

## Filing Wisconsin Fiduciary and Estate Tax Returns

### Wisconsin Fiduciary Returns

#### Who Must File

Every personal representative or special administrator of the estate of a Wisconsin decedent and every trustee of a Wisconsin trust must file a Wisconsin fiduciary income tax return (Form 2) if the gross income of the estate or trust exceeds \$600. Nonresident estates and trusts must file Wisconsin fiduciary returns if they have gross income in excess of \$600 from Wisconsin sources.

Trusts must file on a calendar-year basis, and the due date is the following April 15. (Exception: a limited number of charitable trusts may still file on a fiscal basis.) Estates can choose any fiscal year, but the first return may not cover more than a 12-month period and the taxable year must end the last day of a month. The due date for fiduciary returns for estates is 3½ months after the close of the fiscal year.

#### Closing Certificates

Every executor, administrator, personal representative, or trustee applying to a court in Wisconsin having jurisdiction for discharge must obtain a Closing Certificate for Fiduciaries from the department. Before the certificate will be issued, all required income, gift, sales, use, and withholding tax returns and reports, with the exception of the final income tax return of the estate or trust, must be filed.

With the next-to-final fiduciary return, estates must submit a copy of the probate inventory and a copy of the decedent's will. Trustees must submit a statement as to why the trust is closing, a schedule of assets held by the trust, and a copy of the trust agreement (or will creating such trust) if not submitted with a prior return.

If an estate or trust has less than \$600 of income and needs a Closing Certificate for Fiduciaries, the top one-third of the Form 2 should be completed. At line 1, "No 1041 Required" should be inserted. Any required documents must be attached to the Form 2 filed.

The department shall determine that all income, withholding, sales, use, gift, and delinquent taxes are paid. A Closing Certificate for Fiduciaries will then be issued. This does not relieve the executor, administrator, personal representative, or trustee from filing the final fiduciary income tax return. If a probate final account is filed with the court, a copy must be attached to the final return.

For the fiscal year ending June 30, 1993, the department issued nearly 17,000 Closing Certificates for Fiduciaries.

### Wisconsin Estate Tax Returns

#### Filing Requirement

An estate is required to file a Wisconsin estate tax return (Form W706) if it is required to file a federal estate tax return. An estate is required to file a federal estate tax return (Form 706) if the gross estate at date of death plus gifts in excess of \$10,000 made to each donee per calendar year since December 31, 1976, exceeds \$600,000.

The Wisconsin estate tax is equal to the credit for state death taxes allowed on the federal estate tax return (line 15 of federal Form 706). This credit is computed under section 2011 of the Internal Revenue Code. Estates owning property both within and outside Wisconsin owe a percentage of the credit to Wisconsin based on gross Wisconsin property divided by gross total property.

#### Due Date

The personal representative, special administrator, trustee, or distributee must file the Wisconsin estate tax return by the due date, which is 9 months after the date of death or the extended due date allowed by the Internal Revenue Service (IRS).

If the return is filed after the due date, there is a penalty equal to 5% of the tax, with a minimum of \$25 and a maximum of \$500.

#### Payment of Tax

The tax is due 9 months after the decedent's date of death, even if an extension has been obtained to file the return.

If the tax is not paid within 9 months of the decedent's death, interest is imposed at 1% per month from the date of death.

#### Examples:

1. Decedent Able died February 15, 1993. An extension of time to file the federal estate tax return was obtained from the IRS. The Wisconsin estate tax return and payment of the tax were submitted on November 30, 1993, which was within the extension period. Tax of \$1,200 was due. The total amount due is \$1,314, computed as follows:

Tax	\$1,200
Interest (1% x 9½ months)	<u>114</u>
Total amount due	<u>\$1,314</u>

2. Decedent Body died February 15, 1993 and did not obtain an extension to file from the IRS. The Wisconsin estate tax return was filed November 30, 1993, and showed no tax due. This estate owes the minimum penalty of \$25.

*Certificate Determining Estate Tax*

Upon receipt of the Wisconsin estate tax return and review for correctness, the department will issue a Certificate Determining Estate Tax. If the IRS increases or decreases the federal estate tax, the person entitled to the refund or liable for the additional tax is required to notify the department within 30 days. □

## Farmers Receive Over \$43 Million in Tax Credits

More than \$43 million in direct benefits were distributed to Wisconsin farmers in 1993 through two state programs, the farmland preservation credit program and the farmland tax relief credit program. About 23,700 Wisconsin farmers claimed farmland preservation credits amounting to \$27.7 million in the fiscal year ending June 30, 1993, and 61,300 farmers received farmland tax relief credits totalling \$15.5 million for 1992.

*Farmland Preservation Credit*

Benefits averaging \$1,169 per claimant were distributed through the farmland preservation credit program, which is intended to help protect farmland through local land use planning and soil conservation practices.

To qualify for a benefit under this program, farmland must be zoned for exclusive agricultural use or be subject to a farmland preservation agreement between the farmer and the state. About 78% of the claims for the fiscal year ending June 30, 1993, were for land under zoning and 22% were for land covered by agreements.

*Farmland Tax Relief Credit*

Farmland tax relief credits averaging \$252 were paid to farmers statewide for 1992. These credits equal 10% of

the first \$10,000 of property taxes on qualifying farmland, exclusive of improvements. This program, which is in addition to the farmland preservation credit, provides direct benefits to virtually all farmers in the state. □

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

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 Legislative Council Rules Clearinghouse

- ch. 4 (title) MOTOR VEHICLE AND GENERAL AVIATION FUEL TAXATION-A
- 4.01 Portable motor equipment-A
- 4.02 Resellers' personal claims for refund-A
- 4.03 Public highways closed to public travel-A
- 4.04 No printing on back of original invoice-R
- 4.05 Taxicabs-A
- 4.10 Motor vehicle fuel tax liability-NR
- 4.11 Tax exemption for dyed or marked diesel fuel-NR
- 4.12 Uncollected motor vehicle fuel taxes and repossessions-NR
- 4.50 Assignment, use and reporting of document number-A
- 4.51 Measuring withdrawals-A
- 4.52 Separate schedules-A
- 4.53 Certificate of authorization-A

- 4.54 Security requirements-A
- 4.55 Ownership and name changes-A
- 4.65 Motor vehicle fuel tax refunds to vendors and tax credits to suppliers-NR
- 4.75 Payment of motor vehicle fuel tax-NR

### Rules Sent to Revisor of Statutes for Publication of Notice

- 11.04 Constructing buildings for exempt entities-A

### Rules Adopted But Not Yet Effective

- 11.05 Governmental units-A
- 11.19 Printed material exemptions-A
- 11.34 Occasional sales exemption for sale of a business or business assets-A
- 11.56 Printing industry-A
- 11.61 Veterinarians and their suppliers-A
- 11.68 Construction contractors-A

### Rules Adopted and in Effect (including date of adoption)

- 3.095 Income tax status of interest and dividends received from government and other securities by individuals and fiduciaries-R&R (2/1/94)
- 9.67 Cigarette tax credit-R&R (3/1/94)
- 11.27 Insurance and warranties-R&R (2/1/94)
- 11.82 Mailing lists and mailing services-A (2/1/94)

### Emergency Rule (effective April 1, 1994)

Chapter Tax 4 (title) and all sections — see listing under "Rules Sent to Legislative Council Rules Clearinghouse" above. □

## Recently Adopted Rules Summarized

Listed below is a summary of recent revisions to administrative rules. In addition to the summary, substantive changes and new text are reproduced (examples and notes appearing in the rules are not reproduced here). In the amendments, material lined through (~~lined through~~) represents deleted text, and underscored (underscored) material represents new text.

This issue includes information about the following rules: sec. Tax 3.095, repealed and recreated effective February 1, 1994; ch. Tax 4, including amendments to the title and ten of the eleven sections, the repeal of one section, and the creation of five new sections, all as an emergency rule effective April 1, 1994; sec. Tax 9.67, repealed and recreated effective March 1, 1994; sec. Tax 11.27, repealed and recreated effective February 1, 1994; and sec. Tax 11.82, amended effective February 1, 1994. For a list of the sections in ch. Tax 4, see the section titled "Rules Sent to Legislative Council Rules Clearinghouse" in the preceding article ("Administrative Rules in Process").

**Tax 3.095 Income tax status of interest and dividends received from government and other securities by individuals and fiduciaries.** Tax 3.095 is repealed and recreated, to more closely reflect in the title the types of securities listed in the rule, to improve readability, to set forth previously stated definitions in a separate Section, and to reflect the statutory provisions of the taxability or exemption of interest or dividends from the listed securities. In addition, nine securities not previously listed are included. The text of Tax 3.095 is as follows:

**Tax 3.095 Income tax status of interest and dividends received from government and other secu-**

**rities by individuals and fiduciaries.** (s. 71.05(6)(a)1 and (b)1, Stats.) (1) PURPOSE. This section lists federal, state, municipal and other government securities, and certain nongovernment securities, and specifies whether interest and dividends payable on those securities are exempt from or subject to the Wisconsin income tax on individuals and fiduciaries. The lists are not all-inclusive.

(2) DEFINITIONS. In this section:

(a) "CHAP" means "Community Housing Alternatives Program."

(b) "Federal securities" means only securities which are direct and primary obligations of the United States and securities the interest on which federal law prohibits states from taxing. Federal securities do not include securities for which the United States is merely a guarantor and, therefore, has an obligation which is secondary and contingent to that of the issuer of the security.

(c) "Public housing agency" means any state, county, municipality or other governmental entity or public body, or agency or instrumentality thereof, which is authorized to engage in or assist in the development or operation of lower income housing, under 42 U.S.C. § 1437a(b)(6).

(d) "WHEDA" means "Wisconsin Housing and Economic Development Authority."

(3) GENERAL. (a) Under s. 71.05(6)(a)1, Stats., interest income which is subject to the Wisconsin income tax on individuals and fiduciaries, but which is not included in federal adjusted gross income, shall be added to federal adjusted gross income in computing Wisconsin taxable income.

(b) Under s. 71.05(6)(b)1, Stats., interest and dividend income which is included in federal adjusted gross income but which is by federal law exempt from state income taxation, shall be subtracted from federal ad-

justed gross income in computing Wisconsin taxable income.

(4) EXEMPT SECURITIES. Interest and dividends payable on the following securities shall be exempt from the Wisconsin income tax on individuals and fiduciaries:

(a) *Exempt state, municipal and other government securities.* 1. District of Columbia general obligation bonds issued on or prior to January 28, 1987, where the interest from the bonds qualifies for exemption from federal income taxation for a reason other than or in addition to s. 103 of the internal revenue code.

2. Higher education bonds issued by the state of Wisconsin, s. 71.05(6)(a)1, Stats.

3. Public housing agency bonds issued on or prior to January 28, 1987, by agencies located outside Wisconsin where the interest from the bonds qualifies for exemption from federal income taxation for a reason other than or in addition to s. 103 of the internal revenue code.

4. Public housing authority bonds issued by municipalities located in Wisconsin, s. 66.40(14)(a), Stats.

5. Redevelopment authority bonds issued by municipalities located in Wisconsin, s. 66.431(5)(a)4.c, Stats.

6. Stripped general obligation bond certificates attributable to certain District of Columbia general obligation bonds issued on or prior to January 28, 1987, where the interest from the bonds qualifies for exemption from federal income taxation under s. 1286 of the internal revenue code and D.C. Code Ann. § 47-332.

7. Virgin Island Housing Authority bonds issued on or prior to January 28, 1987, where the interest from the bonds qualifies for exemption from federal income taxation for a reason other than or in addition to s. 103 of the internal revenue code.

8. WHEDA bonds issued on or prior to January 28, 1987, except business development revenue bonds, economic development revenue bonds and CHAP housing revenue bonds issued by WHEDA.

9. WHEDA bonds issued to fund a loan under s. 234.935, Stats.

10. WHEDA bonds issued under s. 234.65, Stats., to fund an economic development loan to finance construction, renovation or development of property that would be exempt under s. 70.11(36), Stats.

11. Wisconsin Housing Finance Authority bonds, 42 U.S.C. § 1437i(b).

(b) *Exempt federal securities.*

1. Armed Services Housing Mortgage Insurance debentures, 12 U.S.C. § 1748b(f).

2. Bank for Cooperative debentures, 12 U.S.C. § 2134.

3. Bank repurchase agreements for U.S. Government treasury bills, notes and bonds, if interest is paid by the federal government directly to the taxpayer.

4. Commodity Credit Corporation bonds, 15 U.S.C. § 713a-5.

5. Commonwealth of Puerto Rico public improvement bonds, 48 U.S.C. § 745.

6. Farm Credit System Financial Assistance Corporation notes, bonds and debentures, 12 U.S.C. § 2278b-10(b).

7. Federal Deposit Insurance Corporation bonds, 12 U.S.C. § 1825.

8. Federal Farm Credit Banks Consolidated Systemwide Securities, 12 U.S.C. § 2055.

9. Federal Home Loan Bank bonds, debentures and notes, 12 U.S.C. § 1433.

10. Federal Housing Authority debentures, 12 U.S.C. §§ 1710(d) and 1747g(g).

11. Federal Intermediate Credit Bank debentures, 12 U.S.C. § 2079.

12. Federal Land Bank Association bonds, notes and debentures, 12 U.S.C. § 2055.

13. Federal Land Bank bonds, 12 U.S.C. § 2055.

14. Federal Reserve Bank dividends, 12 U.S.C. § 531.

15. Federal Savings and Loan Insurance Corporation bonds, 12 U.S.C. § 1725(e).

16. Financial Assistance Corporation bonds, notes and debentures, 12 U.S.C. § 2278b.

17. Financing Corporation obligations, 12 U.S.C. § 1441.

18. General Insurance Fund debentures issued to acquire housing projects, 12 U.S.C. § 1747g(g).

19. General Insurance Fund debentures issued under the War Housing Insurance Law, 12 U.S.C. § 1739(d).

20. General Services Administration Public Building Trust Participation certificates, 31 U.S.C. § 3124.

21. Guam bonds, 48 U.S.C. § 1423a.

22. Industrial Development bonds of East Samoa, 48 U.S.C. § 1670.

23. Panama Canal Zone bonds, 31 U.S.C. §§ 743-745.

24. Production Credit Association debentures, 12 U.S.C. § 2098.

25. Proprietary zero-coupon certificates, 31 U.S.C. § 3124.

26. Puerto Rico Aqueduct and Sewer Authority revenue bonds, 48 U.S.C. § 745.

27. Puerto Rico Electric Power Authority electric revenue bonds, 48 U.S.C. § 745.

28. Puerto Rico Electric Power Authority power revenue bonds, 48 U.S.C. § 745.

29. Puerto Rico Highway Authority revenue bonds, 48 U.S.C. § 745.

30. Puerto Rico Industrial Development Company bonds, 48 U.S.C. § 745.

31. Puerto Rico Municipal Finance Agency 1974 Series A bonds, 48 U.S.C. § 745.

32. Puerto Rico Ports Authority revenue bonds, 48 U.S.C. § 745.

33. Puerto Rico Public Buildings Authority public education and health facility bonds, 48 U.S.C. § 745.

34. Puerto Rico Public Buildings Authority revenue bonds, 48 U.S.C. § 745.

35. Puerto Rico Telephone Authority revenue bonds, 48 U.S.C. § 745.

36. Puerto Rico Water Resource Authority Series B debentures, 48 U.S.C. § 745.

37. Resolution Funding Corporation bonds, 12 U.S.C. § 1441b(f)(7).

38. Student Loan Marketing Association obligations, 20 U.S.C. § 1087-21.

39. Tennessee Valley Authority bonds, 16 U.S.C. § 831n-4(d).

40. Territory of Hawaii bonds.

41. Territory of Puerto Rico bonds, 48 U.S.C. § 745.

42. United States Postal Service bonds, 39 U.S.C. § 2005.

43. United States savings bonds, 31 U.S.C. § 3124.

44. United States Treasury bills and notes, 31 U.S.C. § 3124.

45. University of Puerto Rico university system revenue bonds, 48 U.S.C. § 745.

46. Virgin Islands general obligation bonds, 48 U.S.C. § 1574(b)(ii)(A).

47. Virgin Islands Public Improvement bonds, 48 U.S.C. § 1574(b)(i).

(5) **TAXABLE SECURITIES.** Interest and dividends payable on the following securities shall be subject to the Wisconsin income tax on individuals and fiduciaries:

(a) *Taxable state and municipal government securities.* 1. District of Columbia Development Land Agency bonds, 42 U.S.C. § 1452.

2. District of Columbia general obligation bonds issued after January 28, 1987, D.C. Code § 47-33.

3. Municipal bonds.

4. Public housing agency bonds issued after January 28, 1987, and by agencies located outside Wisconsin. Public housing agency bonds issued on or prior to January 28, 1987, by agencies located outside Wisconsin where the interest from the bonds qualifies for exemption from federal income taxation solely because of s. 103 of the internal revenue code.

5. Robert F. Kennedy Stadium bonds, D.C. Code § 2-1720 et seq.

6. Transit bonds of the Washington Metropolitan Area Transit Authority.

7. Wisconsin Health Education Assistance Loan revenue obligation bonds, s. 39.374, Stats.

8. WHEDA bonds issued after January 28, 1987, and all business development revenue bonds, economic development revenue bonds and CHAP housing revenue bonds issued by WHEDA, regardless of when issued, unless specifically exempt by law, ch. 234, Stats.

(b) *Other taxable securities.* 1. Asian Development Bank bonds, 22 U.S.C. § 290i-9.

2. College Construction Loan Insurance Association obligations, 20 U.S.C. § 1132.

3. Environmental Financing Authority obligations, 33 U.S.C. § 1281.

4. Export-Import Bank of the United States debentures, 12 U.S.C. § 635.

5. Farmer's Home Administration insured notes, 7 U.S.C. §§ 1928 and 1929.

6. Federal Assets Financing Trust participation certificates, 12 U.S.C. § 1717(c).

7. Federal Financing Bank bonds, 12 U.S.C. § 2288.

8. Federal Home Loan Bank dividends, 12 U.S.C. §§ 1426 and 1436.

9. Federal Home Loan Mortgage Corporation obligations, 12 U.S.C. § 1455.

10. Federal National Mortgage Association certificates, 12 U.S.C. § 1718.

11. Federal National Mortgage Association dividends, 12 U.S.C. § 1719.

12. Government National Mortgage Association, or "Ginnie Mae," bonds, 12 U.S.C. §§ 1720 and 1721.

13. HUD/New Communities Program obligations, 42 U.S.C. § 4514.

14. Insured Merchant Marine bonds, 46 U.S.C. § 1273.

15. Inter-American Development Bank bonds, 22 U.S.C. § 283.

16. Interest paid on deposits in any federal bank or agency.

17. International Bank for Reconstruction and Development bonds, also known as World Bank bonds, 22 U.S.C. § 286.

18. Rural Telephone debentures, 7 U.S.C. § 947(a).

19. Small Business Administration notes, 15 U.S.C. § 633.

20. Small Business Investment Company debentures, 15 U.S.C. §§ 683 and 687.

21. Tennessee Valley Authority bonds, 16 U.S.C. § 831n-3.

22. Virgin Islands Housing Authority bonds issued after January 28, 1987, 48 U.S.C. § 1408(a).

23. World Bank bonds, also known as International Bank for Reconstruction and Development bonds, 22 U.S.C. § 286.

**Ch. Tax 4 MOTOR VEHICLE AND GENERAL AVIATION FUEL TAXATION.** The title of ch. Tax 4 is amended as indicated above, to reflect that general aviation fuel taxation is covered by this chapter. Tax 4.01, 4.02, 4.03, 4.05, 4.50, 4.51, 4.52, 4.53, 4.54(1), (2)(a)(intro.), (2)(a)3, (2)(b), (3)(b), (4)(a)(intro.), (5)(b), (5)(c), and (5)(d)3, 4, and 5, and 4.55(2)(title)

and (2)(b) are amended, to reflect proper grammar, punctuation, and style, and to reflect statutory changes in the terms "motor fuel" and "special fuel" to "motor vehicle fuel" and "alternate fuel," respectively. Tax 4.04 is repealed as it is obsolete because double-face carbon invoices are no longer used. Tax 4.10, 4.11, 4.12, 4.65, and 4.75 are created and Tax 4.50(1) and 4.54(1) are amended, to reflect statutory changes as follows: Tax 4.10 clarifies the motor vehicle fuel tax liability; Tax 4.11 clarifies the tax exemption for dyed diesel fuel; Tax 4.12 clarifies the supplier's recovery of uncollectible motor vehicle fuel tax; Tax 4.50(1) reflects the change in the point at which a document number is assigned; Tax 4.54(1) reflects changes in limitations on security requirements; Tax 4.65 explains motor vehicle fuel tax refunds to vendors and credits to suppliers; and Tax 4.75 explains the payment of motor vehicle fuel taxes. The text of Tax 4.10, 4.11, 4.12, 4.50(1), 4.54(1), 4.65, and 4.75 is as follows:

**Tax 4.10 Motor vehicle fuel tax liability.** (s. 78.07, Stats.) (1) **PURPOSE.** This section clarifies the tax liability on all sales of motor vehicle fuel produced, refined, blended, manufactured or imported into Wisconsin.

(2) **IMPOSITION.** The tax on all motor vehicle fuel, either gasoline or clear diesel fuel, is payable to the department by suppliers required to be licensed with the department, as follows:

(a) *Fuel withdrawn from a Wisconsin marine terminal or pipeline terminal.* The motor vehicle fuel tax on gasoline and clear diesel fuel withdrawn from a Wisconsin marine terminal or pipeline terminal is payable by the position holder, which is the supplier who owns the product when the product is metered out at the terminal rack.