

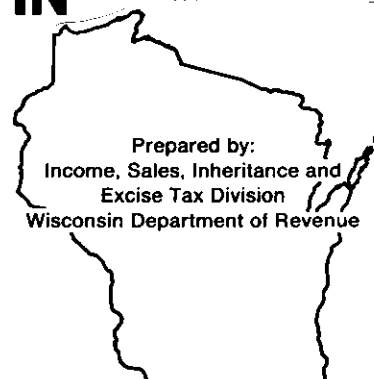
# WISCONSIN TAX BULLETIN

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## NEW TAX LAWS

**The 1985-87 budget bill was still pending before the Wisconsin Legislature at the time this issue went to press. As soon as that bill becomes law, a special issue of the Wisconsin Tax Bulletin will be published to provide information about the tax law changes it contains.**

## OCCASIONAL SALE STANDARDS INCREASED

Wisconsin Administrative Code section Tax 11.10, titled "Occasional Sales" has been revised. The rule amendments increase the occasional sale standard for nonprofit organizations from \$1,000 to \$2,500 of taxable type gross receipts during a calendar year, effective January 1, 1985. The \$1,000 standard had been in effect for approximately 15 years.

The occasional sale standard for persons other than nonprofit organizations was increased from \$500 of taxable type gross receipts per calendar year to \$1,000 per year, also effective on January 1, 1985. This is found in sub. (5) of the rule. This \$1,000 standard now applies to every type of taxable receipt from sales of tangible personal property or taxable services. Previously it only applied to the items specified in the rule. (Note: Sellers who qualify for an exemption on their sales are still required to pay tax on their purchases as described in sub. (5)(c).)

A copy of the revised rule, section Tax 11.10, can be found on page 26 of this issue.

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## TAXABLE NONCASH FRINGE BENEFITS ARE SUBJECT TO WISCONSIN WITHHOLDING TAX BEGINNING JULY 1, 1985

For taxable year 1985, certain non-cash fringe benefits which employees receive from their employers are subject to the Wisconsin income tax. Examples of taxable noncash fringe benefits include: use of employer

provided automobiles for commuting, an employer provided vacation, free or discounted commercial airline flights and employer provided tickets to an entertainment event.

The determination of whether a fringe benefit is taxable for Wisconsin is based on federal income tax law. Noncash fringe benefits which are taxable for federal income tax purposes are also taxable for Wisconsin.

Beginning July 1, 1985, the taxable noncash fringe benefits an employer provides to an employee must be treated as additional wages received by the employee for withholding tax purposes. An additional amount of Wisconsin income tax must be withheld from the employee's regular wages, based on the amount of taxable noncash fringe benefits. (Note: Noncash fringe benefits received by employees from January 1, 1985 through June 30, 1985 may also be taxable income to the employee. However, Wisconsin income tax is required to be withheld only for taxable noncash fringe benefits "paid" after July 1, 1985. See "When A Fringe Benefit is Paid for Withholding Purposes", below.)

(Note: Federal law permits an employer to elect not to withhold federal income tax for taxable noncash fringe benefits which employees realize from the use of an employer provided vehicle. This election also applies for Wisconsin purposes.)

## How the Amount of Withheld Wisconsin Income Tax Should be Determined

An employer may use either of the following two methods to determine the amount of Wisconsin income tax to be withheld from employees who receive taxable noncash fringe benefits:

### Method 1 - Combine Taxable Noncash Fringe Benefits and Regular Wages

Under this method, the amount of taxable noncash fringe benefits received by an employee during a payroll period should be added to the employee's wages for that payroll period. The total amount of Wisconsin income tax to be withheld should then be determined as if the total of the taxable noncash fringe benefits and wages constituted a single wage payment for the payroll period.

*Example:* A single employee has semi-monthly wages of \$1,600 and claims one withholding exemption. During the payroll period this employee also received a taxable noncash fringe benefit valued at \$150.

\$1750 - Total of wages and taxable noncash fringe benefits (\$1,600 + \$150 = \$1750)

\$131.90 - Wisconsin income tax to withhold (per semi-monthly table in Wisconsin Employer's Withholding Tax Guide, dated June 30, 1981)

### Method 2 - Treat Taxable Noncash Fringe Benefits as Supplemental Wage Payments

Under this method, a taxable noncash fringe benefit is treated as a supplemental wage payment. Withholding is determined by estimating the employee's annual gross salary (including taxable noncash fringe benefits) and then multiplying the amount of the taxable noncash fringe benefit by a flat percentage. Instructions for the use of this method and a listing of flat percentage rates which must be used can be found on page 9 of the Wisconsin Employer's Withholding Tax Guide (the current guide has a date of June 30, 1981 on the front cover).

The amount to be withheld for the taxable noncash fringe benefit must be added to the withholding determined for the employee's regular wages for the payroll period in which the taxable fringe benefit is paid. The resulting total is then to be withheld from the employee's regular wages for that payroll period.

*Example:* A single employee receives taxable noncash fringe benefits of \$150 during the current payroll period. The employee's estimated annual gross salary (including taxable noncash fringe benefits) is \$29,000. Using the schedule of flat percent-

ages found on page 9 of the Wisconsin Employer's Withholding Tax Guide, withholding of \$14.25 ( $\$150 \times 9.5\% = \$14.25$ ) would be determined. The \$14.25 would be added to the withholding determined for the employee's regular wages. The resulting total would be withheld from the regular wages.

### How the Value of Taxable Noncash Fringe Benefits is Determined

The federal rules for determining the value of taxable noncash fringe benefits also apply for Wisconsin. The Internal Revenue Service has issued temporary regulations prescribing methods to be used by employers to value various types of noncash fringe benefits. (See Treasury Decisions 8004 and 8009 issued by the Internal Revenue Service.)

### When a Fringe Benefit is "Paid" for Withholding Purposes

The same rules that apply for federal income tax purposes also apply for Wisconsin. Generally, these rules provide that an employer may deem a noncash fringe benefit to be paid at any time on or after the date on which it is provided to the employee, as long as it is on or before the last day of the calendar quarter in which the benefit is provided. For example, a benefit provided on April 18, 1985 could be considered "paid" at any time from then to June 30, 1985.

When a taxable noncash fringe benefit is deemed paid on or after July 1, 1985 it is subject to the Wisconsin withholding tax. Wisconsin income tax is not required to be withheld for a taxable noncash fringe benefit paid prior to July 1, 1985.

### When Amounts Withheld for Fringe Benefits are to be Deposited

Wisconsin income tax withheld from employees receiving taxable noncash fringe benefits should be included with an employer's regular withholding tax deposit report, Wisconsin Form WT-6. The amount withheld for fringe benefits should be deposited in the same manner as regular withholding. A separate deposit report is not required. For example, an employer with a semi-monthly reporting period would report all amounts of regular and fringe benefit withholding for the period of July 1, 1985

through July 15, 1985 as one amount on the Form WT-6 required to be filed by July 31, 1985.

### Questions

If you have questions phone (608) 266-2776 in Madison or the nearest department office. If you write, address your letter to: Wisconsin Department of Revenue, Compliance Bureau, P.O. Box 8902, Madison, WI 53708.

### FORM 101S - WISCONSIN SPOUSAL INHERITANCE TAX RETURN - REVISED

Wisconsin Form 101S has been redesigned to simplify inheritance tax reporting requirements. Form 101S may be used when the surviving spouse is the only person (with one exception) receiving property and date of death is on or after July 1, 1982. If property totalling \$5,000 or less passes to the decedent's issue (including sons- and daughters-in-law), Form 101S may still be used.

The revised Form 101S serves two purposes: (1) It is a declaration by the surviving spouse that he or she is the only person receiving property with the exception stated above, and (2) it serves as a Certificate Determining No Inheritance Tax which is necessary in probate proceedings.

Since an inheritance tax is not owed by a surviving spouse, it is not necessary to list the decedent's property or itemize deductions.

The revised form is a two-ply form and is to be filed with the Department of Revenue in duplicate. After acceptance by the Inheritance and Excise Tax Bureau, the original will be date-stamped, signed and immediately returned to the preparer for purposes of filing with the Circuit Court. The duplicate will be processed to record the closing of the decedent's estate.

The revised Form 101S has been received by the department and will be mailed out by request. A copy of Form 101S can be found on page 29 of this issue.

### INHERITANCE TAX BOARD OF REVIEW CREATED

On May 1, 1985, the Department of Revenue created an Inheritance Tax Board of Review. It offers an alterna-

tive to petitioning the Circuit Court when the Department's Inheritance and Excise Tax Bureau and the estate representatives cannot reach agreement. The three person board includes Kurt Kaspar, Director of ISI&E Technical Services; Clayton Seth, Appellate Bureau Director; and Neal Schmidt, member of the Department's Legal Staff.

### Current Process

Under current inheritance tax law, the Department of Revenue determines the inheritance tax due. That process is initiated when the representative of the estate files an inheritance tax return. The return is audited by the department and the tax is determined - either as reported by the representative of the estate, or adjusted as a result of the department's audit. If the department agrees with the tax due as reported on the return, the estate is closed. If, when audited, the tax is adjusted by the department, the representative of the estate has only two choices — (1) agree with the department's adjustments and pay any additional tax or less tax and the matter is closed, or (2) disagree and file in Circuit Court for a redetermination of the inheritance tax due.

### New Process

#### A. Inheritance Tax Return Correct as Filed

Inheritance tax returns are received by the department and audited. If the return is accurate and complete, the estate is closed and the Certificate Determining Inheritance Tax is prepared and issued to the representative of the estate. (Same as current process)

#### B. Department Disagrees with Inheritance Tax Due Per Return

If the department determines the inheritance tax due to be different from that reported by the estate, the department will send the representative a Notice of Inheritance Tax Adjustment which explains the basis for the adjustment. If the representative agrees with the auditor's determination, the estate is closed and the certificate is issued.

If the representative disagrees he or she will respond to the notice with an objection and supporting justification. The auditor will review that ob-

jection and either agree with the estate (and issue the closing certificate) or disagree. If the auditor still disagrees with the representative, he or she will issue (after supervisory review) a proposed determination of inheritance tax which includes instructions for filing an appeal with the department's new Inheritance Tax Board of Review.

Those estates choosing to appeal to the Inheritance Tax Board of Review will file their appeal with the board by submitting all necessary documentation and computation schedules in support of their appeal.

After conducting the necessary conferences with the estate's representative and audit staff and reviewing the oral and written evidence, the Board of Review may find in whole or in part in favor of either the department or the estate. The board's decisions will be binding upon the department. However, the estate may either agree with the board or disagree and petition the court. Additionally, the board is empowered to offer a compromise for settlement purposes only. If the estate accepts the board's settlement offer, they will so stipulate and the estate will be closed. If the settlement offer is rejected by the estate, the department will issue its final determination without regard to the settlement offer.

### VOLUNTARY WITHHOLDING OF RETIREMENT PAY OF UNIFORMED SERVICE MEMBERS

The Wisconsin Department of Revenue has entered into a tentative agreement, effective July 1, 1985, with the U. S. Department of Defense to allow for the voluntary withholding of Wisconsin income taxes from the retirement pay (retainer pay) of various uniformed service personnel who are residents of Wisconsin. Personnel included are retired members of the Army, Navy, Air Force, Marine Corps, Coast Guard, commissioned corps of the Public Health Service, and the commissioned corps of the National Oceanic and Atmospheric Administration.

The agreement provides that a retiree may request voluntary withholding by contacting their respective

service pay office noted below. This method of withholding may relieve approximately 12,000 uniformed service retirees in Wisconsin of the need to file a Wisconsin Declaration of Estimated Tax. Amounts withheld will be deposited with the State of Wisconsin. Statements of tax withheld will be furnished to retirees each year in order for them to file their income tax returns.

Retirees desiring to have an amount withheld from their retirement pay should provide the following information in writing to their respective pay office when requesting voluntary withholding.

- A. Full name
- B. Social security number
- C. Monthly amount to be withheld - whole dollar amount, not less than \$10.00
- D. State designated to receive the amounts withheld - Wisconsin residents should indicate Wisconsin
- E. Current residence address

The request must be signed by the retiree or his/her guardian or trustee.

It may take at least six weeks for the processing of a request made to a pay office noted below.

#### Army

Commanding Officer  
U.S. Army Finance and Accounting Center  
(Dept. 90)  
Indianapolis, Indiana 46249  
(800) 428-2290

#### Navy

Commanding Officer  
Navy Finance Center (Code 301)  
Anthony J. Celebrezze Federal Building  
Cleveland, Ohio 44199  
(800) 321-1080

#### Air Force

Commander  
Air Force Accounting and Finance Center  
ATTN: RP  
Denver, Colorado 80279  
(800) 525-0104

#### Marine Corps

Commanding Officer (CPR)  
Marine Corps Finance Center  
Kansas City, Missouri 64197  
(816) 926-7130

**Coast Guard**

Commanding Officer (Retired)  
U.S. Coast Guard Pay and Personnel Center  
444 S.E. Quincy Street  
Topeka, Kansas 66683  
(913) 295-2657

**Public Health Service  
(commissioned corps)**

U.S. Public Health Service  
Compensation Branch  
5600 Fisher Lane (Room 4-50)  
Rockville, Maryland 20857  
(800) 638-8744

**National Oceanic and  
Atmospheric Administration  
(commissioned corps)**

Commanding Officer  
Navy Finance Center (Code 301)  
Anthony J. Celebrezze Federal  
Building  
Cleveland, Ohio 44199  
(800) 321-1080

All inquiries and requests regarding this agreement should be directed to the appropriate service office. The Wisconsin Department of Revenue cannot accept requests for participation by individual retirees.

**CONVICTION FOR  
POSSESSION OF UNTAXED  
CIGARETTES**

A West Allis man was convicted in Kenosha County Court on charges of possession of untaxed cigarettes. Robert J. Konopka was sentenced to a \$75 fine and forfeiture of the auto used to transport the cigarettes.

The charges stemmed from an arrest by Wisconsin Department of Revenue agents on I-94 just north of the Illinois state line. The agents observed Konopka entering Wisconsin with cigarettes purchased in Illinois. The agents seized over 35,000 untaxed cigarettes at the time of the arrest.

Authorities also seized Konopka's 1979 Pinto station wagon. Under Wisconsin law, cars and other personal property used to transport smuggled cigarettes may be confiscated by law enforcement officers.

**CONVICTIONS FOR  
CRIMINAL VIOLATIONS OF  
STATE INCOME TAX LAWS**

James J. Martin, Route 1, Onalaska, President of James Martin Trucking,

Inc., was sentenced in La Crosse County Circuit Court, Branch 1, by Circuit Judge Peter G. Pappas on one count of state income tax evasion and one count of theft. Judge Pappas fined Martin \$6,000 on each count and ordered him to serve 18 months in prison on each count, to be served consecutively. Martin pled no contest to both charges on December 28, 1984.

Criminal charges were filed against Martin by the La Crosse County District Attorney's office after an investigation by the Intelligence Section of the Wisconsin Department of Revenue, the Wisconsin Department of Justice and the La Crosse County Sheriff's Department. Martin was charged with failing to report more than \$75,000 in taxable income on his 1979 Wisconsin individual income tax return and evading more than \$6,500 in state income taxes for that year.

Paul G. Beck and Judith I. Beck of West Allis, Wisconsin were each placed on three years probation in Dane County Circuit Court, Branch 8, by Reserve Circuit Judge William L. Jackman for criminal violations of Wisconsin state income tax laws. Under the conditions of probation, Mr. Beck must serve 90 days in jail, Mrs. Beck must pay \$1,000 in fines and they will both be liable for \$6,200 cost of prosecution. They must also file accurate and complete Wisconsin state income tax returns for income years 1977 through 1983 and pay all back taxes, penalties and interest.

Mr. Beck was charged with failing to file state income tax returns for 1980, 1981 and 1982 and Mrs. Beck was charged with failing to file returns for 1981 and 1982. They were found guilty on all counts after trial before a jury on February 19, 1985.

A Manitowoc County man has been ordered to serve one year in jail for criminal violations of the Wisconsin state income tax law. Leon L. Nielsen was sentenced in Manitowoc County Circuit Court, Branch 1, by Circuit Judge Allan J. Deehr on three counts of failing to file Wisconsin state income tax returns after he was tried and found guilty on all counts by a jury. Nielsen was charged with failing to file state income tax returns on gross income of more than \$24,000 for 1981, \$27,000 for 1982 and \$29,000 for 1983.

**NEW ISI&E DIVISION  
RULES AND RULE  
AMENDMENTS IN PROCESS**

Listed below, under Part A are proposed new administrative rules and amendments to existing rules that are currently in the rule adoption process. The rules are shown at their stage in the process as of July 1, 1985. Part B lists rules that have been adopted but are not yet effective. Part C lists new rules and amendments which have been adopted in 1985.

("A" means amendment, "NR" means new rule, "R" means repealed and "R&R" means repealed and recreated.)

**A. Rules at Legislative Council  
Rules Clearinghouse**

- 11.03 Elementary and secondary schools-A
- 11.05 Governmental units-A
- 11.65 Admissions-A

**B. Rules Adopted But Not Yet Effective  
(Tentative Effective Date  
is August 1, 1985)**

- 8.51 Labels-A
- 8.61 Advertising-A
- 8.76 Salesperson-A
- 8.81 Transfer of retail liquor stocks-A
- 11.002 Permits, application, department determination-NR
- 11.10 Occasional sales-A
- 11.16 Common or contract carriers-A
- 11.17 Hospitals, clinics and medical professions-A
- 11.52 Coin-operated vending machines and amusement devices-A
- 11.53 Temporary events-A
- 11.54 Temporary amusement, entertainment, or recreational events or places-A
- 11.62 Barbers and beauty shop operators-A
- 11.67 Service enterprises-A
- 11.68 Construction contractors-A
- 11.69 Financial institutions-A
- 11.97 "Engaged in business" in Wisconsin-A

**C. Rules Adopted in 1985 (in parentheses is the date the rule became effective)**

- 11.10 Occasional Sales-A (5/1/85)
- 11.50 Auctions-A (5/1/85)