

WISCONSIN TAX BULLETIN

items purchased for resale which are sold or otherwise disposed of during the income year. "Agricultural use" means beekeeping; commercial feedlots; dairying; egg production; floriculture; fish or fur farming; forest and game management; grazing; livestock raising; orchards; plant greenhouses and nurseries; poultry raising; raising of grain, grass, mint and seed crops; raising of fruits, nuts and berries; sod farming and vegetable raising (s. 91.01(1)).

The 20-year "rollback" provision has been reduced to 10 years, effective May 19, 1978. This provision requires that upon relinquishment of a farmland preservation agreement or a transition area agreement, or upon removal of land from an exclusive agricultural zone, the Department of Agriculture, Trade and Consumer Protection is required to record a lien against the farm property formerly subject to the agreement or zoning for the total amount of the credits received by the claimants, but not to exceed the last 10 years that claimants received credits based on the land.

EXEMPTION FROM WITHHOLDING IF NO TAX LIABILITY

Generally, all wages paid to Wisconsin residents by Wisconsin employers are subject to state withholding. For Wisconsin withholding purposes, an employe may claim the same number of withholding exemptions as for federal withholding purposes. If an employe is allowed by federal law to claim additional withholding exemptions for special circumstances (ex., because of unusually high itemized deductions or alimony payments), the same number of exemptions may be claimed for Wisconsin.

However, an employe may be exempt from Wisconsin withholding if the employe certifies to the employer that he or she incurred no Wisconsin income tax liability for the past year and expects to incur none for the current year. Wisconsin Form WT-4E ("Exemption from Withholding of Wisconsin Income Tax") should be used to claim this exemption. For calendar year taxpayers, this exemption from withholding expires on April 30 following the close of the taxable year. Therefore, an employe who filed Form WT-4E with his or her employer in 1978 and wishes to claim this exemption again in 1979 should complete and file a new Form WT-4E with the employer by April 30, 1979.

For purposes of claiming this exemption from withholding, a Wisconsin income tax liability is incurred if the employe's gross tax is more than his or her personal exemptions. For example, assume that an employe has 1978 net taxable income of \$2,000 on which the Wisconsin gross income tax is \$66, and that the employe is entitled to claim four personal exemptions at \$20 each (total of \$80) for

1978. The employe incurred no Wisconsin income tax liability for 1978 because the gross tax of \$66 is not more than the personal exemptions of \$80. The employe may claim exemption from withholding of Wisconsin income tax for 1979 if he or she does not anticipate incurring a Wisconsin tax liability for 1979.

HOW TO SUBSCRIBE TO REVENUE RULES

During the past two years, the Department has been adopting an increasing number of administrative rules. Rules are statements of policy of general application which are adopted by an agency to implement or interpret legislation. Rules have the effect of law.

Administrative rules of the Department are part of the Wisconsin Administrative Code and are available on a subscription basis. The charge for a booklet containing current Department rules is \$1.20 and the annual calendar year subscription service to keep the booklet current is \$1.20.

For information on how to obtain a subscription to the Department's administrative rules, you may write:

Document Sales Section
Department of Administration
202 South Thornton Avenue
Madison, WI 53702

REPORT ON LITIGATION

(This portion of the WTB summarizes recent significant Tax Appeals Commission and Wisconsin court decisions. In cases which decisions adverse to the Department's position are rendered, it will be noted whether or not the Department acquiesces or will appeal.)

James E. Basler vs. Department of Revenue (Wisconsin Tax Appeals Commission, June 29, 1978.) The taxpayer held a seller's permit for the sole purpose of reporting the sales tax from the sale of cigarettes at a gas station where he was employed. While holding the permit, the taxpayer sold his personal mobile home which was not used in the course of his business activities. The department assessed the sales tax on the mobile home sale, citing s. 77.51(10)(a), Wis. Stats. The department's interpretation of s. 77.51(10)(a) was that no sale of tangible personal property may be deemed an exempt occasional sale if the seller holds a seller's permit. In an oral opinion, the Tax Appeals Commission held in favor of the taxpayer.

The Department did not appeal the decision.

Horne Directory, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, August 15, 1978.) Taxpayer is a Wisconsin corporation doing business in Wisconsin with

its principal place of business in Madison. During the period involved, taxpayer was engaged in the business of soliciting telephone directory advertising and the publication of telephone directories.

Taxpayer contracted with an Illinois corporation to print the directories it solicited. All the directories involved were printed outside of Wisconsin. The printer delivered most of the directories to the U.S. Post Office, U.P.S. or common carriers outside Wisconsin for delivery directly to telephone subscribers, without any charge to the telephone companies. The decision as to the mode of delivery was made by the printer, not the taxpayer. Except for a small number of directories sent directly to taxpayer, taxpayer never had physical possession of the directories in Wisconsin.

The Department contended that taxpayer owed Wisconsin use tax based on the charges by the printer to the taxpayer for labor, materials, postage and transportation of the directories. The Department's position was that the telephone directories were purchased for storage, use or other consumption in Wisconsin by the taxpayer in providing its service and are subject to the use tax under s. 77.53(1) and (2), Wis. Stats.

The Commission held for the taxpayer. It stated that the directories were not stored, used or otherwise consumed in Wisconsin by taxpayer and were not subject to the use tax.

The Department has appealed this decision.

Trudell Trailer Sales, Inc. vs. Department of Revenue (Wisconsin Tax Appeals Commission, August 15, 1978.) Taxpayer was engaged in the business of selling semitrailers both inside and outside Wisconsin. Some semitrailers were sold to customers located outside Wisconsin to be used outside the state. The issue before the Commission was whether semitrailers come within the language of s. 77.54(5)(a), Wis. Stats., exempting from the sales and use tax "motor vehicles or truck bodies sold to persons who are not residents of this state and who will not use such . . . motor vehicles or trucks for which the truck bodies were made in this state otherwise than in the removal of such . . . motor vehicles or trucks from this state".

The Commission concluded that the semitrailers involved "fall within the intent and meaning" of the exemption language of s. 77.54(5)(a), Wis. Stats., and are exempt from sales and use tax.

The Department has appealed this decision.

Harold N. Fuchs Agency, Inc. vs. Department of Revenue (Circuit Court of Dane County, Case No. 160-052, July 10, 1978.) This case

WISCONSIN TAX BULLETIN

was reported in the October issue of the Wisconsin Tax Bulletin. Contrary to the last sentence in that report, the taxpayer *has* appealed this decision.

TAX RELEASES

"Tax Releases" are designed to provide answers to the specific tax questions covered, based on the facts indicated. However, the answers may not apply to all questions of a similar nature. In situations where the facts vary from those given herein, it is recommended that advice be sought from the Department. 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.

NOTE: Many of these were formerly distributed to Department personnel as sales tax memos or reports. It is thought that these positions would be of help to taxpayers and tax practitioners.)

INCOME TAXES

New optional state sales tax tables for 1978

In 1978, the Internal Revenue Service revised the optional state sales tax tables for use in preparing 1978 federal income tax returns. The income brackets have been revised and have been extended to \$40,000, and a new method of computation of sales tax allowable for incomes over \$40,000 is provided.

These tables are for use by persons who claim an itemized deduction for sales taxes but do not keep records of sales taxes paid during the year. The tables are based on taxpayers' adjusted gross income plus other items which, though not taxable, increase spendable income (e.g., social security, veterans' and railroad retirement benefits; workers compensation; untaxed portion of long-term capital gains; disability income exclusion; dividend exclusion; unemployment compensation; and public assistance payments).

The revised tables will apply in the same manner for Wisconsin income tax purposes as they do for federal purposes. The revision was not the result of new federal legislation. Rather, it was accomplished by an Internal Revenue Service interpretation of an existing law.

SALES TAX

I. Sales by governmental units

Sales by the State of Wisconsin, by any state agency, and by governmental units within this state (such as counties, cities, towns and villages) are generally subject to the Wisconsin sales tax.

Taxable receipts of governmental units include the gross receipts from furnishing admissions to recreational facilities (e.g., green fees, campground fees, swimming fees, skating fees

and park shelter house fees). It also includes any reservation fee paid by a user of a recreational facility to assure that the facility is available when it is needed.

Fees for instruction in a sport or hobby are not subject to the tax. This includes fees charged by a municipality for instruction programs such as swimming, soccer, dancing, chess, physical fitness, archery, yoga, golf, tennis, art and drawing.

Library fines and charges to borrowers for not returning a library's property, either on time or not returning the property at all, are not subject to the sales or use tax.

For additional information on the sales and use tax status of sales by governmental units, see administrative rule Tax 11.05, entitled "Governmental units".

II. Sales to governmental units and schools

Sales of tangible personal property or taxable services which are purchased directly by and used by the federal or state government, by municipalities or by public schools are not subject to the sales tax. Such sales do not have to be supported by exemption certificates if a copy of the purchase order received from the exempt entity is retained by the seller. However, sales to employees of these entities are taxable, even though the organization may subsequently reimburse the employee for the expenditure.

For additional information on the sales and use tax status of such sales, see administrative rule Tax 11.03, entitled "Elementary and secondary schools and related organizations".

III. Sale of a business or business assets

The sale of business assets consisting of tangible personal property by a person who holds or is required to hold a seller's permit at the time of the sale is subject to the sales tax. The tax applies if business assets are sold as a disposition of surplus assets of a continuing business or if they are sold in a single transaction at the time of termination of the business. Tax also applies if such assets are sold piecemeal whether as part of a continuing business or upon termination. The tax does not apply to merchandise inventory purchased for the purpose of resale in the regular course of the purchaser's business.

A person may qualify for the "occasional sale" exemption on such sales of business assets if that person delivers the seller's permit to the Department for cancellation prior to the disposition of the assets. However, the holder of a seller's permit must wait until ceasing business before delivering the permit to the Department since it is a violation of the law to continue regular business operations without a permit. A permit holder may deliver the seller's permit to the Department for cancellation in any one of the following ways:

1. Permittees may personally deliver their seller's permit to a representative of the Department's Income, Sales, Inheritance and Excise Tax Division located in any one of the Divi-

sion's offices during regular office hours. The Department shall presume the permit was received at 12:01 a.m. on the day it is received.

2. The seller's permit may be mailed to the Department (P.O. Box 8902, Madison, 53708) accompanied by a letter requesting that the permit be canceled on or after the postmark date. Delivery is effective at 12:01 a.m. on the postmark date of a postpaid properly addressed envelope, provided the envelope and its contents are actually received by the Department. If the retailer desires assurance that the Department has received the permit, the retailer may wish to send the permit by certified mail, return receipt requested.

3. If the retailer's seller's permit is not available to be delivered (for example, if it has been lost or destroyed), the retailer may send a letter requesting the cancellation of the permit on or after the postmark date. The letter should clearly explain why it is not possible to send in the actual seller's permit.

Although the permit may be deemed to have been delivered and canceled on the postmark date, cancellation cannot be effective prior to the postmark date.

If the permit is delivered to the Department for cancellation, the person immediately qualifies for the occasional sale exemption, even though the person contemplates a subsequent sale of fixtures or equipment. (See *Three Lions Supper Club, Ltd. vs. Wisconsin Department of Revenue* (1976), 72 Wis. 2d 546.) The person does not qualify for the occasional sale exemption, however, if the person holds or is required to hold another seller's permit for some other sales operation.

The fact that a business ceases operations and no longer conducts its day to day activities of selling tangible personal property or taxable services does not result in the automatic cancellation of a seller's permit. A registrant operating as a seller is directed by s. 77.52 (12), Wis. Stats., to ". . . forthwith surrender his permit . . ." when the registrant ceases to operate as a seller. If the registrant does not surrender the permit at that time, the registrant does not qualify for the occasional sale exemption until the permit is surrendered to the Department for cancellation.

For additional information on this topic, see administrative rule Tax 11.13, entitled "Sale of a business or business assets".

IV. Sale of sole proprietor's nonbusiness assets

The Department is in the process of adopting a revision to rule Tax 11.10 ("Occasional sales") to clarify its acceptance of the Tax Appeals Commission's holding in *James E. Basler vs. Department of Revenue* (see summary of this case under "Report on Litigation" in this Bulletin).

In the proposed new Tax 11.10 (6) (e), exempt occasional sales are defined to include