

In October 1994, two Milwaukee-area gasoline suppliers were charged in Dane County Circuit Court, with four counts each of felony theft of state motor fuel tax money. Paul C. Kramer, 53, East Troy, and Patrick S. Gedig, 47, Franklin, were charged with participating in an invoicing scheme that allegedly misappropriated over \$935,000 in state tax monies by early 1990. Kramer ran Ohio Fuel & Supply Company, and Gedig was president of United Petroleum Corporation, which supplied fuel to Kramer. The two devised a phony invoicing scheme so Kramer could collect excess tax money, which was not paid to the state.

Kramer was also charged with five additional counts of theft. He allegedly stole another \$197,000 in fuel taxes collected in late 1990 and early 1991.

If convicted on all charges, Kramer faces up to 90 years in prison and up to \$90,000 in fines. Gedig pled guilty to the charges in December 1994 and faces a maximum prison sentence of 20 years and fines up to \$20,000. Gedig's sentencing was deferred until after the trial of Kramer, the co-defendant.

In November 1994, stockbroker William C. Seitz, 48, Madison, was sentenced in Dane County Circuit Court, on two counts of failure to file state income tax returns. He had been charged in April 1994, with failing to file 1990, 1991, and 1992 state tax returns. Seitz was ordered to pay fines and court costs of \$740 and was placed on 24 months probation. He must perform 100 hours of community service and was ordered to make restitution and provide information to the Department of Revenue.

Seitz allegedly had gross income of over \$104,000 in 1990 to 1992 and has not filed income tax returns since

1978. Tax liens in excess of \$86,000 have been filed against him.

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

Updated information is available on two cases reported in the previous issue (see the article titled "Tax Evasion is Costly" in *Wisconsin Tax Bulletin* 89, October 1994, page 7).

La Crosse dentist Frederick G. Kriemelmeyer was sentenced in September 1994 for failing to file 1990 to 1992 Wisconsin income tax returns. As previously reported, he was placed on three years probation and was ordered to pay over \$14,000 in fines, court costs, and prosecution costs, to file 1987 to 1993 state tax returns and pay all state income taxes, and to disclose his assets. In addition, Kriemelmeyer was ordered to serve three months in the La Crosse County jail.

As previously reported, Patricia G. Hass, 46, La Crosse, was found guilty in July 1994, of filing false and fraudulent 1988, 1988 amended, and 1989 income tax returns, having failed to report nearly \$100,000 of income she had embezzled from Olsten Temporary Services, a temporary employment agency she operated. She was sentenced in October 1994 to up to five years in prison. The sentence was stayed, and she was placed on seven years probation. Under the probation terms, Hass was ordered to serve four months in the La Crosse County jail, make restitution of all tax, interest, and penalties due, pay prosecution costs, including

the Public Defender's expenses, and provide 560 hours of community service. □

How to Obtain Wisconsin Tax Forms

Small supplies of Wisconsin tax forms can be obtained from any Department of Revenue office. Requests will be 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 Forms Order Unit, Wisconsin Department of Revenue, 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." □

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. □

A Shared Future: What Our Goals Mean to You

Note: The following article was submitted by John T. Ader, Director, Milwaukee District, Internal Revenue Service.

I appreciate this opportunity to share information and some thoughts with you. We work very closely with Secretary Mark Bugher and the Wisconsin Department of Revenue on many projects. We share common interests and concerns. We are truly partners in tax administration. Those of you in the professional tax community are our partners as well.

Quality & Productivity through Electronic Filing

Throughout the country, both private and public sector organizations are searching for ways to improve the productivity and quality of their work, while at the same time enhancing service to their customers. Our customers, the American taxpayers,

expect a higher level of service in almost everything we do. They have a right to expect a tax system that is both effective and responsive.

Under our Business Vision, we are moving towards an electronic environment for filing returns. Electronically filed returns are processed faster and are less prone to errors that can delay the processing of the return. During the last filing season, only .6% of electronic returns had errors, compared with 17% of paper returns.

To realize our Business Vision, we must make all of our Tax Systems Modernization (TSM) programs a reality. To effectively administer the tax law, today and in the future, the IRS must take advantage of modern technology. In short, we need to construct our own "on-ramp" to the "information superhighway."

The IRS and the Wisconsin Department of Revenue were among the first in the nation to work together on a joint electronic filing initiative. This initiative allows taxpayers to file their federal and state tax returns simultaneously, and the taxpayers and practitioners in Wisconsin are opting for this streamlined processing. During the 1994 filing season, roughly 45% of the Wisconsin taxpayers who filed their federal tax returns electronically also filed their state returns electronically.

I truly believe that, by the year 2000, the vast majority of our business will be done electronically. If you are not yet part of the electronic filing system, I strongly urge you to join us now. Our Electronic Filing Coordinator Gerri Ness would be happy to tell you more about the program. You can reach her at (414) 297-3385.

Ensuring Taxpayer Privacy

Ensuring taxpayer privacy presents another significant challenge as the

Service modernizes. We are meeting this challenge with an aggressive program to guarantee the privacy of taxpayer information today and in the future. We are developing safeguards, and we are committed to making those safeguards work. IRS Commissioner Margaret Milner Richardson recently named Rob Veeder as the Service's Privacy Advocate. In that role, he is responsible for developing and implementing a Service-wide Privacy Program that puts the IRS at the forefront of the privacy issue in both the public and private sectors.

Increasing Compliance

IRS and WDOR are also facing a much older challenge — that of ensuring compliance with the tax laws. IRS estimates that the current overall compliance rate is about 83 percent. That means that about 17 percent of the tax dollars due each year are not collected. That is simply not acceptable — especially when you realize that each percentage point in the compliance rate represents approximately \$7-10 billion in annual revenue — revenue that, if collected, would be available with no changes in the tax law or tax rates. Our stated goal is to raise the compliance level to 90 percent.

Achieving voluntary compliance is the thrust of the Service's Compliance 2000 strategy, which combines traditional enforcement efforts with other initiatives, such as taxpayer outreach and education, Market Segment Specialization Programs and Audit Technique Guides, and our Nonfiler Program.

A Tax Partnership

The IRS's relationship with the Wisconsin Department of Revenue is a model of joint tax administration. Through our cooperative efforts, both Wisconsin and the IRS have made strides toward our goal of transform-

ing tax administration at both the federal and state levels to a system that works better and costs less.

I know that these joint efforts will continue to help us provide more efficient tax administration to the citizens of Wisconsin. □

Manufacturer's Property Tax Assessment Changes Made

Note: Information for this article was provided by the department's State and Local Finance Division, which administers the assessment of manufacturing property.

Filing Penalty Now Payable to the Department

The manufacturer's property tax filing penalty has been removed from the property tax bill, beginning in 1995, as a result of an amendment to sec. 70.995(12)(c), Wis. Stats. The penalty is payable directly to the Department of Revenue (DOR), within 30 days of the mailing date of the penalty notice. Delinquent penalties will be processed through DOR's Delinquent Tax Collection System.

Leased Personal Property Will Be Assessed to the Lessee

Manufacturer's leased personal property will be assessed to the lessee for 1995. In the past, the department assessed leased equipment to either the lessor or the lessee, dependent on the lessor's preference. DOR's Manufacturing Assessment Section surveyed lessors, manufacturers, and local assessors, and about 80% were in favor of assessing all leased equipment only to the lessee. Advantages of lessee assessment include:

- manufacturers don't have to pay a sales tax on property taxes;
- manufacturers can identify when equipment qualifies as exempt

manufacturing machinery and equipment (M&E) better than the lessor;

- fewer assessments and tax bills for DOR, municipalities, and lessors; and
- cost savings to DOR and municipalities.

Lessors will still be required to file their self-reporting form (ML-form) to assist DOR in discovering leased equipment.

Some Low-Value Leased Items Returned to Local Assessment

In general, personal property leased to, rented to, or loaned to a Wisconsin manufacturer is assessed by DOR. However, sec. 70.995(4), Wis. Stats., gives DOR discretion in determining what unit of tangible personal property should be assessed. Vending machines located at manufacturers have always been assessed by the local assessor. DOR has created a list of low value items located at manufacturers that will be assessed by municipal assessors. These items have no likelihood of qualifying as exempt M&E. The items include pagers, water bottle services, plant rentals, travel reservation terminals, telephone equipment, etc. Manufacturers should continue to list these leases on their self-reporting forms (MP-form) for discovery purposes.

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, 1995, or at the stage in which action occurred during the period from October 2, 1994, to January 1, 1995.

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

- 2.03 Corporation returns-R&R
- 2.04 Information returns and wage statements-R&R
- 2.08 Returns of persons other than corporations-R&R
- 2.10 Copies of federal returns, statements, schedules, documents, etc. to be filed with Wisconsin returns-R&R
- 2.39* Apportionment method-A
*hearing held 12/12/94
- 11.04 Constructing buildings for exempt entities-A
- 11.13 Direct pay-NR
- 11.14 Exemption certificates, including resale certificates-A

Rules Adopted But Not Yet Effective

- 2.97 Earned income credit eligibility-NR

Rules Adopted and in Effect (date of adoption December 1, 1994)

- 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 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 deductions for suppliers-NR
- 4.75 Payment of motor vehicle fuel tax-NR

Emergency Rule (effective November 14, 1994)

- 11.13 Direct pay-NR

Recently Adopted Rules Summarized

Listed below is a summary of recent revisions to administrative rules, including rules in Chapter Tax 4, relating to motor vehicle and general aviation fuel taxation, and sec. Tax 11.13, relating to direct pay permits for sales and use tax. In addition to the summary, the text of sec. Tax 11.13 is reproduced.

Ch. Tax 4 Motor vehicle and general aviation fuel taxation. Chapter Tax 4 is revised, effective December 1, 1994. The title is amended to include the words "general aviation," since the rules encompass general aviation fuel taxation. Every subsection except Tax 4.04 is amended to reflect proper

format, grammar, and punctuation. Notes in Tax 4.53 and 4.55 are revised to reflect the proper address and telephone number for obtaining forms. In addition, Tax 4.02, 4.03, 4.05, 4.50, 4.51, 4.53, and 4.54(1) and (2)(a)3 are further amended to reflect changes made to ch. 78, Wis. Stats., by 1993 Wisconsin Act 16, effective April 1, 1994.

Tax 4.04, relating to double-face carbons, is repealed because it is obsolete.

Tax 4.10, 4.11, 4.12, 4.65, and 4.75 are created to reflect changes made to ch. 78, Wis. Stats., by 1993 Wisconsin Act 16, effective April 1, 1994, and 1993 Wisconsin Act 437, effective June 1, 1994.

Tax 11.13 Direct pay. Tax 11.13 is created as an emergency rule, effective November 14, 1994. Tax 11.13 addresses the use of direct pay permits, effective for taxable years beginning on or after January 1, 1995, per the creation of sec. 77.52(17m), Wis. Stats., by 1993 Wisconsin Act 437. It also addresses the issuance of direct pay permits and the types of purchases not eligible for exemption from sales and use tax under the direct pay provisions. The text of Tax 11.13 is as follows:

Tax 11.13 DIRECT PAY. (s. 77.52(17m), Stats.) (1) GENERAL. (a) The holder of a direct pay permit shall be allowed to purchase tangible personal property and taxable services, except those in sub. (5)(a) and (b), without Wisconsin sales or use tax.

(b) The purchaser shall report Wisconsin use tax on the sales price of tangible personal property or taxable services purchased without tax using a direct pay permit if the property or service is subject to Wisconsin sales or use tax. The tax shall be reported on the taxpayer's Wisconsin sales tax return for the period in which the property or service is first stored, used or consumed in Wisconsin in a taxable manner.

Note: Sales price, for purposes of this paragraph, has the meaning specified in s. 77.51(15), Stats.

(2) ISSUANCE. (a) The department shall issue a direct pay permit to those persons who meet the qualifications set forth in s. 77.52(17m)(b), Stats.

Note: The issuance of direct pay permits is effective for taxable years beginning on or after January 1, 1995.

(b) Persons who wish to obtain a direct pay permit shall apply with the department using the form prescribed by the department. A \$5 fee is required upon application.

Note: Application for direct pay is made using form S-101, application for direct pay permit. Form S-101 is available by writing or calling Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902, telephone (608) 266-2776.

(c) A direct pay permit may only be issued effective with the beginning of the applicant's taxable year for Wisconsin franchise or income tax purposes.

Example: A taxpayer's taxable year begins July 1 for Wisconsin franchise or income tax purposes. The taxpayer files an application for a direct pay permit with the department on January 1, 1995. The taxpayer is issued a direct pay permit which is effective for purchases made on or after July 1, 1995.

(3) REVOCATION OR CANCELLATION. (a) A direct pay permit issued by the department may be used indefinitely until it is revoked by the department or cancelled by the holder.

(b) A permit shall be cancelled by the holder by mailing the permit to the department for cancellation. A letter shall be enclosed with the permit, indicating the holder's intention to cancel the permit.

Note: The permit to be cancelled and letter should be mailed to Wisconsin Department of Revenue, P.O. Box 8902, Madison, WI 53708-8902.

(c) The cancellation of a direct pay permit shall become effective on the last day of the holder's taxable year in which the permit is received by the department.

(4) USING DIRECT PAY. (a) A person shall provide one of the following to a retailer when purchasing without tax using a direct pay permit:

1. A copy of its direct pay permit.
2. A written statement containing all of the following:

a. The name and address of the purchaser.

b. An indication that the purchaser is purchasing without Wisconsin sales or use tax using a direct pay permit.

c. The purchaser's direct pay permit number.

d. The effective date of the direct pay permit.

e. The signature of the purchaser.

(b) If a purchaser uses its direct pay permit to purchase tangible personal property or taxable services without Wisconsin sales or use tax, all subsequent purchases by the purchaser from that retailer, except those in sub. (5)(a) and (b), shall be made without Wisconsin sales or use tax using the direct pay permit.

(c) It is necessary only to provide the documentation in par. (a) to a retailer at the time the purchaser begins purchasing without tax from that retailer using a direct pay permit. The retailer shall keep the information provided by the purchaser under par. (a) on file as proof that all subsequent purchases by the purchaser are made without tax. It is not required that the purchaser provide to a retailer the information in par. (a) each time a sale is made by the retailer to the purchaser.

(d) A direct pay permit shall be used for all purchases from a retailer even though a resale certificate, manufacturer's exemption certificate, certificate of exemption or other exemption requiring different documentation may apply.

Example: On July 1, 1995, Company A begins using its direct pay permit when purchasing tangible personal property from Company B. All purchases of tangible personal property or taxable services, except those described in sub. (5)(a) and (b), by Company A from Company B on or after July 1, 1995, must be made without sales or use tax using the direct pay permit. A resale certificate, manufacturer's exemption

certificate, or certificate of exemption should not be used when purchasing without tax if a retailer has a direct pay permit on file for the purchaser.

(5) **SERVICES AND PROPERTY NOT SUBJECT TO DIRECT PAY.** (a) **Services.** Gross receipts subject to tax from sales of services under the following Wisconsin statutes are subject to Wisconsin sales or use tax, regardless of whether the purchaser holds a direct pay permit:

1. Section 77.52(2)(a)1, Stats., relating to furnishing rooms or lodging.

2. Section 77.52(2)(a)2, Stats., relating to admissions to amusement, athletic, entertainment or recreational events, devices or facilities.

3. Section 77.52(2)(a)5, Stats., relating to telecommunications services.

4. Section 77.52(2)(a)9, Stats., relating to parking.

5. Section 77.52(2)(a)12, Stats., relating to cable television system services.

6. Section 77.52(2)(a)20, Stats., relating to landscaping services.

(b) **Property.** Gross receipts from the sale, lease or rental of the following tangible personal property are subject to Wisconsin sales or use tax, even though the purchaser holds a direct pay permit:

1. Tangible personal property transferred to a purchaser in connection with the sale of landscaping services subject to tax under s. 77.52(2)(a)20, Stats.

2. Motor vehicles, boats, snowmobiles, mobile homes not exceeding 45 feet in length, trailers, semitrailers, all-terrain vehicles or aircraft.

3. Food, food products and beverages described in s. 77.54(20)(b), Stats.

4. Meals, food, food products and beverages subject to tax under s. 77.54(20)(c), Stats.

(c) **Exemptions.** Although not eligible to be purchased without Wisconsin sales or use tax using a direct pay permit, the taxable services and tangible personal property described in sub. (5)(a) and (b) may be purchased without Wisconsin sales or use tax if a resale, farm-

ing, manufacturing or other exemption applies. Documentation required to purchase without tax, as provided in s. Tax 11.14, is required.

(6) **SELLER'S LIABILITY.** A retailer is not liable for sales or use tax on gross receipts from the sale of tangible personal property or taxable services, except those described in sub. (5)(a) and (b), to a person who has provided the retailer with the appropriate information under sub. (4)(a), until the retailer has been notified by the person or the department that the person's direct pay permit has been:

(1) Revoked. A direct pay permit is considered revoked on the date the holder receives the department's notice of revocation.

(2) Cancelled. A direct pay permit is not considered cancelled until the last day of the person's taxable year in which the permit is received by the department. □



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

Credits — taxes paid to other states

Income attribution

Penalties — fraud

Paul G. and Judith I. Beck
(p. 19)

Nonresidents — allocation of income

Thomas J. Flynn (p. 19)

Tax Appeals Commission — class action claims

J. Gerard and Delores M. Hogan, et al. (p. 19)

Corporation Franchise and Income Taxes

Apportionment — air carriers — interstate

United Parcel Service Co. (p. 20)

Extension of time — additional assessments and refunds

Paramount Farms Incorporated
(p. 22)

Sales and Use Taxes

Construction contractors — use tax

Oscar J. Druml (p. 22)

Exemptions — common or contract carrier vehicles

Government purchases

Use tax — liability of user

R-K Towing, Inc. (p. 23)

Rebates

Sovereign immunity

John Grall, et al. (p. 24)

Temporary Recycling Surcharge

Temporary recycling surcharge — constitutionality

Love, Voss & Murray (p. 25)