January through April 15, 1996, 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	1000 Log Lodge Ct.	(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	100 Ranch Rd.	(715) 634-8478	7:45-11:45
Hudson	1810 Crestview Dr., Ste. 1B	(715) 381-5060	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	644 Hillcrest Dr., Ste. 2	(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

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

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 1995.

Form 1099-G will be used to report refunds of Wisconsin income tax. Form 1099-INT will be used to report payments of interest.

Form 1099-INT

Form 1099-INT will be sent to all federal retirees who received payments of interest from the department in 1995. The interest shown on the Form 1099-INT is includable in both federal and Wisconsin taxable income.

Form 1099-G

Form 1099-G will be sent to federal retirees who meet both of the following conditions:

- (1) Received a refund of Wisconsin income tax in 1995, and
- (2) Claimed state income tax payments as an itemized deduction on their federal tax return for the year to which the refund applies.

(Note: A Form 1099-G will not be sent to a federal retiree who received a refund of income tax in 1995 but did not itemize deductions on his/her federal return for the year to which the refund applies.)

The tax year to which the refund applies is identified on the Form 1099-G.

Example:

- Federal retiree received refund installments totalling \$1,200 during 1995. Of this amount, \$200 was payment of interest, \$600 was a refund of 1985 tax, and \$400 was a refund of 1986 tax.

- Retiree claimed state income tax payments as an itemized deduction on his/her 1985 federal income tax return, but claimed the standard deduction on the 1986 federal income tax return.

- Department will send retiree a Form 1099-G showing the \$600 refund of tax for 1985. Form 1099-G will not be sent for the refund of 1986 tax because retiree did not itemize deductions on the 1986 federal income tax return.

- Department will also send retiree a Form 1099-INT showing the \$200 of interest paid by the department in 1995.

Taxability of State Income Tax Refund Shown on Form 1099-G

Wisconsin — The state income tax refund should not be included in Wisconsin taxable income.

Federal — All or a portion of a state income tax refund from Form 1099-G may be includable in 1995 federal taxable income. 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.

Information Return Differences

There are three reasons why the total amount received by a federal retiree may differ from the total amount shown on the Forms 1099-G and 1099-INT. These reasons are:

- (1) The federal retiree did not itemize deductions on the federal return for one or more tax years; therefore, a Form 1099-G was not sent to the retiree for that year(s).

Information Returns to Be Sent to Federal Retirees

During January 1996, Form 1099-G and/or Form 1099-INT information returns will be mailed by the Wisconsin Department of Revenue to federal retirees who received in 1995, refunds of Wisconsin income tax they

(2) The federal retiree is participating in the class action in *Department of Revenue v. Hogan, et al.* The department is required to put a portion of the refund into an escrow account for attorney fees.

The amount that was put into an escrow account is considered income constructively received by the retiree and is included in the information return amounts.

(3) All or a portion of the refund was offset against delinquent taxes, delinquent child support, or debts owed to other state agencies, municipalities, or counties. ☐

Question and Answer

Q Why should I use the mailing label that came with my Wisconsin tax form booklet?

A The mailing label is designed to speed processing of your tax return and prevent common errors that delay refund checks. The mailing label is on the front of the income tax form booklet which is sent to taxpayers. Apply the label to the completed tax return you submit to the department. If you received a postcard with a mailing label instead of an income tax booklet, be sure to transfer the label from the postcard to your tax return.

Q May I still use the label if some of the preprinted information on the label is incorrect?

A Yes. However, you should cross out any incorrect information on the label and print the correct information. For example, if the preprinted address on your mailing label is not your current address, cross out your old address and print your new address.

Q What should I do if I don't have a label?

A If you didn't receive or don't have a label, print or type the information in the spaces provided on the tax form.

Q A business friend recently showed me several tax booklets she received from your department. How can I find out more about your free publications?

A Call the department's Forms Request Office in Madison at (608) 266-1961 and request Publication 502, *Do You Have Wisconsin Tax Questions?* It includes a list of over 40 publications the Department of Revenue provides free of charge. If you prefer, you may mail your request to Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903, or you may order it by fax, by calling the department's Fax-a-form number, (608) 261-6229, from a fax telephone.

Q As the operators of a restaurant, we employ persons as waiters and waitresses. For federal corporation income tax purposes, we can claim a tax credit for a portion of the employer social security taxes on employee cash tips. If we take the credit, we may not claim a deduction on our federal income tax return for the amount used in determining the employer social security credit. Since Wisconsin does not have an employer social security credit, may we claim a deduction for the employer social security taxes on our Wisconsin franchise or income tax return?

A Yes. Federal law gives you the option of claiming either (1) a deduction for the employer social security taxes, or (2) a tax credit based on those expenses. Therefore, you may take a deduction on your Wisconsin return for the employer social security taxes that would have been deductible federally, if you had not claimed the tax credit.

Q My husband and I have been separated for two years. In October 1995 we went to court, and the judge ordered him to pay me \$200 per month beginning November 1, to help support our child, who lives with me. Prior to the court order, he was already giving me \$150 per month, even though he was not required to do so. In 1995 the total amount of child support I received was \$1,900 (10 months at \$150 and 2 months at \$200). Is the \$1,900 includable in household income on my 1995 homestead credit claim?

A Only a portion of the \$1,900 is includable. Court ordered support payments must be included in household income (on Schedule H, line 11g). However, voluntary payments are considered gifts and are not includable. Therefore, the \$1,500 of voluntary payments you received before you went to court ($10 \times \$150 = \$1,500$) is not includable in household income, but the \$400 paid as a result of the court order must be included. ☐

Form 1099-Gs and 1099-INTs Mailed to Taxpayers

Federal law requires that the Department of Revenue provide 1995 information returns (Form 1099-Gs) to persons who received a Wisconsin income tax refund in 1995 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 18,000 Form 1099-INTs and 580,000 Form 1099-Gs during December of 1995 and January of 1996. (See a related article titled "Information Returns to Be Sent to Federal Retirees" on page 7 of this Bulletin.)

Regardless of whether a taxpayer is sent a Form 1099-INT, the taxpayer must report all interest received in 1995 as income on his or her 1995 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.

Form 1099-G explains how the refund reported to the Internal Revenue Service (IRS) was determined. The first line shows the amount of the refund. Subsequent lines show 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 other adjustments. The last line shows the refund reported to the IRS. ☐

New Business Tax Registration

New Law:

Persons applying on or after January 1, 1996, for certain permits or certificates issued by the Department of Revenue may be required to pay a Business Tax Registration (BTR) fee of \$20, as explained below. Applications postmarked or received in department offices before January 1, 1996, are not subject to the BTR fee.

The \$20 BTR fee applies only to the first permit or certificate a person applies for on or after January 1, 1996. Subsequent registrations for other permits or certificates do not require additional BTR fees.

All types of entities, including federal, state, and local government agencies, are subject to the BTR fee.

Permits/Certificates Covered by BTR:

The BTR fee applies to most permits or certificates relating to the following taxes:

- withholding (i.e., employer identification number)
- sales and use (e.g., seller's permit or use tax registration certificate)
- motor vehicle fuel
- alternate fuel
- general aviation fuel
- alcohol beverage
- cigarette
- tobacco products.

See "Exceptions" below for a listing of permits and certificates to which the BTR fee does not apply.

A person applying for a temporary seller's permit is subject to the \$20 BTR fee if the person does not hold any other active registration (permit or certificate) that is subject to the

fee. No additional BTR fee will apply for subsequent temporary permits issued within a two-year period following the initial application.

Exceptions:

The \$20 BTR fee is not required for:

- sales and use tax certificates of exempt status
- consumer's use tax registration certificates
- local exposition district tax permits
- medicinal alcohol permits
- sacramental wine permits
- tobacco products salesperson permits
- fuel transporter permits.

Also, there is no BTR fee requirement for out-of-state employers who are not required to withhold tax, but who apply for a Wisconsin employer identification number for the convenience of their employees. Such employers must attach a letter to the application, explaining the situation, so that the BTR fee will not be charged.

Persons Who Held Permits or Certificates on December 31, 1995:

Persons who held any active permit or certificate on December 31, 1995, that is covered by the BTR provisions, do not have to pay the \$20 BTR fee.

Example: Employer ABC has been in business for several years and had a Wisconsin employer identification number on December 31, 1995. ABC does not have to pay the \$20 BTR fee.

Persons who held any active permit or certificate on December 31, 1995, that is covered by the BTR provisions, may apply for additional permits or certificates without paying the \$20 BTR fee.

Example: Employer ABC in the previous example applies for a seller's permit in 1996. ABC does not have to pay the \$20 BTR fee.

Persons who held only permits or certificates on December 31, 1995, that are not covered by the BTR provisions, must pay the \$20 BTR fee if they apply for a permit or certificate that is subject to the BTR fee.

Example: XYZ Youth Hockey Team, which holds a sales and use tax certificate of exempt status issued in 1994, hires two employees and applies for a Wisconsin employer identification number in 1996. XYZ is required to pay the \$20 BTR fee.

Completing a New Application:

Persons applying for a permit or certificate should indicate on the application whether they hold (or held on December 31, 1995) an active permit or certificate with the department. The \$20 BTR fee will not apply if the person has a registration covered by BTR, that is currently active or was active on December 31, 1995.

The information regarding prior registration should be entered on the application as follows:

Sales, use, or withholding tax —

Enter the type and number of each registration covered by BTR that is currently active or was active on December 31, 1995, on line 8 of Form A-101, *Application for Permit/Certificate*.

Excise taxes —

Enter the type and number of each registration covered by BTR that is currently active or was active on December 31, 1995, at the top of the excise permit application (near the department name and address area).

Renewals:

The initial \$20 BTR fee covers a period of two years. At the end of that period, a \$10 BTR renewal fee applies. The renewal fee applies to all persons holding permits or certificates subject to BTR provisions, including those who paid the initial \$20 BTR fee and those who were not required to pay the initial \$20 fee because they held an active registration on December 31, 1995.

The first renewals will occur in 1998. The Department of Revenue will send a renewal notice.

Example: Repairman DEF holds a seller's permit issued in 1986, so he was not required to pay the initial \$20 BTR fee. Even though he didn't have to pay the \$20 fee, he *will* be required to pay the \$10 renewal fee in 1998.

Expedited Fee:

Persons may receive immediate service on their applications for permits or certificates covered by the BTR provisions. This service is available only at the following department offices:

- 4638 University Avenue, Madison
- 819 North 6th Street, Milwaukee.

A \$10 "expedited fee" will be charged for this service. The fee will be charged for each entity applying.

Alcohol Beverage Fees:

In addition to the initial \$20 BTR fee and the \$10 BTR renewal fee, other BTR fees apply to persons obtaining or renewing certain alcohol beverage permits. The permits for which additional fees are required, and the amounts of the additional fees (for a two-year period), are as follows:

- Wisconsin Liquor/Wine —
 - Manufacturer, \$1,000
 - Wholesaler, \$1,000

- Rectifier, \$1,000
- Winery, \$200
- Sports Club, \$600
- Vessel, \$600
- Airport/Public Facility, \$600
- Distilled Spirits/Wine —
 - Public Warehouse Alcohol Beverages, \$200
 - Out-of-State Shipper of Liquor, Wine, \$500.

These additional BTR fees replace the annual fees that were in effect prior to enactment of the BTR provisions.

Questions and Answers:

Q: I applied for a Wisconsin employer identification number in mid-January, 1996, and enclosed a check for the \$20 BTR fee. I later realized that I didn't owe the fee because I obtained a seller's permit in 1994, which is still active. What should I do?

A: Write to the department and explain the situation. Provide copies of the front and back of the check, along with the seller's permit number. Once the information has been verified, a refund will be issued to you.

Q: Our church holds a sales and use tax certificate of exempt status with the department. We have no other permit or certificate. We have just hired a full-time custodian as an employee and must apply for a Wisconsin employer identification number. Do we have to pay the \$20 BTR fee?

A: Yes. The certificate of exempt status which you hold is not covered by the provisions for BTR, so the \$20 fee must be paid when you apply for the Wisconsin employer identification number.

Q: I am starting a business and am registering for seller's permits for 10 locations in Wisconsin, as well as a Wisconsin employer identification number. What is the amount of the fee that I owe for these permits?

A: The BTR fee is \$20, regardless of the number of different types of permits or certificates you need, or the number of locations for which you need seller's permits.

Q: I ceased operating my business in November 1995 and mailed my seller's permit to the Department of Revenue at that time. This was the only permit or certificate that I ever held with the department. If I resume operating my business in 1996 and wish to have my seller's permit reactivated, will I owe the \$20 BTR fee?

A: Yes. The \$20 BTR fee is due because you held no active permit or certificate covered by the BTR provisions on December 31, 1995. ☐

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 1995 processing season (1994 returns and claims) the department sent back 12,000 individual income tax returns, 4,000 corporation franchise and income tax returns, 400 partnership returns, 36,000 homestead credit claims, and 2,000 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 (Forms W-2, W-2G, and 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 or less 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 incorrect, incomplete, or not attached.
- Copy of **executed** farmland preservation agreement not attached.
- 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.

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. ☐

How to Obtain Wisconsin Tax Forms

Small supplies of Wisconsin tax forms can be obtained from any Department of Revenue office. Requests are 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 Wisconsin Department of Revenue, Forms Request Office, 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."

Forms are also available by fax, using the department's new "Fax-a-form" system. See the article titled "Forms, Publications Now Available by Fax" on page 1 of this Bulletin, for more information about Fax-a-form. □

Department of Revenue to Collect Petroleum Inspection Fees

The Budget Bill enacted in July 1995 (1995 Wisconsin Act 27) transfers the responsibility for collecting the 3¢ per gallon Wisconsin petroleum inspection fee from the Department of

Industry, Labor and Human Relations to the Department of Revenue. This change applies to petroleum inspection fees owing on fuel transactions that occur on and after January 1, 1996.

The law change also moves the collection point of the petroleum inspection fee to the same level as the Wisconsin motor vehicle fuel tax (i.e., when fuel is metered out at the pipeline terminal or refinery rack, or upon its receipt in Wisconsin by any other method). Licensed motor vehicle fuel suppliers will compute the inspection fee themselves each month and remit it along with their monthly motor vehicle fuel tax liability, via EFT (electronic funds transfer).

A notice explaining this law change has been sent to all licensed suppliers of motor vehicle fuel. A copy of the notice appears on page 48 of this Bulletin. □

Refunds May Be Used to Offset Debts to Local Governments

A provision in the Budget Bill, 1995 Wisconsin Act 27, authorizes the Department of Revenue to intercept state tax refunds to pay certain debts which taxpayers owe to counties and municipalities. This program, which will be operational in early 1996, will assist local governments in recovering unpaid fines, fees, restitutions, or forfeitures.

Taxpayers who are certified for this tax intercept will be notified by the department in writing, within five days of the certification. They will be advised of where the tax refund has been applied and of any applicable appeal rights. Any questions regarding the debt should be directed to the municipality or county indicated on the notice, as the department will not have that information. □

Withholding Tax Update Sent to Businesses

The annual Withholding Tax Update was sent in December 1995, 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 55 and 56 of this Bulletin. □

Recycling Surcharge Rates Unchanged

The temporary recycling surcharge rates remain unchanged for taxable years beginning on or after January 1, 1996, and before January 1, 1997.

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. □

Avoid Errors on Income or Franchise Tax Returns

Are your tax returns and credit claims filed without errors? Many errors are discovered each year, either in processing or in subsequent audits by the department. The information below may be helpful in preparing Wisconsin tax returns or credit claims.

Errors Discovered in Processing Returns

Common errors discovered in processing 1994 individual income tax returns include the following:

- MATH ERRORS — 270,000 returns (10% of returns processed) were adjusted for math errors.
- SCHOOL PROPERTY TAX CREDIT — 37,000 returns were adjusted for errors in claiming this credit; 80% of the errors were in looking up the credit.
- ITEMIZED DEDUCTION CREDIT — 33,000 returns were adjusted, two-thirds for errors in looking up the standard deduction.
- INCOMPLETE RETURNS — Processing of many returns was delayed because of missing information, such as school or tax district, school property tax credit, earned income credit, itemized deduction credit, or taxes paid to other states.
- ESTIMATED TAX UNDERPAYMENT — 37,000 returns were adjusted for underpayment interest.
- TEMPORARY RECYCLING SURCHARGE — Most errors included checking the special worksheet box or listing net income or loss when not subject to the surcharge.
- TAX WITHHOLDING ERRORS — Most errors included claiming social security or another state's withholding as Wisconsin tax withheld.

Audit Adjustments

Errors discovered in auditing Wisconsin tax returns and credit claims by department auditors resulted in the collection of \$125.7 million in taxes, excess credits, penalties, and interest in the fiscal year ending June 30, 1995. This includes sales and use taxes of \$43.4 million, income taxes (including credits) of \$36 million, corporation taxes of \$36.9 million, and other taxes (inheritance, alcohol, tobacco, fuel, etc.) of \$9.4 million.

The most common errors, for income taxes, homestead credit, and farmland preservation credit, are described below.

Individual and Fiduciary Income Taxes

- INCOME COMPUTED INCORRECTLY —
 - unemployment compensation or social security (federal/Wisconsin differences calculated incorrectly).
 - capital gains (60% exclusion not taken or taken when not allowed).
 - capital losses (claimed amount in excess of \$500 limitation).
 - tax-option (S) corporation income (wrong amount entered from Schedule K-1).
- INCOME OMITTED —
 - IRA distributions.
 - total gross receipts.
 - municipal interest.
 - interest and dividends.
- CREDITS COMPUTED INCORRECTLY —
 - dependent (incorrectly claimed for self or spouse).
 - earned income (claimed in error or computed incorrectly).
 - taxes paid to other states (incorrectly claimed other state's withholding).
 - school property tax (incorrectly claimed on business portion).
 - itemized deduction (percentage of income not subtracted from medical or miscellaneous deductions, or taxes or casualty losses claimed).
- INCORRECT DEDUCTIONS OR EXPENSES —
 - IRA deduction (omitted or claimed incorrectly).
 - personal travel or entertainment (incorrectly claimed as business expenses).
 - office-in-home (not qualified to claim).

OTHER ERRORS —

- IRA penalty omitted.
- Wisconsin return not amended for IRS adjustments.
- incorrect filing status used.
- farm loss limitation not properly computed.
- temporary recycling surcharge omitted or calculated incorrectly.
- capital loss carryover not claimed in subsequent year.

Homestead Credit

HOUSEHOLD INCOME NOT INCLUDED —

- AFDC.
- IRA/deferred compensation deductions.
- unemployment compensation.
- depreciation or sec. 179 expense.
- net operating loss or capital loss carryover.
- tax-exempt interest.
- one-time exclusion from sale of residence.
- PROPERTY TAXES —
 - special assessments incorrectly claimed.
 - lottery credit not subtracted.
 - taxes not properly prorated for co-ownership or for occupancy only part of year.
 - taxes not reduced for months AFDC received.
- RENT —
 - rent not reduced for joint occupancy.
 - percentage of rent constituting property taxes computed incorrectly.
 - rent not reduced for months AFDC received.
- CREDIT — amount looked up incorrectly in computation table.

Farmland Preservation Credit

- HOUSEHOLD INCOME NOT INCLUDED —
 - gross pension.
 - depreciation.
 - deferred compensation.
 - capital gain exclusion.
- PROPERTY TAXES —
 - special assessments incorrectly claimed.
 - lottery credit not subtracted.
 - taxes not properly prorated for co-ownership.
 - taxes incorrectly claimed for land not covered by zoning certificate or agreement.
 - incorrect computation.
- CREDIT PERCENTAGE — incorrect percentage claimed. ☐

**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. ☐

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* 92 (July 1995), pages 35 to 61, and includes information for issues 1 (October 1976) to 90 (January 1995). ☐

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 57 of this Bulletin. The order blank may also be used for subscribing to the *Wisconsin Tax Bulletin* and for ordering the Wisconsin Administrative Code. ☐

Tax Publications Available

The Department of Revenue publishes over 40 publications that are available, free of charge, to taxpayers or practitioners. To order any of the publications, write or call Wisconsin Department of Revenue, Forms Request Office, P.O. Box 8903, Madison, WI 53708-8903 (telephone (608) 266-1961).

Publications can also be ordered by fax, using the department's new "Fax-a-form" system. See the article titled "Forms, Publications Now Available by Fax" on page 1 of this Bulletin for more information about Fax-a-form.

Number	Title of Publication (and last revision date)
102	Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/95)
103	Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, Trusts (10/95)
104	Wisconsin Taxation of Military Personnel (8/95)
106	Wisconsin Tax Information for Retirees (11/95)

109	Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 1995 (10/95)	203	Sales and Use Tax Information for Manufacturers (12/94)	506	Taxpayers' Appeal Rights of Field Audit Adjustments (10/95)
111	How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (5/95)	205	Do You Owe Wisconsin Use Tax? (Individuals) (9/95)	507	How to Appeal to the Tax Appeals Commission (10/95)
112	Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (8/94)	206	Sales Tax Exemption for Nonprofit Organizations (9/90)	508	Wisconsin Tax Requirements Relating to Nonresident Entertainers (8/94)
113	Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/95)	207	Sales and Use Tax Information for Contractors (7/94)	509	Filing Wage Statements and Information Returns on Magnetic Media (3/94)
114	Wisconsin Taxpayer Bill of Rights (8/95)	210	Sales and Use Tax Treatment of Landscaping (5/94)	600	Wisconsin Taxation of Lottery Winnings (11/93)
115	Wisconsin Federal/State Electronic Filing Handbook (9/95)	211	Sales and Use Tax Information for Cemetery Monument Dealers (10/91)	601	Wisconsin Taxation of Pari-Mutuel Wager Winnings (3/94)
116	Income Tax Payments Are Due Throughout the Year (12/95)	212	Businesses: Don't Forget About Use Tax (7/94)	700	Speakers Bureau presenting ... (2/93)
117	Guide to Wisconsin Information Returns (6/95)	213	Travelers: Don't Forget About Use Tax (3/93)	W-166	Wisconsin Employer's Withholding Tax Guide (9/90) <input type="checkbox"/>
118	Electronic Funds Transfer Guide (12/94)	214	Do You Owe Wisconsin Use Tax? (Businesses) (9/93)		
119	Limited Liability Companies (LLCs) (10/95)	216	Filing Claims for Refund of Sales or Use Tax (9/95)		
120	Net Operating Losses for Individuals, Estates, and Trusts (11/95)	400	Wisconsin's Temporary Recycling Surcharge (12/95)		
121	Reciprocity (10/95)	410	Local Exposition Taxes (11/94)		
200	Sales and Use Tax Information for Electrical Contractors (10/95)	500	Tax Guide for Wisconsin Political Organizations and Candidates (9/95)		
201	Wisconsin State and County Sales and Use Tax Information (9/95)	501	Field Audit of Wisconsin Tax Returns (12/92)		
202	Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (7/94)	502	Do You Have Wisconsin Tax Questions? (10/95)		
		503	Wisconsin Farmland Preservation Credit (12/95)		
		504	Directory for Wisconsin Department of Revenue (10/95)		
		505	Taxpayers' Appeal Rights of Office Audit Adjustments (10/95)		

Self-Proclaimed Spy 8-Year Jail Sentence for Tax Evasion

Leo Emil Wanta, 55, a former Appleton businessman, was sentenced in November 1995 to 8 years in prison for income tax evasion. Dane County Judge Michael Torphy revoked Wanta's bail and ordered him to prison immediately. He also ordered 6 years probation after completion of the prison sentence and gave him credit for 444 days he spent in jail prior to his release on bail in February 1995.

Wanta, who claims he was once an undercover agent for the CIA and a Somali ambassador, was convicted in May 1995, of 6 counts of income tax evasion for 1988 and 1989. The 6 counts include filing false tax returns and hiding taxable income of \$230,000 that he spent on purchases and loan payments.

Judge Torphy noted that the sentencing was for the tax evasion convictions only, without considering the massive financial scams Wanta was allegedly involved in. The numerous scams include a 1990 attempt to defraud the Soviet Union of \$81 million worth of rubles.

Former Attorney William A. Wentzel, 47, of Nashotah, Wisconsin, was sentenced in October 1995, in Waukesha County Circuit Court, for failing to file state income tax returns for 1990 and 1991. He was sentenced to 90 days in jail as well as two years' probation, and he was ordered to perform 100 hours of community service.

The criminal charges resulted from an investigation by the Fraud Unit of the Wisconsin Department of Revenue. According to the complaint, Wentzel had gross income of \$44,723 in 1990 and \$13,550 in 1991, and he failed to file Wisconsin income tax returns for 12 consecutive years.

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

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. ☐

Former, New IRS District Directors Send Messages

Note: The following messages were submitted by John T. Ader, former Director of the Milwaukee District of the Internal Revenue Service, and by Robert E. Brazzil, the new District Director.

My Best Wishes ... My Sincere Thanks (by John T. Ader)

After serving as District Director for Wisconsin's IRS for almost six years, I retired on January 3, 1996. So I'd like to take this opportunity to bid you farewell.

Working for the Internal Revenue Service has been extremely rewarding for me. In the 35 years that I have been an IRS employee, I've been fortunate enough to be involved in some very innovative programs and

events aimed at reducing the burden on taxpayers.

I believe that a "simplified tax system" doesn't have to be an oxymoron. The IRS can have an impact on making our tax system less burdensome to taxpayers. In fact, I believe that we already have.

Over the years, I've seen significant improvements in the tax forms used by taxpayers. They have become much more "user friendly." These improvements occurred because the IRS solicited feedback from taxpayers and tax practitioners. Through focus groups and "Town Meetings on Tax Forms," we learned where taxpayers were having problems and took steps to correct those problems. Each year, the IRS introduces new and improved versions of the most commonly-used tax forms. This certainly plays a major role in simplifying our tax system.

From making improvements in tax forms, the IRS moved to making improvements in the way tax forms are filed. Electronic transmission of tax returns is fast becoming the preferred method of filing. Filing on paper is becoming obsolete. Our Revenue Protection Strategy, implemented last filing season, was very successful in helping us detect and prevent attempts to undermine the tax system. That program will be instrumental again this year in preventing fraudulent refunds from being issued.

Another way the IRS can reduce the burden on taxpayers is through our outreach program. I believe the IRS outreach program is vital to the IRS achieving its mission. How can we expect to increase voluntary compliance unless we *make* opportunities to reach out to taxpayers? The Milwaukee District has always been a leader in this respect. We've held some very extraordinary outreach

events in some very nontraditional settings.

One year, when April 15 was also opening day for the Milwaukee Brewers, we headed out to the game to collect tax returns from fans who were tailgating in the parking lot. We called it "IRS Plays Ball with Taxpayers." This event received a great deal of media attention. That attention meant that a lot of taxpayers found out about the event and brought their tax returns with them. We were the first in the nation to hold such an event. Since then, other districts have followed suit.

One of my favorite events was "An IRS Valentine to Taxpayers." We held this event at shopping malls and helped people complete and electronically file their tax returns. I think this event stands out in my mind because of the reaction we received from taxpayers. People were quite surprised to get a "valentine" from the IRS.

Another reason this event stands out in my mind is because of the support we received from tax practitioners. They worked very hard to make sure that we could help as many taxpayers as possible. Many of the volunteers even stayed late so that the very last taxpayer could receive help. They certainly showed their community spirit that day. They also showed their support for the IRS.

I am enormously grateful for the cooperation and support that Wisconsin tax practitioners have shown me — and the IRS — through the years. I know my successor, Robert E. Brazzil, will feel as welcome here as I was made to feel. I am very fortunate to be able to end my IRS career in Wisconsin. Although I didn't know it when I moved here six years ago, I saved the best for last! My best wishes to each of you.

Greetings From the New Director

(by Robert E. Brazzil)

I am assuming my position as District Director during a time when the IRS is undergoing some significant changes. The IRS, like many businesses and government agencies, is reorganizing. We are merging the Milwaukee District of IRS — that currently serves taxpayers in Wisconsin — with the Des Moines and Omaha Districts. We will have a new identity and a new name: the Midwest District of IRS. The timetable for this merger is still unclear, but it could happen as early as January 1996. The new Midwest District, headquartered in Milwaukee, will serve taxpayers throughout Wisconsin, Iowa, and Nebraska.

I have the honor of being the first director to head the new Midwest District. I will work hard to bring three really fantastic district offices into an organization that shares each other's "best practices." I look forward to the completion of the consolidation so that taxpayers can reap the benefits of an organization that works better and costs less.

With all these changes, I can promise you that some things won't change. Our business vision remains firmly linked to our three objectives:

- Increase voluntary compliance,
- Maximize customer satisfaction and reduce burden, and
- Achieve quality-driven productivity through systems improvement and employee development.

I believe that this filing season will bring a continuation from last year of our successful revenue protection strategy. The purpose of that strategy is to:

- Detect and prevent attempts to undermine the tax system by those

unwilling to comply with the tax laws; and

- Maintain balanced enforcement that ensures compliance among all groups of taxpayers while safeguarding taxpayers' rights and benefits.

In addition, we will continue to move away from paper tax returns. Through electronic filing, 1040PC, computer filing on-line, and TeleFile (filing by telephone), we are expanding the ways in which taxpayers can move from paper returns to electronic information. Wisconsin has shown tremendous support for electronic filing. Each year our numbers indicate that Wisconsin taxpayers are in favor of paperless methods of filing their taxes. They know that electronic information is faster, more accurate, and more efficient.

An added benefit that Wisconsin taxpayers enjoy is being able to file both their federal and state tax returns electronically — in one transmission. Working together, the IRS and the Wisconsin Department of Revenue (WDOR) made this a reality.

I am very committed to strengthening and expanding our federal-state partnerships. This can only benefit the taxpayers we both serve. At a time when budgets are tight and resources are limited, we can minimize the impact of those limitations on taxpayers by working together and pooling our resources.

I believe that communication between the IRS and tax practitioners is also beneficial to taxpayers. It is vital to the IRS achieving its business vision. You see firsthand the affect that the tax laws have on taxpayers. We need your honest and candid feedback in order to make necessary improvements in the tax system. I will continue to practice the "open door" policy that Wisconsin's IRS has al-

ways maintained. I welcome and value your comments and suggestions.

I hope to meet many of you during my tenure as District Director. I promise you that I will continue the tradition of excellence established by my predecessor. I assure you that IRS in Wisconsin will work very hard to improve the quality of the services we provide to our customers. In spite of budget constraints and limited resources, we will continue to develop better and more efficient ways of doing business. □

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, 1996, or at the stage in which action occurred during the period from October 2, 1995 to January 1, 1996.

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

- | | |
|-------|--|
| 2.09 | Reproduction of income tax forms-R&R |
| 2.105 | Notice by taxpayer of federal audit adjustments and amended returns-R&R |
| 2.12 | Amended income and franchise tax returns-R&R |
| 2.31 | Compensation received by nonresident members of professional athletic teams-NR |

3.94	Claims for refund-R	Rules Adopted and in Effect (Adoption date January 1, 1996)
9.01	Definitions-A	2.89 Estimated tax requirements for short taxable years-NR
9.06	Affixing of state revenue stamps-A	2.96 Extensions of time to file corporation franchise or income tax returns-R&R
9.08	Cigarette tax refunds to Indian tribes-A	3.03 Dividends received deduction — corporations-R&R
9.09	Cigarette sales to and by Indians on reservations of tribes that have not entered into a refund agreement with the department-A	Rule on Hold Pending Court Decision
9.11	Refunds-A	11.04 Constructing buildings for exempt entities-A <input type="checkbox"/>
9.12	Refunds — military-R	
9.16	Meter machines-R	Recently Adopted Rules Summarized
9.17	Meter machine settings-R	Summarized below is information regarding administrative rules adopted or revised effective January 1, 1996.
9.19	Fuson machines and stamps-A	Information is provided regarding newly created sec. Tax 2.89, relating to estimated tax requirements for short taxable years, as well as repealed and recreated secs. Tax 2.96, relating to corporation tax return extensions, and 3.03, relating to the dividends received deduction. In addition to the summaries, the text of the three rules is reproduced, excluding notes and examples. See the order blank on page 57 of this Bulletin for information about obtaining the Revenue section of the Wisconsin Administrative Code.
9.21	Shipments to retailers-A	Tax 2.89 Estimated tax requirements for short taxable years. This rule prescribes the estimated tax payment requirements for taxable periods of less than twelve months, as required by secs. 71.09(9) and 71.29(5), Wis. Stats. (formerly numbered secs. 71.21(15) and 71.22(5), repealed and recreated by 1987 Wisconsin Act 27). The text of Tax 2.89 is as follows:
9.22	Drop shipments-A	
9.26	Trade or transfer of unstamped cigarettes-A	
9.31	Sales out of Wisconsin-A	
9.36	Displaying of cigarettes-A	
9.41	Vending machines-A	
9.46	Purchases by the retailer-A	
9.47	Invoicing of sales, including exchanges of cigarettes-A	
9.51	Samples-A	
9.61	Warehousing of cigarettes-A	
9.68	Ownership and name changes-A	

Tax 2.89 ESTIMATED TAX REQUIREMENTS FOR SHORT TAXABLE YEARS. (ss. 71.09(9) and 71.29(5), Stats.) (1) GENERAL. Under ss. 71.09 and 71.29, Stats., certain corporations and persons other than corporations shall make estimated tax payments. For short taxable years, estimated tax payments shall be made in accordance with this section.

(2) DEFINITIONS. In this section:

(a) "Corporation" includes corporations, tax-option (S) corporations, insurance companies, publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code, limited liability companies treated as corporations under the internal revenue code, joint stock companies, associations, common law trusts, regulated investment companies, real estate investment trusts, real estate mortgage investment conduits, nuclear decommissioning trust funds and virtually exempt entities as defined in s. 71.29(1)(c), Stats.

(b) "Estimated tax payable" means the amount calculated under s. 71.09(13) or 71.29(9) or (10), Stats.

(c) "Persons other than corporations" includes individuals, estates, trusts other than those treated as corporations in par. (a), partnerships except publicly traded partnerships treated as corporations in s. 7704 of the internal revenue code and limited liability companies treated as partnerships under the internal revenue code.

(d) "Short taxable year" means a period of less than 12 months.

(3) NUMBER OF INSTALMENT PAYMENTS REQUIRED. (a) For short taxable years, the following number of estimated tax instalment payments shall be made:

1. For periods of one month or less, none.
2. For periods of 2 to 3 months, one.
3. For periods of 4 to 6 months, 2.
4. For periods of 7 to 9 months, 3.
5. For periods of 10 to 11 months, 4.

(b) Except as provided in par. (c), for purposes of determining the required number of estimated tax instalment payments under par. (a), a portion of a month shall be treated as a full month.

(c) If a short taxable year terminates before the end of a month and another

taxable year begins at that time, for estimated tax instalment purposes the first taxable period shall be treated as ending on the last day of that month and the second taxable period shall be treated as beginning on the first day of the following month.

(4) **DUE DATES OF INSTALMENT PAYMENTS FOR CORPORATIONS.** For short taxable years, corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

(a) For periods of 2 to 3 months, the last month of the taxable year.

(b) For periods of 4 to 6 months, the 3rd and last months of the taxable year.

(c) For periods of 7 to 9 months, the 3rd, 6th and last months of the taxable year.

(d) For periods of 10 to 11 months, the 3rd, 6th, 9th and last months of the taxable year.

(5) **DUE DATES OF INSTALMENT PAYMENTS FOR PERSONS OTHER THAN CORPORATIONS.** (a) Except as provided in pars. (b) and (c), for short taxable years, persons other than corporations shall make estimated tax instalment payments on or before the 15th day of each of the following months:

1. For periods of 2 to 3 months, the first month following the close of the taxable year.

2. For periods of 4 to 6 months, the 4th month of the taxable year and the first month following the close of the taxable year.

3. For periods of 7 to 9 months, the 4th and 6th months of the taxable year and the first month following the close of the taxable year.

4. For periods of 10 to 11 months, the 4th, 6th and 9th months of the taxable year and the first month following the close of the taxable year.

(b) If a person other than a corporation files an income tax return on or before the last day of the first month following the close of the taxable year and pays the full amount computed on that return as payable, that person need not make the last payment of estimated tax.

(c) Instead of making estimated tax instalment payments, a farmer or fisher as defined in s. 71.09(1)(a), Stats., may either pay the estimated tax in full by the

15th day of the first month after the close of the taxable year or file the tax return on or before the first day of the 3rd month following the close of the taxable year and pay the full amount computed on that return as payable.

(6) **COMPUTATION OF ESTIMATED TAX PAYABLE.** Corporations and persons other than corporations shall make estimated tax payments equal to the lesser of the following amounts:

(a) Ninety percent of the tax shown on the return for the taxable year or, if no return is filed, 90% of the tax for the taxable year.

(b) For individuals, corporations having less than \$250,000 of Wisconsin net income and estates and trusts having less than \$20,000 of Wisconsin taxable income for the current taxable year, the tax shown on the return for the preceding taxable year, provided the taxpayer filed a return for the preceding year covering a full 12-month year. When the current year is a short taxable year and the preceding year was a period of 12 months, the tax shown on the return for the preceding taxable year may be prorated based on the number of months in the short taxable year.

(c) Ninety percent of the tax calculated by annualizing the taxable income earned for the months in the taxable year ending before the due date of the instalment. The following special rules apply:

1. Corporations which determine their Wisconsin net incomes under the apportionment method may compute their annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the instalment for which the income is being annualized and the apportionment percentage on that return is greater than zero. A corporation that has at least \$250,000 of Wisconsin net income for the current taxable year may also compute annualized income using the apportionment percentage from the return filed for the previous taxable year if the previous year's return is filed by the due date of the 3rd instalment, the apportionment percentage on that return is greater than zero, and the apportionment percentage used in computing the first 2 instalments is not less than the apportionment percentage used on that return.

2. Entities subject to tax on unrelated business taxable income and trusts and estates shall annualize their incomes for the months in the taxable year ending one month before the instalment due date.

(7) **PORTION OF ESTIMATED TAX PAYABLE IN EACH INSTALMENT.** The portion of the estimated tax payable in each instalment depends on when the taxpayer determines that the taxable year will be a period of less than 12 months and the number of instalment payments required, as follows:

(a) If an event that will terminate the taxable year before the end of the 12th month occurs after the taxpayer has begun making estimated tax payments, the initial estimated tax instalment payments shall be based on 25% of the estimated tax payable, with the last payment adjusted for the difference between the estimated tax liability and the amount previously paid.

(b) If an event that will result in a taxable year of less than 12 months occurs before the taxpayer has begun making estimated tax payments, instalment payments shall be made as follows:

1. If one instalment is due, all of the estimated tax shall be paid at that time.

2. If 2 instalment payments are due, 75% of the estimated tax shall be paid for the first instalment and 25% shall be paid for the remaining instalment.

3. If 3 instalment payments are due, 50% of the estimated tax shall be paid for the first instalment and 25% shall be paid for each of the 2 remaining instalments.

4. If 4 instalment payments are due, 25% of the estimated tax shall be paid for each instalment.

(8) **ANNUALIZED INCOME INSTALMENT PAYMENTS.** Under ss. 71.09(13)(d) and 71.29(9)(c), Stats., taxpayers may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the instalment payment's due date. Corporations that are subject to a tax on unrelated business taxable income and virtually exempt entities may compute estimated tax instalment payments by annualizing income for the months in the taxable year ending before the date one month before the due date for the instalment payment. Annualized income installment payments shall be computed as follows:

(a) *Computation of annualized income.* Taxpayers shall annualize income for the annualization period as follows:

1. Compute the Wisconsin net income for the annualization period, excluding adjustments which remain constant from period to period, such as net business loss carryforwards and the amortization of adjustments for changes in the method of accounting.

2. Calculate the annualization factor for the annualization period by dividing the number of months in the taxable year by the number of months in the annualization period.

3. Multiply the amount computed in subd. 1 by the annualization factor computed in subd. 2.

4. Subtract from the result in subd. 3 any adjustments excluded from the calculation of Wisconsin net income in subd. 1 which remain constant for each period. Individuals shall also subtract the standard deduction.

(b) *Computation of instalment payments.* Taxpayers shall calculate their estimated tax instalment payments based on annualized income for the annualization period as follows:

1. Determine the gross tax on the amount calculated under par. (a).

2. Subtract from the gross tax under subd. 1 any allowable tax credits, excluding estimated tax paid.

3. Multiply the net tax computed in subd. 2 by the applicable percentage from sub. (7).

Tax 2.96 Extensions of time to file corporation franchise or income tax returns. This rule reflects statutory changes in the extension requirements, interest charges, late filing fees, and temporary recycling surcharge provisions made by 1989 Wisconsin Act 31, 1991 Wisconsin Acts 39 and 269, and 1993 Wisconsin Acts 16 and 199. It also adds a reference to insurance companies and reflects current department policy regarding estimated tax extension payments. The text of Tax 2.96 is as follows:

Tax 2.96 EXTENSIONS OF TIME TO FILE CORPORATION FRANCHISE OR INCOME TAX RE-

URNS. (ss. 71.24(7) and 71.44(3), Stats.) (1) **DUE DATES.** (a) *General.* Except as provided in par. (b), corporation franchise or income tax returns, forms 4, 4I, 5 and 5S are due on or before the 15th day of the 3rd month following the close of a corporation's taxable year and form 4T is due on or before the 15th day of the 5th month following the close of the corporation's taxable year unless an extension of time for filing has been granted.

(b) *Short-period returns.* Corporation franchise or income tax returns for periods of less than 12 months are due on or before the federal due date.

(2) **EXTENSIONS.** (a) *The automatic extension to 30 days after the federal due date.* If an automatic six-month extension of time has been allowed for filing the corresponding federal income tax return under the internal revenue code, an automatic extension until 30 days after the federal extended due date shall be allowed for filing the Wisconsin return. A copy of federal extension

form 7004 shall be attached to a Wisconsin franchise or income tax return filed under the federal automatic 6-month extension provision for the Wisconsin return to be considered timely filed.

(b) *The 30-day, 3-month or 6-month extension from department.* As an alternative to the extension in par. (a), a corporation may obtain an extension from the department for a period not to exceed 30 days, or not to exceed 3 months in the case of a foreign corporation that does not have an office or place of business in the United States, or not to exceed 6 months in the case of a cooperative filing a return or a domestic international sales corporation, if the extension is requested prior to the original due date of the return. A request for a 30-day, 3-month or 6-month extension, form IC-830, from the department shall be filed by the taxpayer prior to the original due date of the tax return. Requests for extensions shall be mailed to the address specified by the department on form IC-830 or delivered to the department.

(c) *Estimated tax payment.* A taxpayer who desires to minimize interest charges during the extension period may pay the estimated tax liability on or before the original due date of the franchise or income tax return. This shall be done by

attaching a remittance to a corporation estimated tax voucher, form 4-ES, and mailing them to the address specified by the department on the form 4-ES. The estimated tax liability includes the temporary recycling surcharge imposed under s. 77.93, Stats.

(d) *Federal termination or refusal to grant extension.* If the internal revenue service terminates or refuses to grant an extension, the corresponding Wisconsin franchise or income tax return shall be filed on or before 30 days after the date of termination fixed by the internal revenue service.

(3) **INTEREST CHARGES AND LATE FILING FEES.** (a) *Regular interest.* Except as provided in par. (b), additional tax due with the complete return and the temporary recycling surcharge imposed under s. 77.93, Stats., which are not paid by the original due date are subject to interest at 12% per year during the extension period and 1½% per month from the end of the extension period until the date of payment.

(b) *Delinquent interest.* If 90% of the tax shown on the return, form 4, 4I, 5 or 5S, is not paid by the 15th day of the 3rd month or, for form 4T, by the 15th day of the 5th month beginning after the end of the taxable year, the difference between that amount and the estimated taxes paid along with any interest due is subject to interest at 1½% per month until paid regardless of any extension granted for filing the return. The tax shown on the return includes the temporary recycling surcharge imposed under s. 77.93, Stats.

(c) *Late filing fee.* A corporation return filed after the extension period is subject to a \$30 late filing fee.

(4) **CONSOLIDATED RETURNS.** Because Wisconsin does not permit the filing of consolidated returns, a copy of the automatic federal extension, form 7004, shall be attached to the Wisconsin franchise or income tax return of each member of an affiliated group filing a Wisconsin tax return.

Tax 3.03 Dividends received deduction — corporations. This rule reflects amendments to secs. 71.26(3)(j) and 71.45(2)(a)8, by 1993 Wisconsin Act 16. The deduction based on the payer corporation's Wisconsin activity was repealed, the

ownership percentage requirement for deducting dividends was reduced from 80% to 70% of the payer corporation's stock, and insurance companies may claim a dividends received deduction even if the payer corporation is not a Wisconsin corporation. The text of Tax 3.03 is as follows:

Tax 3.03 DIVIDENDS RECEIVED DEDUCTION — CORPORATIONS.

(ss. 71.22(4), 71.26(2) and (3)(j), 71.42(2) and 71.45(2)(a)8, Stats.) (1) PURPOSE. This section clarifies the deduction from gross income allowed to

corporations for dividends received. Dividends may be deductible due to the recipient's ownership of the payer corporation, as provided in sub. (3).

(2) DEFINITION. "Dividends received" means gross dividends minus taxes on those dividends paid to a foreign nation and claimed as a deduction under ch. 71, Stats.

(3) DIVIDENDS DEDUCTIBLE DUE TO OWNERSHIP. A corporation may deduct from gross income 100% of the dividends received from a payer corporation during a taxable year if both of the following occur:

(a) The dividends are paid on common stock of the payer corporation.

(b) The corporation receiving the dividends owns directly or indirectly during the entire taxable year in which the dividends are received at least 70% of the total combined voting stock of the payer corporation.

(4) LIMITATION ON DEDUCTION. The deduction under sub. (3) may not exceed the dividend received and included in gross income for a taxable year.

(5) DIVIDENDS INCLUDABLE IN GROSS INCOME. All dividend income shall be included in full in gross income on the franchise or income tax return of the recipient, whether or not certain dividends are deductible. □



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

— Basis of assets — gifts — basis for gain or loss. *Patrick J. and Jo Ann Murphy, Jr., and Patrick and Carrie Murphy, III vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 14, 1995). The issue in this case is whether the department erred in assessing the taxpayers for additional income tax and interest on the gain realized as a result of their March 7, 1989 sale of real property held by them, where interests in that property were previously transferred to Jo Ann Murphy and Patrick J. Murphy, III as a gift from Patrick J. Murphy, Jr. at a time when his basis in the property was \$26,500, and the fair market value of the property was \$167,000.

On January 27, 1989, taxpayer Patrick J. Murphy, Jr. conveyed by quit claim deed partial interests totalling 75% of the ownership of certain real property, which was previously solely owned by him. The grantees included his spouse, taxpayer Jo Ann M. Murphy, and four of his children,

Individual Income Taxes

Basis of assets — gifts — basis for gain or loss

Patrick J. and Jo Ann Murphy, Jr., and Patrick and Carrie Murphy, III (p. 22)

Farm loss limitation

David G. and Patricia Stauffacher (p. 23)

Retirement funds exempt — constitutionality

John D. and Jane A. Hennick (p. 23)

Individual Income Taxes and Farmland Preservation Credit

Tax Appeals Commission — summary judgment

John R. and Gwendolyn Haugen (p. 24)

Corporation Franchise and Income Taxes

Apportionment — air carriers — interstate

United Parcel Service Co. (p. 25)

Dividends received deduction

Colgate-Palmolive Company (p. 26)

Transition rules — federalization

Lincoln Savings Bank, S.A., f/k/a Lincoln Savings & Loan Association (p. 27)

Sales and Use Taxes

Admissions — boat operator's receipts

LaCrosse Queen, Inc. (p. 28)

Auctions

Terry R. Locke (p. 28)

Temporary Recycling Surcharge

Temporary recycling surcharge
Wolf River Ventures, Inc. (p. 29)

including his son, taxpayer Patrick J. Murphy, III. Patrick J. Murphy, Jr.'s basis in the property was \$26,500 on the date he conveyed it, and the property had an approximate fair market value of \$167,000 at the time.

Following the January 1989 conveyance, the same parcel of property was sold to a third party for \$167,000 on March 7, 1989. The sales price was paid on an installment basis during the years 1989, 1990, and 1991.

In June 1993, the department issued two separate Notices of Amount Due to the taxpayers as married couples who had filed income tax returns jointly during the period under review. In each circumstance, the department assessed additional tax and interest due as a result of the couples' alleged failure to properly report the annual gain realized from installment payments received with respect to the March 7, 1989 property sale.

The Commission concluded that the taxpayers failed to demonstrate by clear evidence that the department erred in assessing additional amounts of income tax and interest due on the gain realized as a result of the taxpayers' March 7, 1989 sale of real property to a third party. The gain realized on the sale is properly determined under Internal Revenue Code (IRC) sec. 1001 as the excess of sales price over donor basis under IRC sec. 1015, as applicable to determining Wisconsin taxable income for each of the years under review under sec. 71.01(6)(d) to (f), Wis. Stats. (1991-92).

Under IRC secs. 1001 and 1015 at all times during the period under review, realized gain on the disposition of appreciated property was equal to the sales price received less the applicable basis in the hands of the seller. For donees disposing of property, the basis of appreciated property is the

same as it would be in the hands of the donor before the time of the gift.

All four of the taxpayers have appealed this decision to the Circuit Court.

CAUTION: The decision with respect to taxpayers Patrick and Carrie Murphy III is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. This decision is provided for informational purposes only. □

■ **Farm loss limitation.** *David G. and Patricia Stauffacher vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 31, 1995). The only issue involved in this decision is whether the taxpayers were, during 1987 to 1991 (the period under review), engaged in "farming" within the meaning of Internal Revenue Code (IRC) sec. 464(e)(1), thereby subjecting them to the farming business loss limitations of sec. 71.05(6)(a)10, Wis. Stats.

Taxpayer David Stauffacher was the principal general partner of Golden Forest Limited Partnership ("Golden Forest"), a business venture which attempted to produce and market Shiitake mushrooms for profit. Some of the activities undertaken by Golden Forest at considerable expense may arguably be characterized as "research" or "manufacturing." However, those activities were undertaken pursuant to and in conjunction with the business venture, the production and marketing of Shiitake mushrooms for profit.

Golden Forest never became an economically viable business venture. The enterprise encountered various problems which prevented it from being profitable and ceased doing business in 1990.

The Commission concluded that the taxpayers were engaged in farming within the meaning of IRC sec. 464(e)(1), thereby subjecting them to the farming business loss limitations contained in sec. 71.05(6)(a)10, Wis. Stats. Even though there were elements of research and manufacturing involved in the Golden Forest operation, it was primarily a Shiitake mushroom production and marketing venture, entered into for profit, which must be considered "farming" by reasons of Rev. Rul. 75-484. The Commission will schedule further proceedings to resolve issues remaining between the parties.

The taxpayers have appealed this decision to the Circuit Court. □

■ **Retirement funds exempt — constitutionality.** *John D. and Jane A. Hennick vs. Wisconsin Department of Revenue* (Circuit Court for Milwaukee County, September 26, 1995). The taxpayers appeal a decision of the Wisconsin Tax Appeals Commission (Commission), denying their claim for an income tax refund for taxes paid on private pension income. See *Wisconsin Tax Bulletin* 91 (April 1995), page 13, for a summary of the Commission decision.

This is the third challenge brought by the taxpayers to the state of Wisconsin taxation of Mr. Hennick's pension. The issues in all three challenges are almost identical except for the years at issue and an amendment to sec. 71.05(1)(a), Wis. Stats., exempting certain pensions from taxation. The taxpayers challenge the constitutionality of the statute.

Mr. Hennick, employed from 1956 through 1983 by a private entity, receives annual pension payments pursuant to his service with his former employer. In June 1993, the taxpayers jointly filed amended Wis-

consin income tax returns for 1989 through 1992, excluding the annual pension payments.

The department denied the claim for refund, and the taxpayers filed a petition for redetermination, which the department denied. The taxpayers filed a petition for review with the Commission. The Commission determined that sec. 71.05(1)(a), Wis. Stats. (1989-90, 1991-92), does not violate either the Uniformity Clause in Article VIII of the Wisconsin Constitution or the Equal Protection Clause of the United States Constitution.

The taxpayers ask the Circuit Court to render sec. 71.05(1)(a), Wis. Stats., unconstitutional, maintaining that the statute violates the Fourteenth Amendment Equal Protection Clause of the United States Constitution and the Equal Protection and Uniformity Clauses of the Wisconsin Constitution.

The Circuit Court concluded that the Commission acted within its jurisdiction, according to law, had a rational basis for its decision, and its decision was supported by substantial evidence in the record. The department was not compelled to grant the taxpayers a refund for taxes paid on Mr. Hennick's pension.

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

INDIVIDUAL INCOME TAXES AND FARMLAND PRESERVATION CREDIT

— Tax Appeals Commission — summary judgment. *John R. and Gwendolyn Haugen vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, September 20, 1995). This is a ruling and order awarding summary judgment. There

is no genuine issue of material fact in this case.

During 1990, the taxpayers jointly filed a 1989 Wisconsin income tax return. Included in income was a gain on sales of certain farm animals and farm equipment, as reported on federal Schedule 4797. This resulted in a Wisconsin subtraction modification of \$21,020.

In November 1990, the taxpayers filed an amended 1989 Wisconsin income tax return, in which they claimed a farmland preservation credit of \$350, with the explanation "Taxpayer is filing for Farmland Preservation under prior year law. Real estate taxes not paid. Agreement dated 10-5-82."

In May 1991, they filed a second amended 1989 Wisconsin income tax return, in which the gain from the 1989 sale of the farm animals and farm equipment was removed from income. The explanation was that the gain was not reportable under sec. 108 of the Internal Revenue Code (IRC), which relates to certain exclusions of income from the discharge of indebtedness. The second amended return also reasserted the \$350 claim for farmland preservation credit.

In February 1992, the department disallowed the subtraction modification made in the second amended return, relating to the 1989 sales of farm animals and equipment. The department also adjusted the 1989 income to reflect a recognizable portion of gain realized on the proceeds from a foreclosure sale of mortgaged property. Lastly, the farmland preservation credit claim was disallowed because no certification was ever provided that the prior year's real estate taxes were paid. The taxpayers filed a petition for redetermination with the department, which was denied.

The foreclosure sale for which the department allocated recognizable gain to the taxpayers for 1989 in fact took place on November 20, 1990, as shown by a 1990 Form 1099-A issued by the lender, noting gross sale proceeds in the amount of \$89,847.41.

The facts do not show the presence of any discharge of indebtedness income relating to 1989 which would qualify under sec. 108, IRC.

The taxpayers have admitted that they did not pay 1988 real estate taxes, as required under sec. 71.59(1)(b), Wis. Stats. (1989-90). If it was the intent of the taxpayers to file for a farmland preservation credit under the prior year's law method, they would nonetheless be ineligible for the credit due to their claimed level of household income under sec. 71.09(11)(b)1, Wis. Stats. (1981-82), and the facts do not indicate eligibility for the minimum credit under sec. 71.09(11)(bm), Wis. Stats. (1981-82).

In December 1994, the department issued a separate assessment for 1990, in which it added the gain on the 1990 foreclosure sale of real estate. The time within which the taxpayers could have petitioned for redetermination of this separate assessment expired on February 20, 1995, rendering it final and conclusive under sec. 71.88, Wis. Stats. In a letter submitted to the Commission by the taxpayers' attorney, they requested that the 1990 assessment be consolidated with this action for review before the Commission and asked that the Commission reprimand the department's attorney for alleged ethical violations in the course of the issuance of the separate assessment for 1990 against the taxpayers.

The Commission held that it could not review the conclusive 1990 assessment on the foreclosure sale gain due to its lack of subject matter jurisdiction over the department's action,

there being no redetermination for the Commission to review. Further, the Commission has no jurisdiction to review alleged violations of the Rules of Professional Conduct for Attorneys. In addition, the Commission ordered as follows:

1. The taxpayers are awarded summary judgment with respect to department's 1989 assessment for gain on the foreclosure sale of real estate, since the sale took place in 1990.
2. The department is awarded summary judgment with respect to its assessment pertaining to the taxpayers' discharge of indebtedness income and eligibility for the farmland preservation credit for 1989.
3. The department's action on the taxpayers' petition for redetermination is affirmed, as modified by the removal of the 1989 foreclosure sale gain.

Neither the department nor the taxpayers have appealed this order. ☐

CORPORATION FRANCHISE AND INCOME TAXES

— Apportionment — air carriers — interstate.

United Parcel Service Co. vs. Wisconsin Department of Revenue (Circuit Court for Dane County, July 26, 1995). This is a proceeding for judicial review of an August 30, 1994, decision of the Wisconsin Tax Appeals Commission, which affirmed a franchise tax determination made by the Wisconsin Department of Revenue against United Parcel Service Co. (UPSCO). The main issue in this case is whether the department's use of an unweighted arrivals and departures factor in the Rule Tax 2.46 apportionment formula violates the Due Process and Commerce Clauses of the United States Constitution. See *Wisconsin Tax Bulletin* 90 (January 1995), page 20, for a summary of the Commission's decision.

UPSCO is an air carrier, which, together with its affiliated corporations, provides a national and international air transportation service for small packages. UPSCO offers service throughout the United States and in certain other parts of the world, using seven different types of aircraft. During 1985 and 1986, the years at issue, UPSCO used its smallest aircraft — the Fairfield Expediter — almost exclusively for Wisconsin flights. That aircraft has a maximum payload of 4,450 pounds. In contrast, the next largest aircraft used by UPSCO during that time, a Boeing 727-100, has a maximum payload of 45,830 pounds. Although Expeditors represented only 21% of UPSCO's flights overall in those years, they accounted for 89-92% of flights arriving or departing Wisconsin.

As an air carrier, UPSCO is a "public utility" for purposes of the Wisconsin franchise tax. Wisconsin Administrative Code sec. Tax 2.46 provides a three-factor formula for apportioning the net business income of air carriers as

required by statute, consisting of (1) the ratio of aircraft arrivals and departures within the state to total 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.

In preparing its 1985 and 1986 tax returns, UPSCO calculated the arrivals and departures factors in those years using the takeoff and landing weight of arriving and departing aircraft rather than the raw number of such aircraft. This was done to account for the much more frequent use of small aircraft in Wisconsin. The result was arrivals and departures factors for the years 1985 and 1986 as follows:

	1985	1986
Wisconsin takeoff & landing weight	18,784,664	32,002,297
Total takeoff & landing weight	2,655,347,050	3,918,079,971
Ratio	0.707789%	0.816660%

In the audit of UPSCO, the department deleted takeoff and landing weight from the computation of the arrivals and departures factors and calculated the factor based on the raw number of arriving and departing flights. Thus, the department's ratio for 1985 was 6.167805%, based on 94,896 total flights, 5,853 of which were Wisconsin flights. This method produced a ratio of 4.437488% for 1986, because of 122,344 total flights, 5,429 were Wisconsin arrivals and departures.

The difference in the ratios used by the department and by UPSCO produced the following result in tax calculations for UPSCO's income apportioned to Wisconsin for 1985 and 1986:

	1985		1986	
	UPSCO	DOR	UPSCO	DOR
Income before apportionment	\$199,438,191	\$199,438,191	\$339,642,250	\$339,642,250
Arrivals & departures factor	0.707789%	6.167805%	0.81660%	4.437488%
Revenue tons factor	1.93375%	1.93375%	1.872719%	1.872719%
Originating revenue factor	2.312998%	2.312998%	2.062386%	2.062386%
Average factor	1.651846%	3.471393%	1.583922%	2.790864%
Wisconsin income	\$3,294,441	\$6,923,283	\$5,379,667	\$9,478,953

The use of the raw number of arrivals and landings rather than a factor based on takeoff and landing weight increased UPSCO's income apportioned to Wisconsin for 1985 and 1986 by 110% and 76%, respectively.

The department's determination involved an assessment of franchise taxes for the years 1985 through 1988, in the amount of \$527,399, based on an adjustment to the arrivals and departures factor in the taxpayer's apportionment formula. UPSCO does not take issue with the department's franchise tax assessment for the years 1987 and 1988 because in those years UPSCO's disproportionate use of the Expeditors in Wisconsin was less dramatic and the weighted and unweighted factors were therefore less disproportionate.

On appeal the Commission observed that the average tax variance over the 4-year assessment period is .75 percent, and for the two years actually in dispute (1985 and 1986) the average variance is about 1.5 percent. On this basis, the Commission concluded that UPSCO had not met its burden of establishing that the Tax 2.46 formula produces a grossly distorted tax result or an attribution of UPSCO's income to Wisconsin which is out of all appropriate proportions.

UPSCO also claimed that by not allowing a weighted average to be used in the arrivals and departures factor the department abused its discretion. UPSCO reached this result by looking to the language of sec. 71.25(11) and (12), Wis. Stats.

UPSCO's last argument was based on the fact that the department interpreted Rule Tax 2.46 as requiring weighted arrivals and departures until 1980. However, in *Republic Airlines, Inc. v. Wisconsin Department of Revenue*, Case No. 80 CV 0954, August 26, 1981, Dane County Circuit Court Judge Edwin Wilke held that the clear and unambiguous language of Rule Tax 2.46 "forecloses the 'weighting' of interstate air carrier 'arrivals and departures' on any basis, including aircraft carrier capacity." The department did not appeal that decision and therefore, under sec. 73.015(2), Wis. Stats., the department was deemed to have acquiesced in the decision and is now bound by it.

The Circuit Court concluded that the use of an unweighted arrivals and departures factor is reasonably related to UPSCO's income and does not violate the Commerce or Due Process Clauses.

In addition, the Circuit Court agreed with the result reached in *Republic Airlines*, and concluded that the language of Rule Tax 2.46 does not provide for weighted arrivals and departures. Rule Tax 2.46 provides that the first element of the apportionment formula is "the ratio which the aircraft arrivals and departures within this state ... bears to the total aircraft arrivals and departures within and without this state..." In other words, Rule Tax 2.46 describes a ratio of the raw number of Wisconsin flights to the raw number of total flights. It is more reasonable to read "aircraft arrivals and departures" as referring to actual aircraft takeoffs and landings rather than takeoff and landing weight.

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

— Dividends received deduction. *Colgate-Palmolive Company v. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, July 26, 1995). The issues in this case are:

- A. Whether the department erroneously disallowed dividend deductions for CPL Industries, Inc., and Hill's Pet Products, Inc., for 1986.
- B. Whether the department erroneously refused to allow the taxpayer an additional fourth factor, the "intangible factor," in its apportionment factor computation, and whether the standard three-factor

apportionment formula properly reflects the taxpayer's Wisconsin taxable income.

- C. Whether Wisconsin's Rule Tax 3.03(3), Wis. Adm. Code, discriminates against out-of-state dividend payors in violation of the Equal Protection and Commerce Clauses of the United States Constitution.

Colgate-Palmolive Company is a Delaware corporation organized in 1923 and is primarily engaged in the manufacture of health care and household products. The taxpayer is the parent company of numerous domestic corporations with which it files a federal consolidated return. The taxpayer is also the parent of controlled foreign corporations generally in the same lines of business from which it derives royalties and dividend income.

During the audit period, January 1, 1986, through December 31, 1988, the taxpayer did not operate any facilities in Wisconsin. The taxpayer did maintain inventories in a public warehouse which ceased in 1988.

During the first half of 1986 and prior years, the taxpayer owned 100% of the stock in two subsidiaries, CPL Industries, Inc., and Hill's Pet Products, Inc. During 1986, these two subsidiaries were merged into the taxpayer so that the companies were divisions of the taxpayer for the second half of 1986. The operations of the companies prior to the liquidation were separately reported on the parent's consolidated federal return for 1986. Operations for the second half of 1986 were combined with the taxpayer as separate divisions of the company and designated as Hill's Pet Products, Inc., and CPL Industries, Inc.

No one owned stock in CPL Industries, Inc., and Hill's Pet Products, Inc., during the second half of 1986.

The taxpayer received dividends prior to the liquidation of CPL and Hill's Pet Products, Inc., in 1986. The taxpayer did not own 80% of the stock of CPL and Hill's Pet Products, Inc., for the entire year 1986.

For 1986, 1987, and 1988, the taxpayer's taxable year began on January 1 and ended on December 31.

The taxpayer has conceded Issue B, pertaining to the department's disallowance of an "intangible factor" in apportioning the taxpayer's Wisconsin income.

Both parties requested that a decision on Issue C, the constitutionality of Rule Tax 3.03(3), Wis. Adm. Code, and companion sec. 71.26(3), Wis. Stats. [formerly sec. 71.04(4)], be held in abeyance pending a final appellate determination in *NCR Corp. v. WDOR*, WTAC Docket Nos. I-8669 and 87-I-359 (February 10, 1992).

The Commission concluded as follows:

- A. The department properly disallowed the taxpayer's 1986 deduction for dividends received from CPL Industries, Inc., and Hill's Pet Products, Inc., pursuant to sec. 71.04(4), Wis. Stats. (1985-86), and Rule Tax 3.03(4), Wis. Adm. Code. The taxpayer failed to meet its burden of bringing itself clearly within the permissible deduction language of the statute and administrative rule. The language requires stock ownership in the payor corporation *during the entire taxable year in which the dividends are received*. There is no dispute that there was no stock ownership during the second half of 1986 because the payor corporations ceased to exist.

- B. The department properly disallowed the taxpayer's "intangible" apportionment factor.

- C. According to the stipulation of the parties, the constitutional issue concerning Rule Tax 3.03(3), Wis. Adm. Code, and sec. 71.04(4), Wis. Stats. (1985-86), shall be held in abeyance for further determination by the Commission following the final outcome on appeal of *NCR Corporation v. Wis. Dept. of Revenue*, WTAC Docket Nos. I-8669 and 87-I-359 (February 10, 1992), now pending before the Wisconsin Court of Appeals.

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

Transition rules — federalization. *Lincoln Savings Bank, S.A., f/k/a Lincoln Savings & Loan Association vs. Wisconsin Department of Revenue* (Circuit Court for Milwaukee County, October 19, 1995). The taxpayer filed a timely petition for review of a January 12, 1995, decision of the Wisconsin Tax Appeals Commission (Commission). The Commission affirmed a redetermination by the department assessing additional franchise taxes and interest of \$23,147.44 for 1987-1990. See *Wisconsin Tax Bulletin* 91 (April 1995), page 13, for a summary of the Commission decision.

The sole issue before the Circuit Court is a question of law calling for an interpretation of Section 3047(1)(a) of 1987 Wisconsin Act 27 (the Section).

The parties agree that the Section "federalized" the Wisconsin income and franchise tax law, so that a corporate taxpayer's federal net taxable income would become its Wisconsin net taxable income for years beginning in 1987, subject to other modifi-

cations which are not germane to this case. The Section requires federalized adjustments to any items of income, loss, or deduction.

The taxpayer federalized its deduction for bad debt reserve (basis), by adjusting upwards its cumulative Wisconsin basis so that it equaled its cumulative federal basis for all years prior to 1987. The adjustment added \$1,016,114 to the taxpayer's Wisconsin basis as of December 31, 1986. The addition to basis was used as a deduction over the tax years 1987 through 1990, pursuant to the five-year rule in the Section. The department challenged this, arguing that the taxpayer had carried no Wisconsin basis for tax years prior to December 31, 1961, because it was not subject to a Wisconsin franchise tax prior to 1962. The department regarded this federalized basis adjustment as a windfall for the taxpayer and concluded that the Legislature never intended to have federalization apply to a zero bad debt reserve in the years the taxpayer was not subject to Wisconsin franchise tax.

The Circuit Court concluded that the taxpayer complied with the adjustment requirements of the Section as written. It rejected the department's interpretation that federalized adjustments be taken only for years in which a taxpayer was subject to a Wisconsin franchise tax. The Court found no language in the Section suggesting that the federal basis is to be altered under any set of circumstances, which is required by the Commission's decision, that it could disregard the pre-1962 federal basis because there was no corresponding state basis.

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

SALES AND USE TAXES

— **Admissions — boat operator's receipts.** *LaCrosse Queen, Inc. vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, August 10, 1995). This is a review of the January 11, 1995, decision of the Wisconsin Tax Appeals Commission (Commission), which affirmed the determination of the Department of Revenue that the gross receipts of the taxpayer are subject to tax. For a summary of that decision, see *Wisconsin Tax Bulletin* 91 (April 1995), page 14.

The issue is whether the taxpayer's receipts from excursion trips on the Mississippi River are subject to sales tax. The taxpayer relies on the "exemption" set forth in sec. 77.54(13) Wis. Stats., which exempts from sales tax the gross receipts from sales of and storage, use, or other consumption of commercial vessels and barges of 50-ton burden or over, primarily engaged in interstate or foreign commerce or commercial fishing.

The matter of tonnage is not at issue; the matter of primary engagement in interstate commerce is at issue.

The Circuit Court affirmed the decision of the Commission. The vessel is not primarily engaged in interstate commerce. It is engaged in a local, state recreational activity which originates in Wisconsin and terminates in Wisconsin. The only contact with non-Wisconsin geography is the slap of a wave on the hull of the boat as it meanders on the Mississippi River. The fact that many of the passengers have addresses outside the State of Wisconsin does not justify a conclusion that the commerce of the vessel is anything other than intrastate.

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

— **Auctions.** *Terry R. Locke vs. Wisconsin Department of Revenue* (Circuit Court for Dane County, September 7, 1995). This is an appeal of the Wisconsin Tax Appeals Commission's decision dated January 11, 1995. For a summary of that decision, see *Wisconsin Tax Bulletin* 92 (July 1995), page 17.

The issue in this case is whether the taxpayer's gross receipts from auction sales held in 1991 are subject to sales tax.

The taxpayer has been conducting business since 1982 as G&L Auction Service. None of his 1991 auctions of household goods occurred at his or G&L's business address; 28 out of 34 of his 1991 auctions were either at a ballroom or in an empty store. These were public places, not the property owner's premises.

During 1991, the ballroom and store were rented as needed, without entering into any leases for the facilities. Other than the auctions, the taxpayer did not conduct any of his other business (correspondence, telephone calls, storage of records, etc.) at the public facilities. The taxpayer held a seller's permit issued by the department for years before and during the year in question.

While the taxpayer's auctions were on-going during 1991, their scheduling varied. In March and May, he conducted only one auction each month; in April, July, and September, he held four or five auctions. Most of the auctions took place on weekends. About mid-week before each public-place auction, the taxpayer would take out newspaper ads to inform potential buyers of the place and date of the auctions.

The taxpayer claims he is exempt from sales tax on his auction receipts at public places because he fits within

certain rules governing taxable auction receipts found in the Wisconsin Administrative Code (emphasis added):

Tax 11.50(3)(a): Taxable receipts from auctions include gross receipts from: Auction sales held *regularly* at an *established place of business*, such as an auction house or auction barn. The household goods exemption does not apply to these sales.

Tax 11.50(4)(a): Gross receipts from the following auction sales are exempt: Auction sales of household goods or personal farm property which are *not held at regular intervals*. The following auctions are generally held on the property owner's premises ...

The Circuit Court concluded that the taxpayer's receipts from auction sales held at the ballroom and empty store are subject to sales tax.

The taxpayer's auctions at the ballroom and empty store were held at "an established place of business." The taxpayer's purpose in renting these public places was the holding of auctions. The distinction being made in Tax 11.50(4)(a) appears to be between private homes or non-auction-related business locations and spaces allotted specifically for auctions.

The taxpayer argues that these public places are not "his" place of business.

There is no mandate that the place of business be owned or even usually occupied by the auctioneer. The **dedication** of a location other than the property owner's home as an auction site is a sufficiently commercial undertaking to justify imposition

of the tax. It is only the sale at the owner's home or the rare or isolated sale at a different site that is intended to be exempted from taxation.

If the taxpayer's auction sales are found to occur "regularly," and at "an established place of business," they then fall squarely within the parameters of Tax 11.50(3)(a). The word "regular" can mean "uniform" but it can also mean "steady." Certainly the auctions being discussed happened on a steady basis.

The taxpayer has not appealed this decision. ☐

TEMPORARY RECYCLING SURCHARGE

I — **Temporary recycling surcharge.** *Wolf River Ventures, Inc. vs. Wisconsin Department of Revenue* (Wisconsin Tax Appeals Commission, August 4, 1995). The issue in this case is whether the department appropriately assessed the taxpayer for an additional temporary recycling surcharge and interest due for the 1991 tax year, where the taxpayer's tax year ended on April 30, 1991, and where the Wisconsin Legislature subsequently amended the recycling surcharge statutes in August of 1991, creating a recycling surcharge for any tax-option corporation with net income, to be initially applicable for taxable years ending after April 1, 1991, and before April 1, 1992.

Prior to and during 1991, the taxpayer was engaged in business as a Wisconsin corporation and had elected to be treated as a small business corporation for federal income tax purposes under sec. 1362 of the Internal Revenue Code. From late 1990 through

April 1991, the taxpayer ceased its business operations, liquidated its assets, and made its last cash distribution on April 26, 1991.

The taxpayer originally filed a final federal income tax return for the short period fiscal year ended May 15, 1991. Later, the taxpayer's certified public accountant declared in correspondence to the department dated August 29, 1994, that the appropriate short period fiscal year-end should correctly have been noted as April 30, 1991.

On August 22, 1994, the department issued a notice of amount due to the taxpayer, assessing an additional temporary recycling surcharge and interest due of \$1,279.

The Commission concluded that the department appropriately assessed the taxpayer for an additional temporary recycling surcharge and interest due for the tax year ended on April 30, 1991. Section 77.94, Wis. Stats., as amended by 1991 Wisconsin Act 39, renders the revised surcharge determination language clearly applicable to qualifying entities, tax-option corporations included, whose tax years ended between April 1, 1991, and April 1, 1992. The department and the Commission are duty bound to apply the legislature's clear and unambiguous statutory enactments to the letter, however unfair those enactments may seem to those affected.

The taxpayer has not appealed this decision.

CAUTION: This is a small claims decision of the Wisconsin Tax Appeals Commission and may not be used as a precedent. The decision is provided for informational purposes only. ☐



Tax Releases

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

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

The following tax releases are included:

Individual Income Taxes

1. Carryforward of Historic Rehabilitation Credits by Claimants Subject to Alternative Minimum Tax (p. 30)

Homestead Credit

2. Effect of General Relief on Homestead Credit (p. 31)

Homestead, Farmland Preservation Credits

3. Proceeds From the Surrender of an Insurance Policy (p. 32)

Sales and Use Taxes

4. Exemption Certificates — Facsimile (FAX) and Other Electronic Transmittals (p. 33)
5. Photofinishing Machinery and Equipment (p. 33)
6. Snow-Making for a Ski Hill (p. 35)

Excise, Occupational Taxes

7. Statute of Limitations for Adjustments to Cigarette, Tobacco Products, Fermented Malt Beverages (Beer), Intoxicating Liquor and Wine, Motor Vehicle Fuel, Alternate Fuels, and General Aviation Fuel Tax Reports (p. 36)

- (c) Itemized deduction credit under sec. 71.07(5)
- (d) School property tax credit under sec. 71.07(9)
- (e) Supplement to federal historic rehabilitation credit under sec. 71.07(9m)
- (f) State historic rehabilitation credit under sec. 71.07(9r)
- (g) Alternative minimum tax under sec. 71.08
- (h) Married persons credit under sec. 71.07(6)
- (i) Development zone investment credit under sec. 71.07(2di)
- (j) Development zone location credit under sec. 71.07(2dL)
- (k) Payments to other states under sec. 71.07(7).

Section 71.08(1)(intro.), Wis. Stats. (1993-94), imposes an alternative minimum tax on individuals, estates, and trusts if the income tax under sec. 71.02, Wis. Stats., not considering the claim of right credit under sec. 71.07(1), development zone investment, jobs, location, and sales tax credits under secs. 71.07(2di), (2dj), (2dL), and (2ds), 71.28(1di), (1dj), (1dL), and (1ds), and 71.47(1di), (1dj), (1dL), and (1ds), farmers' drought property tax credit under secs. 71.07(2fd), 71.28(1fd), and 71.47(1fd), farmland tax relief credit under secs. 71.07(3m), 71.28(2m), and 71.47(2m), married persons credit under sec. 71.07(6), earned income tax credit under sec. 71.07(9e), homestead credit under subch. VIII, farmland preservation

INDIVIDUAL INCOME TAXES

1 Carryforward of Historic Rehabilitation Credits by Claimants Subject to Alternative Minimum Tax

Statutes: Sections 71.07(9m) and (9r), 71.08, and 71.10(4), Wis. Stats. (1993-94)

Background: Sections 71.07(9m) and (9r), Wis. Stats. (1993-94), provide for a supplement to the feder-

al historic rehabilitation credit and a state historic rehabilitation credit, respectively. Each of these provisions provides for a 15-year carryforward of unused credits.

For individuals, sec. 71.10(4), Wis. Stats. (1993-94), requires computations to be made in the following order:

- (a) Income tax under sec. 71.06
- (b) Dependent credit and senior citizen credit under sec. 71.07(8)

credit under subch. IX, and credit for taxes paid to other states under sec. 71.07(7), is less than the tax under sec. 71.08.

Facts and Question: An individual taxpayer calculates a state historic rehabilitation tax credit of \$10,000 for 1994. The individual computes his 1994 Wisconsin tax liability as follows:

Income tax (gross tax)	\$4,000
Dependent credit	(100)
Itemized deduction credit	(300)
School property tax credit	(200)
State historic rehabilitation credit	(3,400)
Regular income tax	\$ 0
Alternative minimum tax	\$1,600.

How much of the taxpayer's 1994 historic rehabilitation credit is available to be carried forward to 1995?

Answer: Of the taxpayer's \$10,000 1994 historic rehabilitation credit, \$8,200 is available to be carried forward to 1995. Since the historic rehabilitation credit cannot offset the alternative minimum tax, the historic rehabilitation credit is considered utilized to the extent needed to reduce the taxpayer's regular Wisconsin income tax to the alternative minimum tax amount. Thus, \$1,800 [\$4,000 gross tax - \$100 dependent credit - \$300 itemized deduction credit - \$200 school property tax credit - \$1,600 alternative minimum tax = \$1,800] of the historic rehabilitation credit is utilized in 1994. □

HOMESTEAD CREDIT

2 Effect of General Relief on Homestead Credit

Statutes: Section 71.52(5), (6) and (8), Wis. Stats. (1993-94)

Wis. Adm. Code: Sections Tax 14.03(5)(a)3, June 1993 Register, and

Tax 14.05(3)(b), January 1991 Register

Background: General relief is a public assistance program of the state of Wisconsin. The benefits are administered by each county. Counties pay general relief benefits to needy recipients by various methods.

General relief benefits are sometimes paid directly to the recipient, by check. In other instances the benefits are paid, by check or voucher, to the recipient's landlord for rent, or to other providers of goods or services, such as to stores, utility companies, etc.

Some counties require general relief recipients to work on "work relief projects" established by the county, in exchange for the general relief benefits. The time spent working on the work relief project is credited at a specific hourly rate, and the number of hours required to work is proportionate to the amount of general relief benefits the recipient receives (including payments to third parties such as landlords or providers). Sec. 49.05, Wis. Stats. (1993-94).

Facts and Questions 1a and b: For all twelve months of 1994, Claimant A received general relief benefits of \$200 per month from County X, for a total of \$2,400. The checks were issued to Claimant A, who added \$100 per month from other sources, to pay his rent of \$300 per month (\$3,600 for the year).

Question 1a: Are the general relief benefits of \$2,400 paid to Claimant A includable in household income on his 1994 homestead credit claim (Schedule H)?

Answer 1a: Yes. "Household income" includes all income received by a claimant or a member of the claimant's household (sec. 71.52(5), Wis. Stats. (1993-94)), and "income"

includes cash public assistance and general relief (sec. 71.52(6), Wis. Stats. (1993-94)). Since Claimant A received the general relief benefits directly from County X, the benefits must be included as household income on Schedule H.

Question 1b: May Claimant A include in the computation of rent constituting property taxes accrued, the full \$3,600 of rent paid?

Answer 1b: Yes. "Rent constituting property taxes accrued" is based on rent actually paid by the claimant and his or her household (sec. 71.52(8), Wis. Stats. (1993-94)). Since Claimant A received the general relief benefits from County X and he directly paid the entire rent of \$3,600 to his landlord, the full amount may be claimed.

Facts and Questions 2a and b: Assume the same facts as in Facts and Question 1, except that Claimant A lived in County Y, and County Y paid the general relief benefits by issuing a voucher or a check to Claimant A's landlord.

Question 2a: Are Claimant A's general relief benefits of \$2,400 includable in household income?

Answer 2a: No. The general relief benefits are not received by the claimant as provided under sec. 71.52(5), Wis. Stats. (1993-94). Income does not include relief in kind supplied by a governmental agency, such as payments made directly to a supplier of goods or services, including rent (sec. 71.52(6), Wis. Stats. (1993-94), and sec. Tax 14.03(5)(a)3, Wis. Adm. Code). General relief benefits are not includable in income on Schedule H if paid to another party or if paid to the claimant and a third party.

Question 2b: May the \$2,400 of rent paid through general relief bene-

fits which were paid to Claimant A's landlord by County Y be included in the calculation of Claimant A's rent constituting property taxes accrued?

Answer 2b: No. The \$2,400 was paid by County Y rather than by the claimant as required under sec. 71.52(8), Wis. Stats. (1993-94). Indirect payments of rent may not be included (sec. Tax 14.05(3)(b), Wis. Adm. Code).

Note: In this situation, Claimant A's total rent for 1994 is \$3,600. The \$1,200 paid directly by Claimant A may be included in the calculation of his rent constituting property taxes accrued.

Question 3: Would the answers to Questions 2a and 2b differ if Claimant A had been required to work under a work relief project?

Answer 3: No. Rent paid to Claimant A's landlord by County Y is not includable in household income and may not be included in the calculation of rent constituting property taxes accrued, even if Claimant A participates in a work relief project. Wisconsin statutes do not differentiate between assistance payments requiring the performance of services and payments without such a condition. There is no basis for differential treatment between the two types of situations. The performance of work as part of a work relief project has no bearing on either household income or rent constituting property taxes accrued on a homestead credit claim. ☐

HOMESTEAD, FARMLAND PRESERVATION CREDITS

3 Proceeds From the Surrender of an Insurance Policy

Statutes: Sections 71.52(6) and 71.58(7), Wis. Stats. (1993-94)

Wis. Adm. Code: Section Tax 14.03(4)(intro.) and (b)(intro.) and 8 and (5)(a)(intro.) and 4, June 1993 Register

Background: Under sec. 71.52(6), Wis. Stats. (1993-94), "income," for homestead credit purposes, includes "the gross amount of any pension or annuity." Section 71.58(7), Wis. Stats. (1993-94), references the homestead credit definition of income for farmland preservation credit purposes.

"Income" is further defined in the Administrative Rules. Section Tax 14.03(4)(b)8, Wis. Adm. Code, provides that proceeds from a personal endowment insurance policy or annuity contract purchased by the recipient of the proceeds are includable in income for homestead credit purposes. Specifically excluded from income, however, under sec. Tax 14.03(5)(a)4, Wis. Adm. Code, are lump sum insurance proceeds received for a recipient's disability or loss of limb and lump sum life insurance proceeds received by a beneficiary. These same provisions apply for farmland preservation credit purposes.

Facts and Question 1: Claimant A is filing a 1994 Wisconsin farmland preservation credit claim. Claimant A owned a whole life insurance policy, which he cashed in or "surrendered" in 1994. He received the total cash value of the policy, which was \$8,000, consisting of \$6,000 in premiums that he had paid in, plus \$2,000 of accrued interest.

Are the \$8,000 of proceeds that Claimant A received from the surrender of his whole life insurance policy includable in income on his 1994 farmland preservation credit claim?

Answer 1: The \$2,000 of accrued interest is taxable income and thus includable on the farmland preserva-

tion credit claim (Schedule FC). However, the amount constituting the premiums he paid (\$6,000) is not includable on Schedule FC. A whole life policy is not an endowment insurance policy or an annuity contract, and thus sec. Tax 14.03(4)(b)8, Wis. Adm. Code, which provides for the inclusion of proceeds from those sources, is not applicable to Claimant A.

Facts and Question 2: Several years ago, Claimant B purchased a combination term life insurance and annuity policy. The annuity portion of her policy generated a cash value, but the term insurance portion of the policy did not. In 1994, Claimant B surrendered the entire policy and received the cash value of \$4,000. During the life of the policy Claimant B had paid premiums totaling \$5,000, consisting of \$2,000 for the term insurance portion and \$3,000 for the annuity portion.

Is any portion of the \$4,000 proceeds that Claimant B received from the surrender of her policy includable in income on her 1994 homestead credit claim?

Answer 2: The entire proceeds of \$4,000 must be included in income on Claimant B's 1994 homestead credit claim (Schedule H). The proceeds she received are all attributable to the annuity portion of the policy; \$1,000 of that amount (the \$4,000 of proceeds minus the \$3,000 of premiums she paid for the annuity) is accrued interest, which is taxable and thus includable as income on Schedule H (on line 9 or 10a). The \$3,000 representing the repayment of her premiums for the annuity portion of the policy must be included as income on Schedule H (on line 11e), as an annuity contract purchased by the recipient, per sec. Tax 14.03(4)(b)8, Wis. Adm. Code.

The \$3,000 is not excludable under sec. Tax 14.03(5)(a)4, Wis. Adm. Code, because the proceeds were not received as a result of a disability or loss of limb, nor were they received as a beneficiary of another person's life insurance policy. (Note: The \$2,000 of premiums that Claimant B paid for the term insurance portion of the policy are not considered in the computation of income on Schedule H, since that portion of the policy did not generate a cash value; the proceeds were entirely attributable to the annuity portion.) ☐

SALES AND USE TAXES

Note: The following tax releases interpret the Wisconsin sales and use tax law as it applies to the 5% state sales and use tax. The ½% county sales and use tax may also apply. For information on sales or purchases that are subject to the county sales and use tax, refer to the January 1995 issue of the *Sales and Use Tax Report*. A copy can be found in *Wisconsin Tax Bulletin* 90 (January 1995), pages 39 to 42.

4 Exemption Certificates — Facsimile (FAX) and Other Electronic Transmittals

Statutes: Sections 77.52(13) and (14) and 77.61(9), Wis. Stats. (1993-94)

Wis. Adm. Code: Section Tax 11.14(2)(b) and (3)(b), June 1995 Register and Section Tax 11.92(l)(b), December 1992 Register

Introduction: This tax release sets forth various types of exemption certificates which the department will accept in lieu of original paper exemption certificates.

Background: Section 77.52(13), Wis. Stats. (1993-94), provides that all receipts are subject to tax until the contrary is established and the burden of proving that a sale of tangible personal property or a taxable service is not a "taxable" sale is on the person who makes the sale. One of the ways a seller may prove that a sale is not a "taxable" sale is to obtain a properly completed exemption certificate from the purchaser.

Section 77.52(14), Wis. Stats. (1993-94) and sec. Tax 11.14(2)(b) and (3)(b), Wis. Adm. Code, June 1995 Register, provide, in part, that exemption certificates which support exempt sales must contain all of the following:

- 1) Name and address of the purchaser
- 2) General character of the property or service sold by the purchaser
- 3) Basis for the claimed exemption
- 4) Date and signature of the purchaser.

There is no requirement that the exemption certificate provided to a seller must be on a form designed by the Wisconsin Department of Revenue. A substitute exemption certificate may be used if it contains all of the information listed in 1 through 4 above and is in a form approved by the Wisconsin Department of Revenue.

Section Tax 11.92(l)(b), Wis. Adm. Code, December 1992 Register, provides that the documents necessary to support the claimed exemptions from Wisconsin sales and use tax (e.g., exemption certificates) shall be maintained in a manner in which they can be readily related to the transaction for which the exemption is sought.

Facsimile (FAX) Exemption Certificates

Question 1: May a seller accept properly completed exemption certificates transmitted via facsimile (FAX) in lieu of original paper exemption certificates?

Answer 1: Yes.

Exemption Certificates Containing Computer Generated Signatures

"Computer generated signature," as used in this tax release, is a signature which is obtained from a customer and stored by electronic means in a computer or on other media for retrieval at a later date.

Question 2: May a seller accept properly completed exemption certificates containing signatures which are generated and stored by electronic means (e.g., by computer) in lieu of original paper exemption certificates?

Answer 2: Yes.

Note: Persons who want to use some other form of electronically generated and transmitted exemption certificates must receive approval from the department, prior to implementing the use of such certificates. Approval requests, along with a sample of the certificate to be generated by your system and an explanation of the system, should be sent to:

Wisconsin Department of Revenue
Attn: Audit Technical Services Unit
P.O. Box 8906
Madison, WI 53708-8906. ☐

5 Photofinishing Machinery and Equipment

Statutes: Section 77.54(6)(a) and (6m), Wis. Stats. (1993-94)

Wis. Adm. Code: Section Tax 11.39, April 1994 Register

Introduction: This tax release discusses whether a photofinishing operation is manufacturing and illustrates that the process is manufacturing even when performed as part of a retail operation.

Background: Section 77.54(6)(a), Wis. Stats. (1993-94), provides, in part, an exemption for machines and specific processing equipment used by a manufacturer in manufacturing tangible personal property.

Section 77.54(6m), Wis. Stats. (1993-94), defines "manufacturing" to mean "the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

"Photofinishing" for purposes of this tax release consists of the following processes performed by a business through the use of machines:

1. The process begins with a roll or cartridge of exposed photographic film. The photographic film consists of a clear, flexible plastic which is coated with a light-sensitive emulsion. When a photograph is taken, absorbed light produces chemical reactions with a silver compound, which form a negative latent image.
2. The exposed film is treated in a solution known as a "developer," which converts the latent image into a visible negative.
3. The film is placed in a chemical bath called "bleach," which stops the developer action.
4. The film is washed to remove the developer and bleach chemicals.
5. The film is placed in a fixing bath. The purpose of the bath is

to remove the unexposed silver compound and metallic silver image bleached in step 3.

6. The film is washed to remove the processing chemicals from the emulsion. At this point, the negative can be described as somewhat orange in color with the color images in reverse, or negative, of what they should be for viewing.
7. A printer is used to expose the negative image onto photographic paper. The printing is accomplished by sending light rays through the negative onto the paper, which is coated with silver halide grains.
8. Color developer acts upon the exposed silver halide grains creating a black and white silver image.
9. Color development compounds combine and react with colorless dye couplers to create a color dye image.
10. Bleach and fix solutions remove the black and white image leaving behind only the color dye image.
11. The result is photographic prints that are packaged in an envelope with the negatives.

Note: The department has determined, based on evidence it reviewed, including an opinion of an expert as to whether the process of photofinishing was popularly regarded as manufacturing, that the described photofinishing operation met the six requirements under sec. 77.54(6m), Wis. Stats. (1993-94).

Facts and Question 1: Company A operates a retail outlet which provides photographic services (i.e., photography and photofinishing) and sells photographic supplies (e.g., cameras

and related equipment, film, photo albums, and frames).

Customers enter a small counter area to drop off film, pick up prints, and purchase equipment and supplies. The photofinishing process takes place in a separate room which contains 7 machines operated by 4 employees. There is also a room where photographs are taken.

Machines used in the photofinishing process include:

- Developer
- Printer
- Printer and enlarger of photographs from picture or slide negatives
- Negative producer from positive.

Are these machines, if used exclusively and directly by Company A in its photofinishing operation, subject to Wisconsin sales or use tax?

Answer 1: No. The machines are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94).

Facts and Question 2: Company B operates a large grocery store. Included in the grocery store is a photo department.

The photo department provides photofinishing services and sells photographic supplies, including film, albums, and frames.

Company B employs 6 people in the photofinishing area. Duties performed include prepping the film for developing, operating 2 machines that process the exposed film into negatives, operating 2 machines that print the photographs, and packaging the completed prints.

Are the machines and equipment, if used exclusively in prepping the exposed film, developing negatives, creating prints, and packaging prints, subject to Wisconsin sales or use tax?

Answer 2: No. The machines are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94).

Facts and Question 3: Company C operates an express photofinishing business in a store within a shopping mall.

At the front of the store is a counter where exposed film is accepted for processing and finished prints are delivered to customers. Behind the counter is a machine used to develop the film into negatives and a machine for creating prints from the negatives. A small area at the back of the store is used for storage.

Company C has one employee on duty at a time who accepts film from customers, operates the machines, and delivers prints to customers.

Is the machinery, if used to exclusively and directly by Company C to develop negatives and print photographs, subject to Wisconsin sales or use tax?

Answer 3: No. The machines are exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94). □

6 Snow-Making for a Ski Hill

Statutes: Section 77.54(2), (6)(a) and (6m), Wis. Stats. (1993-94)

Wis. Adm. Code: Section Tax 11.39, April 1994 Register

Introduction: This tax release discusses whether the making of snow

for a ski hill is considered manufacturing.

Background: Section 77.54(6)(a), Wis. Stats. (1993-94), provides, in part, an exemption for machines and specific processing equipment used by a manufacturer in manufacturing tangible personal property.

Section 77.54(6m), Wis. Stats. (1993-94), defines "manufacturing" to mean "the production by machinery of a new article with a different form, use and name from existing materials by a process popularly regarded as manufacturing."

Section Tax 11.39(2), Wis. Adm. Code (April 1994 Register), provides, in part, that manufacturing includes the conveyance of raw materials and supplies from plant inventory to the work point of the same plant, conveyance of work in progress directly from one manufacturing operation to another in the same plant, and the conveyance of finished products to the point of first storage on the plant premises.

Section 77.54(2), Wis. Stats. (1993-94), provides, in part, an exemption for tangible personal property consumed, destroyed, or losing its identity in the manufacture of tangible personal property destined for sale.

Facts: Company A is a recreational service business which provides, during the winter months, a downhill skiing facility in Wisconsin. Company A's gross receipts are from sales of lift tickets, rentals of ski equipment, locker fees, and related services.

An insufficient amount of natural snow falls to cover ski areas owned by Company A. As a result, Company A makes snow to maintain viable ski hills. Approximately 80% of the snow covering Company A's ski hill is made by Company A. Company A

does not sell any of the snow it makes.

The snow-making process is as follows:

- Pumps in a pump house system pull water from a cooling pond and combine it with a clay compound. The clay compound, purchased in bulk form, is a naturally-occurring protein derived from bacteria. The clay compound raises the freezing point of water making it possible to produce snow in less than ideal winter conditions.
- The water and clay mixture is directed uphill through a piping system to an upper pump house. In the upper pump house, turbine water pumps pull the water and clay mixture uphill.
- Strainers adjacent to the pumps remove sticks, stones, fish parts, leaves, and other substances from the water and clay mixture.
- The water and clay mixture travels out of a hydrant, through a flexible hose, into the snow-making machine which has been conveyed to the site by a truck or forklift.
- The snow-making machine provides a high volume airstream by means of an electric motor-driven propeller mounted on a ducted blower.
- Water droplets of controlled size and temperature from the snow machine are injected into the airstream and super cool into particles of ice.
- The particles of ice pass with the airstream to nozzles and are expelled from a ducted fan in a dense cloud. As the dense cloud expands, it entraps cold air. Each particle changes to snow.

- “Snow cats” spread the snow made that has fallen on the ski hill, as required.

Question 1: Is the making of snow by Company A manufacturing under sec. 77.54(6m), Wis. Stats. (1993-94)?

Answer 1: Yes. The snow-making process meets the definition of manufacturing in sec. 77.54(6m), Wis. Stats. (1993-94). Company A uses machinery and equipment to produce snow which is different in form, use, and name from the existing water and clay compound raw materials. The process is popularly regarded as manufacturing by persons in the snow-making industry.

Question 2: In the snow-making process described in the Facts, when does the manufacturing process of producing snow begin and end for purposes of determining what machinery and equipment qualifies for exemption from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94)?

Answer 2: The snow manufacturing process begins with the mixing of the water from the cooling pond with the clay compound and includes the conveyance of the water from the pond and clay compound from inventory to the point of mixing. The process ends when the snow produced falls on the ski hill.

Machinery and equipment used exclusively and directly within this process is exempt from Wisconsin sales or use tax under sec. 77.54(6)(a), Wis. Stats. (1993-94).

Question 3: Is the clay compound used to make snow subject to Wisconsin sales or use tax?

Answer 3: Yes. The clay compound is tangible personal property, the sale of which is subject to Wisconsin sales tax under sec. 77.52(1), Wis. Stats. (1993-94). The exemption under sec. 77.54(2), Wis. Stats. (1993-94), relating to tangible personal property consumed, destroyed, or losing its identity in the manufacture of tangible personal property, does not apply because the snow manufactured by Company A is not destined for sale. □

EXCISE, OCCUPATIONAL TAXES

7 Statute of Limitations for Adjustments to Cigarette, Tobacco Products, Fermented Malt Beverages (Beer), Intoxicating Liquor and Wine, Motor Vehicle Fuel, Alternate Fuels, and General Aviation Fuel Tax Reports

Statutes: Secs. 71.77, 78.70(7), 139.092, 139.39(6) and 139.83, Wis. Stats. (1993-94)

Background: Section 71.77(2), Wis. Stats. (1993-94), provides that notice of assessment of additional tax must be given within four years of the date the income or franchise tax return was filed. Section 71.77(8), Wis. Stats. (1993-94), provides that a return filed before the due date is considered as filed on the due date.

Various provisions in the Wisconsin Statutes relating to cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, and general aviation fuel taxes refer to sec. 71.77, Wis. Stats. (1993-94). Sections 78.70(7), 139.092, 139.39(6), and 139.83, Wis. Stats. (1993-94), provide that sec. 71.77 as

it applies to the taxes under Chapter 71 applies to the cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, and general aviation fuel taxes.

Question: Does the four-year statute of limitations period for assessing additional cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, and general aviation fuel taxes begin on (1) the date the income or franchise tax return of a taxpayer was filed or (2) the date the cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, or general aviation fuel tax report was filed?

Answer: The four-year statute of limitations begins the dates the cigarette, tobacco products, fermented malt beverages (beer), intoxicating liquor and wine, motor vehicle fuel, alternate fuels, or general aviation fuel tax report was filed. Reports filed before the due date are considered as filed on the due date.

Example: A taxpayer's January 1992 fuel tax report was due February 20, 1992.

- The department has until February 20, 1996, to adjust a January 1992 fuel tax report filed on February 20, 1992.
- The department has until February 20, 1996, to adjust a January 1992 fuel tax report filed before February 20, 1992.
- The department has until March 1, 1996, to adjust a January 1992 fuel tax report filed late on March 1, 1992. □



Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.

The number assigned to each ruling is interpreted as follows: The "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the number in the series of rulings issued that year. The date following the 7-digit number is the date the ruling was mailed to the requestor.

Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From the Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following private letter rulings are included:

Homestead Credit

Property taxes accrued — sewer charges
W9541008 (p. 37)

Individual Income Taxes

Pensions — federal retirement
W9541009 (p. 38)

Corporation Franchise and Income Taxes

Business loss carryforward — merger
W9543010 (p. 38)

✻ W9541008, July 20, 1995

Type Tax: Homestead Credit

Issue: Property taxes accrued — sewer charges

Statutes: Section 71.52(7), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling, regarding the inclusion of sewer charges in determining allowable property taxes accrued for Wisconsin homestead credit purposes.

Facts

You and other residents of Village V in Wisconsin are charged a sewer charge of approximately \$X per quarter for each residence, by the ABC Sewer Authority. This charge by the ABC Sewer Authority is based on the total assessed valuation of property in Village V. The charge is in no way based upon water flow, and no water is provided in the charge.

Unlike Village V, in Milwaukee County the sewer charge is included on the property tax bill (for example, the City of Milwaukee assesses \$3.072041 per \$1,000 of assessed valuation of the property, and the Village of Fox Point assesses \$3.700584 per \$1,000 of assessed valuation). You assume that these residents get credit for their sewer charges in determining allowable property taxes accrued, when they submit Wisconsin homestead credit claims.

Request

You ask that you and all residents of Village V in Wisconsin be able to combine your real estate tax bill amounts with your annual sewer charges for purposes of any Wisconsin homestead credit claims.

Ruling

No portion of the sewer charges paid by you or any other resident of Village V in Wisconsin in the manner described in your request may be used for purposes of determining allowable property taxes accrued on a Wisconsin homestead credit claim.

Analysis

Under sec. 71.52(7), Wis. Stats. (1993-94), for Wisconsin homestead credit purposes "*Property taxes accrued*" means *real or personal property taxes ... exclusive of special assessments, delinquent interest and charges for service, levied on a homestead owned by the claimant or a member of the claimant's household. 'Real or personal property taxes' means those levied under ch. 70 ...*

The statutes do not permit any portion of a sewer charge imposed by a sewer authority for services it provides to a homeowner to be treated as property taxes for purposes of calculating a homestead credit. In fact, the statutory definition of "property taxes accrued" specifically excludes "charges for service" and further defines "real or personal property taxes" to mean those levied under ch. 70 of the Wisconsin statutes. The sewer charg-

es are not levied under ch. 70 of the Wisconsin statutes.

Residents of municipalities that include sewer charges as part of their determination of property taxes accrued, which the municipalities levy under ch. 70, Wis. Stats., may include the sewer charges as property taxes accrued in the calculation of their homestead credit.

The calculation of a Wisconsin homestead credit for an eligible claimant is based on two factors: 1) total household income; and 2) property taxes accrued and/or rent constituting property taxes accrued. Since the sewer charges imposed by ABC Sewer Authority are not includable as part of "property taxes accrued," those charges do not enter into the calculation of a claimant's allowable homestead credit. ☐

✳ **W9541009**, July 20, 1995

Type Tax: Individual Income

Issue: Pensions — federal retirement

Statutes: Section 71.05(1)(a), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling regarding the exclusion for benefits from certain retirement plans.

Facts

You work for the U.S. Postal Service in Milwaukee and will be eligible for retirement in 1996. Your employment with the Postal Service began in 1964.

You served in the U.S. Air Force from 1960 to 1964. You have taken the option of making a deposit into the Civil Service Retirement Fund for

retirement credit buyback which covers the wages earned for the four years of service you completed in the Air Force. As a result of this retirement credit buyback, your retirement computation date, including military service, is a date in 1960.

Request

You have requested a ruling as to whether your Civil Service Retirement System benefits will qualify as exempt from Wisconsin income tax. You indicated that since you made the deposit in the retirement system, your military time, which began in 1960, should qualify as your starting date in the federal Civil Service Retirement System.

Ruling

Payments you receive from the Civil Service Retirement System are subject to Wisconsin income tax. The fact that your military time is counted in the computation of the amount of your retirement benefit does not change the fact that you first became a member of the Civil Service Retirement System in 1964, when your employment began.

Analysis

Section 71.05(1)(a), Wis. Stats. (1993-94), provides that all payments received from the U.S. Civil Service Retirement System, the U.S. military employe retirement system, certain Milwaukee city and county retirement systems, and the Wisconsin State Teachers Retirement System are exempt from Wisconsin income tax if paid on the account of a person who was a member of the retirement system as of December 31, 1963.

Therefore, under sec. 71.05(1)(a), Wis. Stats. (1993-94), your Civil Service Retirement System benefits

will be exempt from Wisconsin tax only if you were a member of the Civil Service Retirement System as of December 31, 1963.

Your employment with the U.S. Postal Service began in 1964. Based on your date of employment, you were not a member of the federal Civil Service Retirement System as of December 31, 1963.

In addition, you exercised the option to make a deposit into the Civil Service Retirement Fund for retirement credit buyback. Your exercise of this option simply allowed recognition of your years of military service for calculating the amount of your retirement benefits. It did not retroactively establish membership status in the Civil Service Retirement System as of December 31, 1963.

Because you were not a member of the Civil Service Retirement System as of December 31, 1963, your Civil Service Retirement System benefits will be subject to Wisconsin income tax. ☐

✳ **W9543010**, August 3, 1995

Type Tax: Corporation Franchise and Income

Issue: Business loss carryforward — merger

Statutes: Sections 71.42(2) and 71.45(2) and (4), Wis. Stats. (1993-94)

This letter is in response to your request for a private letter ruling with respect to the proposed statutory merger transaction and its tax effect on the Wisconsin net business loss carryforwards and the future utilization of such carryforwards by the surviving corporation.

Facts

INS Corporation, a non-Wisconsin insurance corporation, is a mutual insurer with the following wholly owned subsidiaries: SUB 1 Company, a non-Wisconsin corporation, and SUB 2 Company, a Wisconsin corporation.

SUB 1 Company will change its name to New Sub Insurance Company (NSIC). Thereafter, NSIC will be redomesticated from the other state to Wisconsin.

After the redomestication of NSIC, INS Corporation will execute a plan of reorganization whereby SUB 2 Company will merge under Wisconsin law into NSIC in an "A" reorganization (statutory merger) under Internal Revenue Code (IRC) section 368(A)(1)(A). The proposed date of the merger is January 1, 1995. After the merger, SUB 2 Company will no longer exist as a separate legal entity. NSIC will continue the business operations of SUB 2 Company after the merger.

The corporations are all on the accrual basis of accounting and are included in the consolidated federal income tax return of INS Corporation.

SUB 2 Company has a Wisconsin net business loss carryforward as of December 31, 1993.

Request

You have requested that the following rulings be issued:

1. The proposed statutory mergers under the laws of the state of Wisconsin will qualify as "A" reorganizations under IRC section 368(a)(1)(A), and each of the three corporations qualifies as "a party to a reorganization" under IRC section 368(b).

2. No gain or loss will be recognized pursuant to IRC section 361(a) to INS Corporation or any other party to the reorganization as a result of the proposed statutory merger.
3. The assets and liabilities of SUB 2 Company to be transferred to NSIC will retain the same tax bases in the hands of NSIC as that of SUB 2 Company in accordance with the provisions of IRC section 362(b).
4. Pursuant to IRC section 358(a), the basis of the stock received by INS Corporation will equal the existing basis in SUB 2 Company immediately prior to the merger transaction and the holding period of such stock will continue pursuant to IRC section 1223(1).
5. The Wisconsin net business loss carryforwards of SUB 2 Company from the tax years 1989 through 1994 will be available to NSIC, including any operating loss of SUB 2 Company from January 1, 1995, until the date of the merger should such merger occur subsequent to the proposed merger date of January 1, 1995.
6. The losses of SUB 2 Company will not be subject to limitations under IRC section 382 and thus will be 100% available to NSIC in the year of the merger.

Ruling

1. If the proposed statutory mergers under the laws of the state of Wisconsin qualify as "A" reorganizations under IRC section 368(a)(1)(A) and each of the three corporations qualifies as "a party to a reorganization" under IRC section 368(b) for federal income tax purposes, IRC sections 368(a)(1)(A) and (b) will

also apply for Wisconsin franchise or income tax purposes.

2. If no gain or loss is recognized pursuant to IRC section 361(a) to INS Corporation or any other party to the reorganization for federal income tax purposes as a result of the proposed statutory merger, IRC section 361(a) will also apply for Wisconsin franchise or income tax purposes.
3. If the assets and liabilities of SUB 2 Company to be transferred to NSIC retain the same tax bases in the hands of NSIC as that of SUB 2 Company in accordance with the provisions of IRC section 362(b) for federal income tax purposes, IRC section 362(b) will also apply to their Wisconsin tax bases.
4. If, pursuant to IRC section 358(a), the basis of the stock received by INS Corporation equals the existing basis in SUB 2 Company immediately prior to the merger transaction and the holding period of such stock continues pursuant to IRC section 1223(1) for federal income tax purposes, IRC sections 358(a) and 1223(1) will also apply for Wisconsin franchise or income tax purposes.
5. The Wisconsin net business loss carryforwards of SUB 2 Company from the tax years 1989 through 1994 will be available to NSIC as provided by IRC sections 381 and 382, including any operating loss of SUB 2 Company from January 1, 1995, until the proposed date of the merger should such merger occur subsequent to the proposed merger date of January 1, 1995.
6. If the limitations under IRC section 382 do not apply for

federal income tax purposes because the merger does not constitute an ownership change under IRC section 382(g), the Wisconsin net business losses of SUB 2 Company will not be subject to limitations under IRC section 382 and thus will be 100% available to NSIC in the year of the merger.

Analysis

The Wisconsin net income of an insurance company is federal taxable income as determined under the Internal Revenue Code, with certain

adjustments prescribed in sec. 71.45(2), Wis. Stats. (1993-94). Internal Revenue Code sections 358, 361, 362, 368, and 1223 are not modified for Wisconsin purposes. However, sec. 71.45(2)(a)1, Wis. Stats. (1993-94), requires insurers to add back to federal taxable income the amount of any loss carryforward or carryback deducted in the calculation of federal taxable income. A deduction for the Wisconsin net business loss carryforward is permitted under sec. 71.45(4), Wis. Stats. (1993-94). When IRC section 381 applies for federal income tax purposes, the successor corporation may

utilize the predecessor corporation's unused Wisconsin net business loss carryforwards sustained in the 15 preceding taxable years.

Since the Wisconsin Department of Revenue will not issue private letter rulings involving interpretations of the Internal Revenue Code, the department will not rule that IRC sections 358(a), 361(a), 362(b), 368(a)(1)(A) and (b), and 1223(1) do apply, nor will the department rule that IRC section 382 does not apply to this transaction. □