



# Wisconsin TAX BULLETIN



### FOCUS ON . . . *Wisconsin Tax Bulletin* Annual Index

See pages 31 to 58.

### Tax Bills Pending in Legislature

Several bills containing provisions that affect Wisconsin taxes have been introduced in the Wisconsin Legislature. None of these bills have been enacted into law as of the date this *Wisconsin Tax Bulletin* went to press.

The Wisconsin Legislature is scheduled to conclude its current session on May 16, 1996. If any bills which affect Wisconsin taxes become law, the new laws will be explained in a future issue of the *Wisconsin Tax Bulletin*. □

### Do You Owe Use Tax?

If you were audited tomorrow, do you know in what area the auditor would likely find errors? Use Tax!

Most businesses make purchases subject to use tax. Perhaps you buy office equipment or supplies from out-of-state sellers. Or, you own a

retail business, buy inventory for resale, and then occasionally use inventory items in your business.

You are required to pay Wisconsin use tax on these purchases if the seller did not charge you Wisconsin sales tax. Failure to pay use tax may result in the imposition of penalties and interest, in addition to the tax.

Additional information about use tax is contained in Wisconsin Publication 214, *Do You Owe Wisconsin Use Tax?* Copies are available from any Department of Revenue office, or by fax, by calling the department's Fax-a-form number, (608) 261-6229, from a fax machine and entering retrieval number 10214. □

### Focus on Publications: Auctioneers

Household goods, farm equipment, business assets, and motor vehicles – all of these are sold at auctions.

When must an auctioneer collect and pay sales tax? Answers can be found in the Department of Revenue's new Publication 217, *Auctioneers – How Do Wisconsin Sales and Use Taxes Affect Your Operations?* This publication is available from any Department of Revenue office, or by fax, by calling the department's Fax-a-form number, (608) 261-6229, from a fax machine and entering retrieval number 10217. □

### Information or Inquiries?

Listed below are telephone numbers to call if you wish to contact the Department of Revenue about any of the taxes administered by the Income, Sales, and Excise Tax Division.

#### Madison — Main Office Area Code (608)

|                                                                |          |
|----------------------------------------------------------------|----------|
| Appeals . . . . .                                              | 266-0185 |
| Audit of Returns: Corporation, Individual, Homestead . . . . . | 266-2772 |
| Beverage . . . . .                                             | 266-6701 |
| Cigarette, Tobacco Products . . . . .                          | 266-8970 |
| Copies of Returns: Homestead . . . . .                         | 266-2890 |
| Individual . . . . .                                           | 266-1266 |
| All Others . . . . .                                           | 266-0678 |
| Corporation Franchise and Income . . . . .                     | 266-1143 |
| Delinquent Taxes . . . . .                                     | 266-7879 |
| Estimated Taxes . . . . .                                      | 266-9940 |
| Fiduciary, Estate . . . . .                                    | 266-2772 |
| Forms Request: Taxpayers . . . . .                             | 266-1961 |
| Practitioners . . . . .                                        | 267-2025 |
| Homestead Credit . . . . .                                     | 266-8641 |
| Individual Income . . . . .                                    | 266-2486 |
| Motor Vehicle Fuel . . . . .                                   | 266-3223 |
| Refunds . . . . .                                              | 266-8100 |
| Sales, Use, Withholding . . . . .                              | 266-2776 |
| TDD . . . . .                                                  | 267-1049 |

#### District Offices

|                              |                |
|------------------------------|----------------|
| Appleton . . . . .           | (414) 832-2727 |
| Eau Claire . . . . .         | (715) 836-2811 |
| Milwaukee: General . . . . . | (414) 227-4000 |
| Refunds . . . . .            | (414) 227-4907 |
| TDD . . . . .                | (414) 227-4147 |

□

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**Refund Interception Program for Local Governments**

On February 22, 1996, the Department of Revenue hosted the first orientation session for local governments signed up to participate in the refund interception program for county and municipal debts. A provision in 1995 Wisconsin Act 27 authorizes the Department of Revenue to intercept state tax refunds to pay unpaid fines, fees, restitutions, and forfeitures owed to local governments.

The department has set up a computer bulletin board service for local governments to use to transmit debt information to the department and receive information about refund intercepts. A publication describing the program is being prepared and will be distributed to local governments later in 1996.

Local governments interested in participating in the program may receive information about the program and an application to participate by writing to Wisconsin Department of Revenue, Refund Interception Coordinator, P.O. Box 8901, Madison, WI 53708-8901, or by calling (608) 267-0825. □

**Wisconsin LLP Act Enacted**

Effective December 11, 1995, 1995 Wisconsin Act 97 authorizes the organization and operation of limited liability partnerships (LLPs) in Wisconsin.

A "registered limited liability partnership" is a partnership formed pursuant to an agreement under Wisconsin law and registered with the Wisconsin Secretary of State's Office. A "foreign registered limited liability partnership" is an LLP

**Wisconsin Tax Bulletin**

*Published quarterly by*  
Wisconsin Department of Revenue  
Income, Sales, and  
Excise Tax Division  
P.O. Box 8933  
Madison, WI 53708-8933

*Subscriptions available from*  
Wisconsin Department of  
Administration  
Document Sales  
P.O. Box 7840  
Madison, WI 53707-7840  
*Annual cost \$7.00*

**Wisconsin Tax Bulletin Annual Index Included**

Once each year the *Wisconsin Tax Bulletin* includes an index of articles, tax releases, court cases, private letter rulings, and other materials that have appeared in past Bulletins. The index for issues 1 (October 1976) to 95 (January 1996) can be found on pages 31 to 58 of this Bulletin. □

formed pursuant to an agreement under the laws of another state or country and registered under the laws of that jurisdiction. Foreign registered limited liability partnerships that are transacting business in Wisconsin must also register with the Wisconsin Secretary of State's Office.

Generally, a partner in a registered LLP is not personally liable directly or indirectly for any debt, obligation, or liability of the partnership, including any debt, obligation, or liability arising from omissions, negligence, wrongful acts, misconduct, or malpractice, arising while the partnership is a registered LLP. However, a partner may be held liable for any of the following:

- (a) The partner's own omissions, negligence, wrongful acts, misconduct, or malpractice.
- (b) The omissions, negligence, wrongful acts, misconduct, or malpractice of any person acting under the partner's actual supervision and control in the specific activity in which the omissions, negligence, wrongful acts, misconduct, or malpractice occurred.
- (c) Any other debts, obligations, and liabilities resulting from the partner's acts or conduct other than as a partner.
- (d) Any liability that the partner may have under sec. 13.69(1), Wis. Stats., relating to penalties for violations of the state's lobbying laws.

Currently, it is unknown what Wisconsin tax effects, if any, will result from the creation of LLPs. When additional information becomes available, it will be published in a future issue of the *Wisconsin Tax Bulletin*. □



## Need a Speaker?

Are you planning a meeting or training program? The Wisconsin Department of Revenue provides speakers to business, community, and educational organizations.

Department representatives are available to speak on a variety of topics that can be targeted toward your group's particular areas of interest, including:

- New sales/use, income, and corporate tax laws.
- How sales tax affects contractors, landscapers, manufacturers, non-profit organizations, or businesses in general.
- What to expect in an audit.
- Common errors discovered in audits.
- Homestead credit.
- Farmland preservation credit.
- Manufacturing property assessment.

To arrange for a speaker, please write to Wisconsin Department of Revenue, Speakers Bureau, P.O. Box 8933, Madison, WI 53708-8933, or call (608) 266-1911. □

## Taxation of Certain Retirement Income of Former Residents Preempted

Public Law 104-95, signed into law by the President on January 10, 1996, preempts state taxation of certain retirement income received by former residents. The law is effective for amounts received after December 31, 1995.

The new federal law will have limited impact on the Wisconsin individual income tax. Distributions former residents receive from **qualified** retirement and deferred compensation plans were already considered exempt from Wisconsin income tax, even if attributable to personal services performed in Wisconsin (per sec. Tax 3.085, Wisconsin Administrative Code). Therefore, only the provisions of Public Law 104-95 relating to **nonqualified** deferred compensation plans will impact Wisconsin in 1996 and future tax years.

Very little information concerning the specifics of Public Law 104-95 was available at the time this article was prepared (3/96). The following briefly describes its effect on states' taxation of nonresidents:

- prevents states from taxing distributions from retirement plans and arrangements that are considered "**qualified plans**" under the Internal Revenue Code (IRC). These are code sections 401(a), 408(k), 403(a), 403(b), 7701(a)(37), 457, 414(d), and 501(c)(18); and
- prohibits states from taxing distributions from **nonqualified deferred compensation plans** in two cases:
  - (1) When the distribution is paid out in annuity form over the life expectancy of the individual or a period of not less than 10 years; and
  - (2) When the distribution is paid in either an annuity or lump sum from arrangements known commonly as "mirror" plans.

A mirror plan is a nonqualified retirement plan maintained by an employer solely for the purpose of

providing benefits in excess of certain limits on contributions and benefits contained in the Internal Revenue Code which apply to qualified retirement plans. The benefits provided under a mirror plan are those benefits that would have been provided under the terms of a qualified retirement plan, but for the application of the following limits on contributions and benefits:

- (1) Code section 401(a)(17): limits the amount of annual compensation that may be taken into account under a qualified retirement plan for purposes of computing benefits and contributions to \$150,000.
- (2) Code section 401(k): limits the amount of elective deferrals that may be made by a highly compensated employe to a qualified cash or deferred arrangement.
- (3) Code section 401(m): limits the amounts of employer matching contributions and after-tax employe contributions that may be made to a 401(k) plan on behalf of highly compensated employes.
- (4) Code section 402(g): limits the annual amount of elective deferrals that may be made to a 401(k) plan (or a similar arrangement).
- (5) Code section 403(b): limits the amount of annual contributions that may be made to a tax-sheltered annuity maintained by certain tax-exempt entities and organizations.
- (6) Code section 408(k): limits the amount of elective deferrals that may be made by a highly compensated employe to a simplified employe pension (maintained by smaller employers).

- (7) Code section 415: limits the amount of annual benefits that may be paid from a defined benefit plan generally to the lesser of \$120,000 or 100 percent of the participant's average compensation for the highest three years of compensation, and limits the amount of annual contributions that can be made to a defined contribution plan to the lesser of \$30,000 or 25 percent of compensation.

As additional information concerning the effect of Public Law 104-95 becomes available, additional articles may be published in the Bulletin. □

### **Sales and Use Tax Contractor Publication Revised**

Wisconsin Publication 207, *Sales and Use Tax Information for Contractors*, has been revised to reflect the changes described below. The revised Publication 207 with a revision date of "2/96," replaces Publication 207 with a revision date of "7/94."

The following revisions have been made (the page number where the item appears in the revised Publication 207 is given):

1. Information has been added regarding the Business Tax Registration fee (pages 1 and 2)
2. Information has been added regarding the stadium tax (pages 1 and 10)
3. Persons questioning the treatment of property installed in jails are asked to contact the Department of Revenue (page 4)
4. County tax information has been updated for counties that have

adopted the county tax since 7/94 (pages 9 and 10)

5. Items have been added and changed in the chart that appears on pages 17 through 20 (see below for more information on the chart changes)

### **Chart Changes**

Four new items have been added to the chart in Publication 207, which explains the characterization (real property (RE) vs. personal property (P)) of various items. The four new items that have been added and the pages they appear on in the publication are as follows:

- Faucets (not in bathrooms) — page 18
- Faucets (in bathrooms) — page 18
- Railroad Signs and Signals — page 19
- Street Identification Signs — page 20

In addition, the characterization of five items previously listed in the chart on pages 17 - 20 of Publication 207 has changed from either real property (RE) to personal property (P), or personal property (P) to real property (RE). The items in Publication 207 (2/96) as changed are as follows:

- Cabinets (in bathrooms) — Residential and Commercial — Real Estate Function — Repair — P (previously listed as RE in Publication 207 (7/94))
- Incinerators — Commercial — Process Function — Install — P (previously listed as RE in Publication 207 (7/94))

- Sinks (other than bathroom fixtures) — Commercial — Real Estate Function — Install — RE (previously listed as P in Publication 207 (7/94))
- Thermostats (wall-mounted) — Residential and Commercial — Real Estate Function — Repair — RE (previously listed as P in Publication 207 (7/94))
- Traffic Signs and Signals — Residential and Commercial — Install and Repair — P (previously listed as RE in Publication 207 (7/94))

The changes in characterization from RE to P and P to RE of these five items in Publication 207 apply to all periods open to adjustment.

For sales occurring prior to April 1, 1996, the following applies:

***Repair of Cabinets (in bathrooms), Installation of Incinerators and Traffic Signs and Signals***

If you treated the above items as real property improvements (position indicated in Publication 207 (7/94)) and paid Wisconsin sales or use tax based on your purchase price of the items, rather than the selling price of the materials and labor, you have two options:

1. Do nothing. The department will not adjust your sales and use tax liability for these items.
2. File a claim for refund for the sales or use tax paid on your purchase price of the items and report sales tax on the selling price of the item, unless an exemption applies.

If you treated the above items as personal property (position indicated in Publication 207 (2/96)) and

charged your customers Wisconsin sales or use tax based on your selling price of the items (materials and labor), you do not have to do anything. You have treated the items in a manner consistent with the department's "revised" position as shown in Publication 207 (2/96).

**Example 1** — In 1996 you are audited by the department for the year 1995. You did not charge Wisconsin sales tax on \$2,000 worth of repairs made to bathroom cabinets for residential customers because you thought the repairs were real property improvements. You did, however, pay Wisconsin sales tax to your suppliers on your purchases of the materials (\$500) used in making the repairs.

Although the department's "revised" position, as shown in Publication 207 (2/96), with respect to the repair of bathroom cabinets is that this service (\$2,000) is subject to Wisconsin sales tax, the department will not assess you sales tax on the repairs of the bathroom cabinets (\$2,000), nor will the department refund you the amount of Wisconsin sales and use tax you paid on your purchases of the materials (\$500) used in the repairs of the bathroom cabinets.

**Example 2** — In January of 1995, you installed traffic signals for a Wisconsin municipality for \$5,000. You treated the installation as a real property improvement and, therefore, paid Wisconsin sales or use tax on your purchase price of the traffic signals (\$2,000).

Since the department's "revised" position, as shown in Publication 207 (2/96), with respect to traffic signals is that the installation is an installation of personal property and subject to Wisconsin sales tax unless an exemption applies, you were not

required to pay Wisconsin sales or use tax on your purchase of the traffic signals. In addition, because your sale was to a Wisconsin municipality, the \$5,000 sale is exempt from Wisconsin sales and use tax.

You may file a claim for refund for the amount of Wisconsin sales and use taxes you paid on your purchase of the traffic signals from your supplier.

**Example 3** — In February of 1995, you installed traffic signals for a Wisconsin municipality for \$10,000. You treated this sale as a sale and installation of personal property. Since you were installing the traffic signals for a Wisconsin municipality, the \$10,000 sale was exempt from Wisconsin sales and use tax. In addition, you did not pay Wisconsin sales or use tax on your purchase price of the traffic signals (\$4,000).

Since the department's "revised" position, as shown in Publication 207 (2/96), with respect to traffic signals, is that the sale and installation is a sale and installation of personal property subject to Wisconsin sales tax unless an exemption applies, you do not need to do anything. You have treated the installation of the traffic signals in a manner consistent with the department's "revised" position as shown in Publication 207 (2/96).

***Installation of Sinks (other than bathroom fixtures) and Repair of Thermostats (wall-mounted)***

If you treated the above items as personal property and charged your customers Wisconsin sales or use tax based on your selling price of the items (materials and labor), you have two options:

1. Do nothing. The department will not adjust your sales and use tax liability for these items.
2. File a claim for refund for the amount of tax you charged to your customer. However, you would owe Wisconsin use tax based on your purchase price of these materials.

If you treated the above items as real property improvements and paid Wisconsin sales or use tax based on your purchase of the items, you do not need to do anything. You have treated the items in a manner consistent with the department's "revised" position as shown in Publication 207 (2/96).

**Example 1** — In March of 1995, you repaired for \$150 a wall-mounted thermostat that regulated a residential customer's furnace. You charged your customer Wisconsin sales and use tax ( $\$150 \times 5\% = \$7.50$ ) on this repair. You did not pay Wisconsin sales or use tax on your purchase price of the materials (\$50) used in making this repair.

Since the department's "revised" position, as shown in Publication 207 (2/96), is that wall-mounted thermostats for furnaces are real property and repairs to them are not subject to Wisconsin sales and use tax, you may file a claim for refund for the sales tax of \$7.50 which you charged your customer in error.

However, if you file a claim for refund on your sale of the thermostat repair to your customer because the repair is a real property improvement, you would owe Wisconsin use tax ( $\$50 \times 5\% = \$2.50$ ) on your purchase price of the materials (\$50) used in the repair of the thermostat.

**Example 2** — In December of 1995, you repaired for \$200 a wall-mounted thermostat that regulates a residential customer's furnace. You

treated the repair as a real property improvement and, therefore, paid Wisconsin sales or use tax based on your purchase price of the materials (\$75) used in the repair of the thermostat.

Since the department's "revised" position, as shown in Publication 207 (2/96), is that thermostats for furnaces are real property and repairs to them are not subject to Wisconsin sales and use tax, you do not need to do anything. You have treated the item in a manner consistent with the department's "revised" position as shown in Publication 207 (2/96).

For sales occurring on or after April 1, 1996, the proper amount of Wisconsin sales and use tax must be paid to the department based on the positions reflected in Publication 207 (2/96).

**Note:** See *Wisconsin Tax Bulletin* 91 (April 1995), pages 21 to 26, for information about filing claims for refund and passing on the tax collected from buyers. □

### 1996 Estimated Tax Requirements for Individuals, Estates, and Trusts

Taxpayers who expect to owe \$200 or more of tax and temporary recycling surcharge on a 1996 Wisconsin income tax return are required to pay 1996 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 1996 Form 1-ES, Wisconsin Estimated Tax Voucher, is filed with each estimated tax payment.

For calendar year taxpayers, the first estimated tax payment is due on April 15, 1996. Installment payments are also due on June 17,

1996, September 16, 1996, and January 16, 1997. For fiscal year taxpayers, installment payments are due on the 15th day of the 4th, 6th, and 9th months of the fiscal year and the 1st month of the following fiscal year.

Estates and grantor trusts which are funded on account of a decedent's death are only required to make estimated tax payments for taxable years which end two or more years after the decedent's death. For example, an individual died on March 25, 1996. A grantor trust which was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 25, 1998.

A trust which is subject to tax on unrelated business income is generally required to pay 1996 Wisconsin estimated tax if it expects to owe \$500 or more on a 1996 Wisconsin franchise or income tax return (Form 4T). A 1996 Form 4-ES, Wisconsin Corporation Estimated Tax Voucher, is filed with each estimated tax payment. Installment payments for such trusts are due on the 15th day of the 3rd, 6th, 9th, and 12th months of the taxable year.

If a taxpayer does not make the estimated tax payments when required or underpays any installment, interest may be assessed. □

### Sales and Use Tax Report Mailed

The March 1996 *Sales and Use Tax Report* (1-96), contains a number of articles regarding sales and use tax issues. This report was sent in late March to all persons registered for Wisconsin sales and use tax purposes. A copy of the report appears on pages 29 and 30 of this Bulletin. □