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Estate Tax Changes Set for 2011

The Wisconsin estate tax is based on the federal credit for state death taxes after December 31, 2007. Since there is no federal credit for state death taxes for deaths occurring in 2008 through 2010, there is no Wisconsin estate tax for deaths occurring between January 1, 2008, and December 31, 2010.

Under current law, the federal credit for state death taxes will return and the federal exemption and maximum federal tax rate will be \$1,000,000 and 55%, respectively, for estates in 2011. These changes are a result of the “sunset” of the provisions of, and amendments made by, The Economic Growth and Tax Relief Reconciliation Act of 2001. Since there will be a federal credit for state death taxes for deaths occurring in 2011, there will be a Wisconsin estate tax for deaths occurring on or after January 1, 2011.

At this time it is not known if Congress or the Wisconsin Legislature will enact further legislation regarding the estate tax. Any such legislation will be reported in [News for Tax Professionals](#) and the *Wisconsin Tax Bulletin*. [↗](#)

Update: Electronic Filing and Payment Mandate Letters

A recent article in “News for Tax Professionals” indicated the department would be sending notification letters to certain persons not filing and paying electronically. A number of these letters were sent in late September and early October, and will continue to be sent through January 2011. Please keep the following in mind if you or one of your clients is contacted:

- If a requirement to file or pay by electronic means causes an undue hardship, a [waiver request](#) may be submitted.
- There are a number of simple and free ways to electronically file and pay on the department's web site, under “[Online Services](#).” [↗](#)

Help Make Form 1099-G Paperless

Each year the department mails hundreds of thousands of Forms 1099-G to individuals, reporting Wisconsin income tax refund information. With your help, we can significantly reduce the time and cost this involves.

Starting in early November, you and your clients can [sign up](#) on the department's web site to receive Form 1099-G information online instead of through the mail. If an e-mail address is provided during sign up, notification will be sent in January 2011 when Form 1099-G information becomes available online.

We hope you will go paperless and encourage your clients to do the same. It's an easy way to help reduce the cost of government, something in which we all share an interest. The mailing list for 2010 Forms 1099-G will be finalized in mid-December, so don't delay! [↗](#)

Sales and Use Tax Report Available

The latest issue of the [Sales and Use Tax Report](#) became available on the Department of Revenue's web site in September. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information, including the following:

- Effective January 1, 2011, the motor vehicle dealers' measure of use tax is increased from \$138 to \$139 and the 2.0% local exposition basic room tax will be increased to 2.5%.
- A description of the documentation required for exempt sales to American Indian Tribes or bands and the federal government.
- An overview of how sales and use tax may apply to the exchange of products for services, realty, or intangibles.
- Clarification of the treatment of charges for extended service contracts and warranties (this topic was also the subject of an article in News for Tax Professionals). [↗](#)

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Claiming Wisconsin Research Credits and Substantiating Them Upon Audit

In order to claim the Wisconsin research credits, taxpayers must keep contemporaneous documentation to substantiate the type and cost of research activities conducted. If the research credit claimed is questioned by the Department of Revenue (DOR) in an audit, a taxpayer has the burden to support the credit claimed. Failure to keep adequate records may result in the credit claimed being denied.

What Records Should I Keep?

Documents created at the time the qualified research activities (QRAs) are performed should be prepared and maintained **by project** that detail:

- Project scope (including uncertainty to address and alternative methods for resolving uncertainty)
- Research and testing activities performed
- Time spent on research and testing activities by employee
- Results of the research (including evaluation of tests performed and summary of uncertainty resolved)

Internal Revenue Service regulations require a taxpayer claiming a credit under sec. 41, IRC, to maintain records in sufficiently usable form and detail to substantiate that the research expenditures claimed are eligible for the credit. While the IRC does not contain a particular approach or accounting methodology for capturing expenditures, it does require that the taxpayer identify qualified research expenses (QREs) by business component (qualified activity). The business component reflects the actual activity undertaken to discover new information where the activities reflect components of a process of experimentation. Wisconsin follows sec. 41, IRC, with certain exceptions, for the definition of qualified research expenses (QREs).

Are Studies Done Subsequent to the Research Sufficient to Substantiate Research Credits Claimed Upon Audit?

The Department of Revenue, when auditing records relating to research credit, has found that taxpayers have computed credits based on interviews, estimates, and data manipulation done several years after the research was performed. The results of these activities (referred to for purposes of this article as “studies”) are then presented as the sole substantiation of the credits claimed.

These studies often do not establish the required nexus between QREs and qualified research activities (QRAs). While most accounting systems contain information to identify and measure expenditures, they don’t contain information that details whether research and development activities meet the statutory requirements under sec. 41, IRC. The studies rely on surveys, interviews, and other input from taxpayer personnel, often referred to as Subject Matter Experts (SMEs). The method attempts to create nexus between the QREs and QRAs by the assignment of a time percentage by the SME to the QRE.

The Internal Revenue Service and Department of Revenue have held that interviewing employees to reconstruct the activities believed to qualify (or not qualify) is insufficient in determining what employees did and whether such expenses qualify for the research credit. Without additional substantiation, research credits claimed may be adjusted or denied.

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What Additional Substantiation Can I Provide?

The following documents, created at the time research activities were performed, should be provided to substantiate research credits claimed in terms of QREs and the QRAs to which they relate. The documents should be organized by project and referenced to the applicable QREs used in computing the credit.

- Purchase orders and invoices
- Project authorization requests
- Work orders and capital addition requests
- Research and other department meeting minutes
- Internal memos outlining project progress and results

- Position and department descriptions of employees identified in the study as providing qualified research
- Patent applications
- Workpapers documenting how the research credit and base credits were computed
- Prototype and process testing reports

Caution: This list is not all-inclusive. Additional documents may be required if the above items do not contain information that adequately substantiates that the activities qualify or are related to the QREs used in computing the credit.

Persons claiming research credits may request guidance as to whether specific records they keep will adequately substantiate research credits by writing to: Audit Technical Services, Wisconsin Department of Revenue, Mail Stop 5-257, P.O. Box 8906, Madison, WI, 53708-8906. [✉](#)

Reminders: Schedule OS Enclosures

The following enclosures are required when filing Schedule OS, *Credit for Net Tax Paid to Another State*, with a Wisconsin income tax return (Form 1, 1NPR, or 2):

- A complete copy of the income tax return and wage statement(s) or other withholding statement(s) from the other state. This information must be included for **each** state for which a credit is claimed.
- If credit is claimed for tax paid to another state by a partnership, LLC, or tax-option (S) corporation, a copy of the Wisconsin Schedule 3K-1 or 5K-1 received. If the partnership, LLC, or corporation did not file a Wisconsin return, submit federal Schedule K-1 plus a statement from the partnership, LLC, or (S) corporation listing the states where tax was paid, the type of income that was taxed, and the amount of each state's tax allocable to the partner, member, or shareholder.

The enclosures can be transmitted to the Department of Revenue electronically using one of two methods:

- If your tax preparation software allows it, attach a PDF of the required enclosures as part of your electronically filed Wisconsin return. Instructions on how to do this should be included with the software.
- Transmit the enclosures separately from the electronically filed Wisconsin return directly to the Department of Revenue over the [Internet](#).

Note: If paper copies of the enclosures are sent to the Department of Revenue with Form W-RA, *Required Attachments for Electronic Filing*, there may be a delay in processing the Wisconsin income tax return. [✉](#)

Updated Publications

The following [publications](#) of the Income, Sales, and Excise Tax Division of the Department of Revenue have recently been revised:

Income and Franchise Taxes

- 106 Wisconsin Tax Information for Retirees (10/10)
- 113 Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/10)
- 121 Reciprocity (10/10)
- 127 Wisconsin Homestead Credit Situations and Solutions (10/10)

Sales and Use Taxes

- 220 Grocers: How Do Wisconsin Sales and Use Taxes Affect Your Operations (10/10)

Other Topics

- 117 Guide to Wisconsin Information Returns (10/10)
- 506 Taxpayers' Appeal Rights of Field Audit Adjustments (9/10)
- 509 Filing Wage Statements and Information Returns Electronically (10/10) [☞](#)



Feedback...Good!

What our friend here is trying to say is if you have ideas, comments, or suggestions concerning the *Wisconsin Tax Bulletin*, please take a few moments to share them with us. Contact Dale Kleven by e-mail at isetechsvc@revenue.wi.gov or by phone at (608) 266-8253. [☞](#)



Enforcement Report

Update: Prisoners Facing Tax Fraud Charges

Attorney General J.B. Van Hollen made announcements in August and October 2010 concerning three of the four Taycheedah inmates charged with multiple counts of homestead credit tax fraud. The charges were a result of claims that the inmates were living in private residential properties when in reality they were incarcerated.

- Wendy Nelsen has been sentenced on six counts of tax fraud in Fond Du Lac County Circuit Court before the Honorable Judge Peter L. Grimm. Judge Grimm sentenced Nelsen to a term of 6 years in prison followed by 6 years of extended supervision. The sentence is to begin after Nelsen's current sentence elapses in 2012.
- Kristine Flynn has been sentenced on five counts of felony tax credit fraud in Fond Du Lac County Circuit Court before the Honorable Judge Gary Sharpe. Judge Sharpe ordered that Flynn serve five years of initial confinement followed by five years of extended supervision. Among other things, she is ordered to pay restitution of \$2,518 to the Department of Revenue.

- After a two day jury trial in Fond du Lac County Circuit Court before the Honorable Peter Grimm, presiding, a panel of twelve Fond du Lac County jurors found Amy Prelwitz, age 30, guilty of homestead tax credit fraud along with false statements related to a tax credit. The jury took less than 30 minutes to return their verdict. Immediately following the verdict the jury members were excused and the Court proceeded to sentencing. The Court sentenced Prelwitz to two years of initial confinement in the Wisconsin State Prison System followed by three years of extended supervision.

These matters were investigated by the Wisconsin Department of Revenue and the Wisconsin State Capitol Police Department. Assistant Attorney General Eric D. Defort represents the State of Wisconsin in these cases.

Milwaukee Man Found Guilty of Tax Fraud

Dwayne Green of Milwaukee was sentenced in August 2010 to four years in prison for preparing and filing fraudulent state tax returns. Milwaukee County Circuit Court Judge David Hansher also sentenced Green to an additional four years of extended supervision after confinement.

Green pled guilty to filing fraudulent tax claims and identity theft on June 17, 2010. Green was charged in Milwaukee County with nine felonies for defrauding the State of Wisconsin out of \$79,591.

According to the criminal complaint, between 2005 and 2009 Green filed 44 fraudulent homestead credit claims using stolen identities. The complaint further alleges that, between 2004 and 2009, Green was responsible for filing 102 tax returns for other persons on which he claimed fraudulent earned income credits or fraudulent deductions for dependents. The returns showed a pattern of claiming the same persons as dependents on multiple claims.

Green was prosecuted by the Public Integrity Unit of the Milwaukee County District Attorney's Office after an investigation by the Wisconsin Department of Revenue and Wisconsin Department of Justice.

Green Bay Convenience Store Owner Charged With Tobacco Tax Evasion

Stop N Go II, Inc., and its corporate agent Kashmir Gill were charged in August 2010 for dealing in untaxed tobacco and acting as a tobacco products distributor without a permit. Stop N Go and Gill were charged in Brown County with five counts of dealing in untaxed tobacco and one count of acting as a tobacco products distributor.

According to the criminal complaint, Stop N Go II, Inc., operates the Stop N Go Mobile located at 2512 Steffens Court in Green Bay. Between July and November 2009, it is alleged that Stop N Go II, Inc., obtained untaxed tobacco products from an Illinois company and resold those products through its Green Bay store.

The parties were charged by the Brown County District Attorney's Office following an investigation by the Wisconsin Department of Revenue.

If convicted on all counts, the parties could face up to \$61,000 in fines. Gill also faces up to four years in prison.

Illinois Man Charged With Tobacco Tax Evasion in Wisconsin

Mohammed N. Farooqui, Illinois, has been charged in Ozaukee County Circuit Court with dealing in untaxed tobacco and acting as a tobacco products distributor without a Wisconsin permit.

According to the criminal complaint, Farooqui operates Three Star Wholesale & Distributors, Inc., located in Niles, Illinois. Farooqui is alleged to have delivered untaxed tobacco products to gas stations and convenience stores in Grafton, Wisconsin, in 2008.

Farooqui was charged by the Wisconsin Attorney General's Office following an investigation by the Wisconsin Department of Revenue.

If convicted on both counts, Farooqui could face up to \$11,000 in fines, one year in prison, or both.

Oconto County Man Charged with Alcohol Violations

Kenneth L. Behnke, Jr., who operates the Klondike Saloon in the Town of Brazeau, has been charged with alcohol violations. Behnke has been charged in Oconto County and two separate criminal complaints allege that Behnke sold alcohol without a license, possessed unauthorized alcohol, had unlicensed bartenders and his beer tap knobs were mislabeled.

According to the criminal complaints, the Klondike Saloon was operating in September 2010 without the proper liquor license. The tavern was also open on several occasions without a licensed bartender on the premises during the summer of 2009. In addition, on two different dates, the bar was in possession of beer that had been obtained from unauthorized sources. The complaint further alleges that the tavern sold tap beer labeled as "Bud Light" when it was actually "Busch Light."

Behnke was charged by the Oconto County District Attorney's Office following an investigation by the Wisconsin Department of Revenue.

If convicted on all counts, Behnke could face up to \$22,000 in fines and two years in prison. [☞](#)