

# Wisconsin TAX BULLETIN

[www.dor.state.wi.us](http://www.dor.state.wi.us)

Number 138

April 2004

## Nonresident Military Compensation No Longer Considered When Completing Form 1NPR

The federal Servicemembers Civil Relief Act (Public Law 108-189) was signed by the President on December 19, 2003. One of the provisions of this new law states that “A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction.”

This provision will affect the computation of tax on Form 1NPR for a nonresident servicemember.

Form 1NPR has two columns, column A for reporting federal income and column B for reporting Wisconsin income. When completing line 1 of Form 1NPR (wages, salaries, tips, etc.), the amount of wages to report in the federal column should not include military compensation received while the servicemember was **not** a resident of Wisconsin. The servicemember should write “nonresident servicemember” and the amount of military compensation received while not a Wisconsin resident in the space to the left of line 1. Any taxable military compensation received while the servicemember was a resident of Wisconsin continues to be reported in column B of Form 1NPR.

(continued on page 3)

## Information or Inquiries?

This issue of the *Wisconsin Tax Bulletin* includes a comprehensive listing of addresses and telephone numbers to use if you wish to contact the Department of Revenue about any of the taxes administered by the Processing and Customer Services Division, and the Income, Sales, and Excise Tax Division.

The listing appears on pages 34 to 37 of this Bulletin. It is arranged alphabetically, by the type of tax or credit involved. [☞](#)

## New Tax Laws

Since the last issue of the *Wisconsin Tax Bulletin*, the Wisconsin Legislature has enacted changes to the Wisconsin tax laws. On pages 38 through 48 of this Bulletin is a supplement containing brief descriptions of the individual and fiduciary income tax, corporation franchise or income tax, sales and use tax, and alcohol beverage regulation provisions. [☞](#)

## Rice Lake Office Closed

The Department of Revenue has closed its Rice Lake branch office, effective the end of April 2004. Customer services for persons in this location are being provided from the Eau Claire district and Hayward branch offices.

The Department of Revenue remains committed to providing the best possible service to its customers in the Rice Lake area, as well as statewide. Customers in that location may contact the Eau Claire district office (telephone 715-836-2811), the Hayward branch office (telephone 715-634-8478), or the Madison headquarters office (telephone 608-266-2772). Assistance and information are also available 24 hours a day, 7 days a week on the department's Internet web site, [www.dor.state.wi.us](http://www.dor.state.wi.us). [☞](#)

## Suggestions for Tax Practitioners - Mailing Addresses and Direct Deposit Information

With the increase in the number of electronically filed returns received this year, the Wisconsin Department of Revenue (“DOR”) has been encountering a significantly larger volume of direct deposit rejects from banks and undeliverable refund checks from the Post Office. A majority of the returns that have generated the rejects and returned checks were prepared by tax practitioners.

When a direct deposit reject occurs, the refund must be issued via a paper check instead. This adds approximately one month to the time it takes to receive a refund. Undeliverable refund checks are held until DOR is contacted with correct address information.

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The following suggestions are offered by DOR to tax practitioners, so they may better serve their customers:

- Verify the customer's current mailing address.
- When a customer elects a direct deposit of their refund, verify the accuracy of their bank routing number and account number. A check is the best document to use to verify the routing number, as this information is not always correct on a deposit slip.

Following the above steps will help customers receive their refunds timely, and in the manner they have elected. [☞](#)

## 2004 Estimated Income Tax Requirements for Individuals, Estates, and Trusts

Individuals and fiduciaries that expect to owe \$200 or more of income tax (including recycling surcharge) with their 2004 Wisconsin income tax return are required to pay 2004 Wisconsin estimated tax. There are exceptions for certain estates and trusts, as explained below. A 2004 Form 1-ES, Wisconsin Estimated Tax Voucher, is filed with each estimated tax payment. (**Note:** Only individuals and fiduciaries making estimated **income** tax payments may file a Form 1-ES.)

For calendar year taxpayers, the first estimated income tax payment was due on April 15, 2004. Installment payments are also due on June 15, 2004, September 15, 2004, and January 17, 2005 (January 16 is a Sunday). 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. (**Note:** If any due date falls on a Saturday, Sunday, or legal holiday, use the next business day.)

Estates and grantor trusts that are funded on account of a decedent's death are only required to make estimated

tax payments for taxable years that end two or more years after the decedent's death. For example, an individual died on March 28, 2003. A grantor trust that was funded on account of the individual's death is not required to make estimated tax payments for any taxable year ending before March 28, 2005. The first year that the trust is required to make estimated payments is 2005.

A trust that is subject to tax on unrelated business income is generally required to pay 2004 Wisconsin estimated income tax if it expects to owe \$500 or more (including recycling surcharge) on a 2004 Wisconsin franchise or income tax return (Form 4T). A 2004 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. [☞](#)

### Wisconsin Tax Bulletin

*Published quarterly by:*

Wisconsin Department of Revenue  
Income, Sales, and Excise Tax Division  
Mail Stop 6-40  
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*


## Nonresident Military Compensation No Longer Considered When Completing Form 1NPR

*(Continued from page 1)*

The form instructions should be followed for the remainder of the form. For example, when adding the federal column, nonresident military compensation will not be included in the total federal income on line 30 of the 2003 Form 1NPR. This federal income from line 30 is then used to compute the ratio of Wisconsin income to federal income on line 31, complete line 32, and determine the standard deduction amount to enter on line 33c.

This revised computation of tax for nonresident servicemembers is available for all years open to adjustment. Amended returns must generally be filed within four years of the original due date of the return.

To file an amended Form 1NPR, servicemembers must complete another Form 1NPR for the same year as shown on the original return. Complete instructions for filing an amended Form 1NPR are included in the Form 1NPR instructions for each year. The Form 1NPR and instructions for 2003 and prior years are available on the Department of Revenue's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). They are also available by contacting the department at (608) 266-1961 or [forms@dor.state.wi.us](mailto:forms@dor.state.wi.us).

Questions concerning the taxation of nonresident servicemembers may be directed to the department at (608) 266-2772 or [income@dor.state.wi.us](mailto:income@dor.state.wi.us). 

## Farmers Receive \$40 Million in Farmland Credits

Direct benefits of approximately \$40.0 million were distributed to Wisconsin farmers in 2003, primarily for the 2002 tax year, through the farmland preservation credit program and the farmland tax relief credit program. This is approximately a \$9.9 million increase over the amount of direct benefits that were distributed through these programs during 2002.

The farmland preservation credit and farmland tax relief credit are paid as a reduction in Wisconsin income tax, or as a cash refund if the credits exceed income tax due. The total combined amount of the farmland preservation credit and farmland tax relief credit may not exceed 95% of the farm property taxes.

### Farmland Tax Relief Credit Program

It is not necessary for the farmland to be subject to agricultural zoning or a farmland preservation agreement to receive farmland tax relief credit. This program provides direct benefits to any qualifying farmland owner with 35 or more acres of farmland. About 55,900 farmers, including about 840 corporations, claimed farmland tax relief credits totaling \$23.6 million in 2003, for an average credit of \$422.

The credit is computed as a percentage of up to \$10,000 of property taxes on farmland (exclusive of improvements), up to a maximum credit of \$1,500. The Department of Revenue calculates the percentage each year, based on the amount appropriated for the program.


The credit for 2002 claims equaled 30% of the first \$10,000 of property taxes on farmland, but limited to a maximum credit of \$1,500. For the 2003 tax year (credits claimed in 2004), the credit is equal to 16% of the first \$10,000 of property taxes, but limited to a maximum credit of \$1,500.

### Farmland Preservation Credit Program

About 20,500 farmers, including about 350 corporations, claimed farmland preservation credits totaling \$16.4 million in 2003. The credit averaged \$801 per claimant. About 37% of farm owners with 35 or more acres claimed the credit, which equaled about 23% of claimants' average property tax bills.

The goals of the farmland preservation credit program are twofold –

- To preserve Wisconsin farmland by means of local land use planning and soil conservation practices.
- To provide property tax relief to farmland owners.

To qualify for the credit, farmland must be 35 acres or more and must either be zoned for exclusive agricultural use, or be subject to a farmland preservation agreement between the farmland owner and the state. In addition, participants must comply with soil and water conservation standards set by the state Land Conservation Board. 

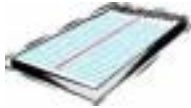
## Reduce Processing Delays - Use Preferred W-2 Forms

To provide fast and accurate income tax processing, the Department of Revenue uses scanner technology to capture wage statement (Form W-2) information. The department is requesting that employers NOT use carbon copied W-2 forms, including NCR. **Carbon and NCR copied W-2 forms do not scan well**, and this often necessitates additional time-consuming steps. This can result in **delays in processing refunds** for tax returns with those forms.

The preferred format for a Form W-2 is the Internal Revenue Service (“IRS”) approved format, which can be viewed on the IRS web page, [www.irs.gov/formspubs/index.html](http://www.irs.gov/formspubs/index.html). The IRS format W-2 form is 8.5 by 5.5 inches and can easily be imaged by production scanners. All information on the Form W-2 should be printed as large as possible within each space allotment and should not be printed over preprinted information on the form. Always complete the form using black ink.

If you have questions regarding the use or preparation of preferred W-2 forms, you may call the department at (608) 261-7681. [☎](#)

## Index of Reference Material Available



Are you looking for an easy way to locate reference material to research a Wisconsin tax question? The *Wisconsin Topical and Court Case Index* may be just what you need.

This two-part index will help you find reference material relating to income, franchise, withholding, sales/use, estate, and excise taxes.

The “Topical Index” portion lists by tax type, alphabetically by subject, references to Wisconsin statutes, administrative rules, tax releases, private letter rulings, Wisconsin tax publications, *Sales and Use Tax*

*Reports*, Attorney General opinions, and *Wisconsin Tax Bulletin* articles.

The “Court Case Index” lists by tax type, alphabetically by issue, decisions of the Wisconsin Tax Appeals Commission, Circuit Court, Court of Appeals, and Wisconsin Supreme Court.

The *Wisconsin Topical and Court Case Index* is available by subscription for \$18 per year, plus sales tax. This includes a volume published in January and an addendum published in June. To order your copy, complete the order blank on page 53 of this Bulletin. The Index is also on the department’s Internet web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). Just click on “Publications.” [☎](#)

## Collecting Sales Tax at Temporary Events

Spring is here, and so are flea markets and craft fairs. Again this year, representatives from the Department of Revenue will be attending selected events across the state, to determine if vendors are appropriately registered for and collecting Wisconsin sales tax.

Vendors who make taxable sales of \$1,000 or more in a year are required to hold a Wisconsin seller’s permit. They need to charge sales tax at a rate ranging from 5% to 5.6%, depending on the county in which the sale takes place.

For those vendors who do not have a seller’s permit or who have a delinquent account with the Department of Revenue, department representatives will be meeting them at the registration table, to get them registered and/or to collect their delinquent account.

Operators (organizers) of these temporary events are required by law to report to the Wisconsin Department of Revenue the name, address, and seller’s permit number of each vendor selling merchandise at an event. A social security number or federal employer identification number is required if the vendor does not have a seller’s permit number.

New for this year is a page on the department’s web site, [www.dor.state.wi.us](http://www.dor.state.wi.us), devoted to temporary events. Click on “Business” and then “Temporary Events.” The page has links to forms, publications, and tax returns, as well as an e-mail address for any questions that an operator or vendor may have.

Questions about the responsibilities of operators or vendors at temporary events may also be referred to the department’s Temporary Events Coordinator, Tom Beyer, at (608) 266-7183 or [tbeyer@dor.state.wi.us](mailto:tbeyer@dor.state.wi.us). [☎](#)

## Tax Publications Available

Listed below are 74 publications that are available, free of charge, from the Department of Revenue. Copies are available at any department office, or by mail, e-mail, fax, or the Internet.

### By Mail

Write to Wisconsin Department of Revenue, Forms Request Office, Mail Stop 1-151, P.O. Box 8949, Madison, WI 53708-8949; call (608) 266-1961; or fax a request to (608) 264-7776.

### By E-Mail

You may e-mail your request to [forms@dor.state.wi.us](mailto:forms@dor.state.wi.us).

### Via Your Fax Machine

Use the department's Fax-A-Form system by calling (608) 261-6229 from a fax telephone and entering the retrieval code "10" plus the publication number.

### Via the Internet

Access the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us), and click on "Publications" and then "Tax Publications."

**Note:** The numbers of some publications may be followed by an asterisk (\*). These are publications that are new or have been revised since the last issue of the *Wisconsin Tax Bulletin*.

### Income and Franchise Taxes

- |     |   |                            |   |
|-----|---|----------------------------|---|
| 102 | Wisconsin Tax Treatment of Tax-Option (S) Corporations and Their Shareholders (12/03)                               | 119                        | Limited Liability Companies (LLCs) (12/02)  |
| 103 | Reporting Capital Gains and Losses for Wisconsin by Individuals, Estates, and Trusts (11/03)                        | 120                        | Net Operating Losses for Individuals, Estates, and Trusts (11/03)                           |
| 104 | Wisconsin Taxation of Military Personnel (10/03)  | 121                        | Reciprocity (11/03)   |
| 106 | Wisconsin Tax Information for Retirees (11/03)  | 122                        | Tax Information for Part-Year Residents and Nonresidents of Wisconsin for 2003 (11/03)      |
| 109 | Tax Information for Married Persons Filing Separate Returns and Persons Divorced in 2003 (11/03)                    | 123                        | Business Tax Credits for 2003 (12/03)   |
| 112 | Wisconsin Estimated Tax and Estimated Surcharge for Individual, Estates, Trusts, Corporations, Partnerships (11/02) | 125                        | Credit for Tax Paid to Another State (11/03)  |
| 113 | Federal and Wisconsin Income Tax Reporting Under the Marital Property Act (10/03)                                   | 126                        | How Your Retirement Benefits Are Taxed (11/03)  |
| 116 | Income Tax Payments are Due Throughout the Year (11/02)   | 600                        | Wisconsin Taxation of Lottery Winnings (12/03)  |
|     |   | 601                        | Wisconsin Taxation of Pari-Mutuel Wager Winnings (1/02)                                     |
|     |   | <b>Sales and Use Taxes</b> |   |
|     |   | 200                        | Electrical Contractors – How Do Wisconsin Sales and Use Taxes Affect Your Business? (11/02) |
|     |   | 201                        | Wisconsin Sales and Use Tax Information (11/02)   |
|     |   | 202                        | Sales and Use Tax Information for Motor Vehicle Sales, Leases, and Repairs (11/00)          |
|     |   | 203                        | Sales and Use Tax Information for Manufacturers (7/00)                                      |
|     |   | 204                        | Sales and Use Tax Information for Colleges, Universities and Technical Colleges (3/01)      |
|     |   | 205                        | Use Tax Information for Individuals (4/03)  |
|     |   | 206                        | Sales Tax Exemption for Nonprofit Organizations (6/00)                                      |
|     |   | 207                        | Sales and Use Tax Information for Contractors (10/00)                                       |
|     |   | 210                        | Sales and Use Tax Treatment of Landscaping (11/03)  |
|     |   | 211                        | Cemetery Monument Dealers – How Do Wisconsin Sales and Use Taxes Affect You? (6/00)         |
|     |   | 212                        | Businesses: Do You Owe Use Tax on Imported Goods? (4/03)                                    |
|     |   | 213                        | Travelers: Don't Forget About Use Tax (4/03)  |
|     |   | 214                        | Businesses: Do You Owe Use Tax? (4/03)  |
|     |   | 216                        | Filing Claims for Refund of Sales or Use Tax (2/03)   |

217 Auctioneers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/00)

219 Hotels, Motels, and Other Lodging Providers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (2/03)

220 Grocers – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (10/01)

221 Farm Suppliers and Farmers – How Do Wisconsin Sales and Use Taxes Affect Sales to Farmers? (3/02)

222 Motor Vehicle Fuel Users: Do You Owe Use Tax? (3/00)

223 Bakeries – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (1/03)

224 Veterinarians – How Do Wisconsin Sales and Use Taxes Affect Your Business? (6/99)

225 Barber and Beauty Shops – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (12/02)

226\* Golf Courses – How Do Wisconsin Sales and Use Taxes Affect Your Operations? (4/04)

227 E-file Sales Tax returns with S.I.P. (3/01)

229 Brackets for Collecting Wisconsin Sales or Use Tax on Retail Sales (11/01)

230 Sales and Use Tax Information for Sellers of Antiques, Crafts, and Artwork (12/02)

### Excise Tax

AB-103 Alcohol Beverage Tax Information (3/03)

MF-106\* Alternate Fuel Tax Information (4/04)

MF-107\* Motor Vehicle Fuel Tax Information (4/04)

MF-108\* General Aviation Fuel Tax Information (4/04)

302 Wisconsin Alcohol Beverage and Tobacco Laws for Retailers (4/03)

### Other Taxes and Credits

127 Wisconsin Homestead Credit Situations and Solutions (11/03)

400 Wisconsin's Recycling Surcharge (12/03)

403 Premier Resort Area Tax (2/03)

410 Local Exposition Taxes (2/03)

503 Wisconsin Farmland Preservation Credit (11/03)

508 Wisconsin Tax Requirements Relating to Nonresident Entertainers (2/03)

W-166\* Wisconsin Employer's Withholding Tax Guide (2/04)

### Audits and Appeals

501\* Field Audit of Wisconsin Tax Returns (2/04)

505 Taxpayers' Appeal Rights of Office Audit Adjustments (2/02)

506 Taxpayers' Appeal Rights of Field Audit Adjustments (10/03)

507 How to Appeal to the Tax Appeals Commission (6/03)

515 Non-Statistical Sampling (1/01)

### Other Topics

111 How to Get a Private Letter Ruling From the Wisconsin Department of Revenue (2/01)

114 Your Wisconsin Taxpayer Bill of Rights (10/01)

115 2004 Handbook for Federal/State Electronic Filing (11/03)

117 Guide to Wisconsin Information Returns (11/03)

124 Petition for Compromise of Delinquent Taxes (11/03)

130 Fax A Form (12/03)

140 A Tax Practitioner's Guide to Electronic Filing (6/03)

401 Extensions of Time to File (12/03)

405 Wisconsin Taxation of Native Americans (12/01)

500 Tax Guide for Wisconsin Political Organizations and Candidates (12/03)

502 Directory of Wisconsin Tax Publications (11/03)

504 Directory for Wisconsin Department of Revenue (5/03)

509 Filing Wage Statements and Information Returns on Magnetic Media or by Electronic Transmission (11/03)

700 Speakers Bureau presenting . . . (6/00) [☞](#)

## Filing Wisconsin Fiduciary Income Tax Returns (Form 2) - Estates and Trusts

(**Note:** The fiduciary income tax return filing requirements for estates are discussed in the article titled “Filing Wisconsin Tax Returns for a Deceased Taxpayer,” on page 9 of this Bulletin. Refer to the section in that article titled “Fiduciary Income Tax Return(s).”)

- A Wisconsin “resident” trust must file a Wisconsin fiduciary return if it has (a) any taxable income for the taxable year, or (b) gross income of \$600 or more, regardless of the taxable income.

Gross income means all income, before deducting expenses, reportable to Wisconsin which is received in the form of money, property, or services. It does not include items which are exempt from Wisconsin tax.

**Example:** A resident trust has \$400 of interest income. It makes no distributions and therefore only has an exemption of \$100, which would result in taxable income of \$300. The trust is required to file a Wisconsin fiduciary return, because it has taxable income.

- A “nonresident” trust must file a Wisconsin fiduciary return if it has (a) any Wisconsin taxable income for the year, or (b) gross income from Wisconsin sources of \$600 or more, regardless of the taxable income.

Wisconsin source income includes income or gain from:

- Real or tangible personal property located in Wisconsin.
- A business, trade, profession, or occupation carried on within Wisconsin, including a corporation taxed under Subchapter S of the Internal Revenue Code.
- Personal or professional services performed in Wisconsin either as an individual or as a member of a partnership or limited liability company.
- Income received from the Wisconsin State Lottery or a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

### *Resident Trust*

A trust created by a decedent’s will (testamentary trust) is resident at the domicile of the decedent at the time of the decedent’s death, unless transferred by a court having jurisdiction to another court’s jurisdiction.

Inter vivos trusts that are made irrevocable and were administered in Wisconsin before October 29, 1999, shall be considered resident at the place where the trust is being administered.

The following inter vivos trusts that become irrevocable on or after October 29, 1999, or that became irrevocable before October 29, 1999, and are first administered in Wisconsin on or after October 29, 1999, are resident of Wisconsin:

1. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of Wisconsin at the time that the property was placed in the trust if, at the time that the assets were placed in the trust, the trust was irrevocable.
2. Trusts, or portions of trusts, the assets of which consist of property placed in the trust by a person who is a resident of Wisconsin at the time that the trust became irrevocable if, at the time that the property was placed in the trust, the trust was revocable.

A trust is revocable if the person whose property constitutes the trust may revest title to the property in that person.

A trust is irrevocable if the power to revest title does not exist.

### **Examples:**

#### ***Law prior to October 29, 1999:***

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on October 22, 1999, in Florida that is to be administered in Florida. The trust will not be taxable to Wisconsin.

- c. Mary Doe, a resident of Florida, set up an irrevocable trust on October 22, 1999, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable) trust in Arkansas that is to be administered in Arkansas. The trust became irrevocable at his death on October 22, 1999. James was a Wisconsin resident at death. This trust will not be subject to Wisconsin income tax.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On October 22, 1999, she made an irrevocable gift to the trust of her company stock. The earnings on the stock, if taxable at the trust level, would not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust administered in Wisconsin in 1997. Martha moved to Florida on October 22, 1999, established Florida residency, and moved her trust to Florida. The trust would no longer be taxable to Wisconsin, as the trust would now be administered in Florida.
- time of death. The trust would be taxable to Wisconsin.
- e. Susan Taxpayer, a resident of Wisconsin, has an irrevocable trust that is administered in Florida. On December 15, 2003, she made an irrevocable gift to the trust of \$2 million of her company stock. The value of the assets in the trust are \$1.5 million before the gift, and \$3.5 million after. All income from the \$2 million that was placed in the trust on December 15, 2003, will be taxable to Wisconsin. The assets put into the trust prior to October 29, 1999, will not be taxable to Wisconsin.
- f. Martha Doe, a resident of Wisconsin, set up an irrevocable trust in Wisconsin on December 15, 1999. In March 2003, Martha moved to Florida and became a Florida resident. The trust would remain taxable to Wisconsin since Martha Doe was a resident of Wisconsin at the time the trust became irrevocable.

This law change provides that any and all trusts funded by a Wisconsin resident, that became irrevocable on or after October 29, 1999, and contributions to such trusts by a Wisconsin resident, are subject to Wisconsin income tax. It exempts from Wisconsin income tax all trusts that became irrevocable on or after October 29, 1999, and are funded by a nonresident, even if administered in Wisconsin.

***Law change effective on October 29, 1999:***

- a. John Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2003, in Wisconsin that is to be administered in Wisconsin. The trust will be taxable to Wisconsin.
- b. Jack Doe, a resident of Wisconsin, set up an irrevocable trust on December 15, 2003, in Florida that is to be administered in Florida. The trust will be taxable to Wisconsin. The trust will continue to be taxable to Wisconsin even if Jack Doe changes his domicile to another state.
- c. Mary Doe, a resident of Florida, set up an irrevocable trust on December 15, 2003, in Wisconsin to be administered in Wisconsin. The trust would not be taxable to Wisconsin since Mary Doe was not a Wisconsin resident at the time the trust became irrevocable.
- d. James Taxpayer, a resident of Wisconsin, set up a grantor (revocable trust) in Arkansas that is administered in Arkansas. The trust became irrevocable on James's death on December 15, 2003, and James was a Wisconsin resident at the

***Qualified Funeral Trust (QFT)***

For taxable years beginning after August 5, 1997, if a qualified funeral trust (QFT) makes the election under sec. 685 of the Internal Revenue Code for federal income tax purposes, that election also applies for Wisconsin income tax purposes. A QFT must treat each beneficiary's interest as a separate trust. A copy of the federal Form 1041-QFT must be attached to the Form 2.

***Electing Small Business Trust (ESBT)***

For taxable years beginning on or after January 1, 1997, electing small business trusts (ESBTs) may be S corporation shareholders. The portion of an ESBT that consists of stock of one or more S corporations is treated as a separate trust. The separate trust is subject to Wisconsin income tax at the highest rate under sec. 71.06(1), (1m), (1n), or (1p), Wis. Stats. (2001-02).



*Closing Certificates*

A trust may request a Closing Certificate for Fiduciaries from the Wisconsin Department of Revenue on the Form 2 that is filed for the year prior to the final year. Section 71.13(2), Wis. Stats., provides that the department may issue a Closing Certificate for Fiduciaries to an “Executor, administrator, personal representative or trustee applying to a court having jurisdiction” in order to obtain the court’s approval for final distribution and discharge of the fiduciary. The department will issue the Closing Certificate for Fiduciaries only in cases where the court has required it to close a proceeding.

The following information should be attached to the certificate request:

- Payment of any tax due.
- A copy of the trust instrument and any amendments.

- Copies of the annual court accountings for the last three years. If annual accountings have not been filed with the court, verification that the court requires the certificate to close a proceeding.
- A detailed statement of why the trust is closing.
- A completed Schedule E, lines 1 through 8 and the Summary of Assets, lines 1 through 8 on page 4 of Form 2.

The certificate request should be mailed to:

Wisconsin Department of Revenue  
Mail Stop 5-144  
P.O. Box 8904  
Madison, WI 53708-8904

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return. [☞](#)

## Filing Wisconsin Tax Returns for a Deceased Taxpayer

More than one type of Wisconsin tax return may be required for a deceased taxpayer, such as:

- Individual income tax return
- Fiduciary income tax return(s)
- Estate tax return
- Inheritance tax return (for deaths prior to January 1, 1992).

### Individual Income Tax Return

A personal representative or petitioner must file an individual income tax return, Form 1, 1A, 1NPR, or WI-Z, for a decedent from the beginning of the year to the date of death. The due date of the individual return is April 15th of the year following death.

The filing requirements for tax years beginning in 2003 are as follows:

- a. Single person - gross income of \$9,000 or more.
- b. Married persons filing jointly - gross income of \$18,000 or more.
- c. Married person filing separately - gross income of \$9,000 or more (each spouse).

- d. Head of household:
  - (1) Under age 65 - gross income of \$10,760 or more.
  - (2) Age 65 or over - gross income of \$11,010 or more.
- e. Part-year resident or nonresident - gross Wisconsin income of \$2,000 or more.

When a surviving heir files a return claiming a refund on behalf of a person who died and the refund is larger than \$100, a completed Form I-804, *Claim for Decedent’s Wisconsin Income Tax Refund*, should be attached to the front of the return. If a refund of \$100 or less is being claimed, a note should be attached to the front of the tax return, listing the survivor’s name, address, social security number, and relationship to the person who died, and the note should be signed.

The person who files the return should write “deceased” after the decedent’s name in the name and address area at the top of the return.

If the taxpayer did not have to file a return but paid estimated tax or had tax withheld, a return must be filed to get a refund.

If a taxpayer’s spouse died during 2003 and the taxpayer did not remarry in 2003, a joint return may be filed. A

joint return for 2003 may also be filed if a taxpayer's spouse died in 2004 before filing a 2003 return. A joint return should show the deceased spouse's 2003 income before death and the surviving spouse's income for all of 2003. "Filing as surviving spouse" should be written in the area where the return is signed. If someone else is the personal representative, he or she must also sign.

If a refund is being claimed as a surviving spouse filing a joint return with the deceased and the above instructions are followed, a Form I-804 is not required.

### Fiduciary Income Tax Return(s)

#### *Resident Estate*

Every personal representative or special administrator of an estate of a Wisconsin decedent must file a *Wisconsin Fiduciary Income Tax Return*, Form 2, if the gross income of the estate is \$600 or more. Gross income means all income, before deducting expenses, reportable to Wisconsin that is received in the form of money, property, or services. It does not include items that are exempt from Wisconsin tax.

The decedent is considered a resident of the state in which the decedent was domiciled at the time of death.

#### *Nonresident Estate*

A nonresident estate must file a Wisconsin fiduciary return, Form 2, if it has gross income (as described in "*Resident Estate*" above) of \$600 or more from Wisconsin sources, and a federal fiduciary return is required to be filed with the Internal Revenue Service. Income from sources within Wisconsin includes income or gain from:

- a. Real or tangible personal property located within the state.
- b. A business, trade, profession, or occupation carried on within the state, including a corporation taxed under Subchapter S of the Internal Revenue Code.
- c. Personal or professional services performed within the state as an individual or a member of a partnership or limited liability company.
- d. Income received from the Wisconsin State Lottery or a multijurisdictional lottery if the winning lottery ticket or lottery share was purchased from a Wisconsin retailer.

The first fiduciary income tax return filed by a personal representative or petitioner of an estate covers the period from the date of death of the decedent to the end of the first year selected by the fiduciary. The taxable year cannot be longer than 12 months, must end on the last day of a month, and must coincide with the year selected for filing the federal return. The return is due on the 15th day of the 4th month after the close of the taxable year.

#### *Closing Certificates*

An estate may request a Closing Certificate for Fiduciaries from the Wisconsin Department of Revenue on the Form 2 that is filed for the year prior to the final year. Section 71.13(2), Wis. Stats., provides that the department may issue a Closing Certificate for Fiduciaries to an "Executor, administrator, personal representative or trustee applying to a court having jurisdiction" in order to obtain the court's approval for final distribution and discharge of the fiduciary. The department will issue the Closing Certificate for Fiduciaries only in cases where the court has required it to close a proceeding.

Copies of the inventory and will, including any codicils, should be attached with the request. If these documents were previously submitted with a Wisconsin Estate Tax Return, it is not necessary to submit them again. A completed Schedule D, lines 1 through 10 and the Summary of Assets and Deductions, lines 1 through 20 on page 3 of Form 2 should also be provided with the request.

The receipt of the Closing Certificate for Fiduciaries will not relieve the fiduciary from the responsibility of filing the final fiduciary return.

**NEW:** If the gross estate, plus adjusted taxable gifts and specific exemption, exceeds \$675,000 or if the estate files a federal estate tax return, Form 706, a Wisconsin Estate Tax Return, Form W706, must be filed. The W706 must be filed whether or not estate tax is due. The Closing Certificate for Fiduciaries will not be issued until the W706 is filed.

**Note:** If an estate does not have enough income to require filing and needs a Closing Certificate for Fiduciaries, or if the estate will be filing only one fiduciary return when the estate is closed and needs the closing certificate before filing the return, the following procedures should be used.

- a. Complete the top third of the Form 2, page 1.

- b. Insert the appropriate statement in line 1:
  - (1) “Gross income is less than \$600 and no 1041 is required,” or
  - (2) “A first and final return will be filed upon closing the estate.”
- c. Complete the appropriate “Information Required” section of Schedule D, on page 3 of Form 2.
- d. Sign and date the Form 2.
- e. Attach copies of the inventory and will.
- f. Mail the certificate request to:

Wisconsin Department of Revenue  
 Mail Stop 5-144  
 P.O. Box 8904  
 Madison, WI 53708-8904

**Estate Tax Return**

A tax is imposed upon any transfer of property to any distributee in either of the following cases: (a) when the transfer is from a person who dies while a resident of Wisconsin at death; or (b) when the transfer is of property within the jurisdiction of Wisconsin, and the decedent was not a resident of Wisconsin at death.

*Wisconsin Estate Tax Basis*

**1/1/92 to 9/30/02** For deaths occurring from January 1, 1992, through September 30, 2002, the Wisconsin estate tax is a tax based on the federal credit for state death taxes. This tax is imposed upon both resident and nonresident decedents.

**10/1/02 to 12/31/07** For deaths occurring from October 1, 2002, through December 31, 2007, the Wisconsin estate tax will be based on the federal credit for state death taxes and the federal estate tax as computed under the federal estate tax law in effect on December 31, 2000.

**After 12/31/07** For deaths occurring after December 31, 2007, the Wisconsin estate tax will again be based on the federal credit for state death taxes, and the federal estate tax is to be computed under the federal estate tax law in effect on the date of the decedent’s death. Under current federal estate tax law, there is no state death tax credit for deaths occurring in 2008 or 2009, and there is no federal estate tax for deaths occurring in 2010. See

the note in the next section regarding deaths occurring in 2011 and thereafter.

*Wisconsin Estate Tax Filing Requirements*

The Wisconsin estate tax filing requirements for deaths occurring on or after January 1, 1992, are as follows:

<u>Period</u>	<u>Filing Requirement*</u>
1992 to 1997	\$ 600,000
1998	\$ 625,000
1999	\$ 650,000
2000 and 2001	\$ 675,000
1/1/02 to 9/30/02	\$1,000,000
10/1/02 to 12/31/07	\$ 675,000
2008 through 2010	NO WISCONSIN ESTATE TAX FOR 2008-2010
2011 and after	\$ 675,000**

**\*Note:** The filing requirement is based on the gross estate, plus adjusted taxable gifts and specific exemption.

**\*\*Note:** The federal estate tax changes are “sunsetting.” In the absence of further changes, the federal estate tax as it existed prior to the 2001 federal law changes will be restored in 2011, and unless there are changes to Wisconsin law, the Wisconsin estate tax will also be restored in 2011.

Since the Wisconsin estate tax for deaths occurring from October 1, 2002, through December 31, 2007, is based on the federal estate tax law in effect on December 31, 2000, the filing requirements for filing a *Wisconsin Estate Tax Return*, Form W706, differ from the federal filing requirements for those years. For example, the federal filing requirement is \$1,500,000 in 2004 and 2005 and goes up in later years. Therefore, there may be a Wisconsin filing requirement for those years, even though no federal estate tax return is required.

*Wisconsin Estate Tax Forms*

The *Wisconsin Estate Tax Return*, Form W706, should be filed by the person responsible for filing the federal estate tax return (personal representative, special administrator, trustee, distributee, or other person signing the federal Form 706). A *Tax Computation Schedule*, Schedule TC, should accompany the Form W706.

The Form W706 is due nine months after the date of death or when the federal estate tax return is required to be filed, as extended, whichever is later. For federal estate tax returns filed after July 25, 2001, the Internal Revenue Service (“IRS”) provides an automatic six-month extension of time to file the return. A request for a federal extension must be made on federal Form 4768 and filed with the IRS on or before the due date of the return. Wisconsin will accept the federal extension; a copy of the approved Form 4768 must be filed with the Wisconsin Form W706. If no federal estate tax return is required, a Wisconsin-only extension may be requested using Wisconsin Form W4768, *Application for Extension of Time to File a Wisconsin Estate Tax Return (W706)*.

Regardless of when the tax return is filed, the tax is due nine months after date of death. There is no provision for extending the time to pay the Wisconsin tax (even though a federal extension is available for paying the federal tax). If the tax is not paid within nine months of the decedent’s death, interest is imposed at 1% per month **from the date of death**. If an advance payment of Wisconsin estate tax is to be made (before the estate tax return is filed), the payment should be submitted with a completed Wisconsin Form 401T, *Report of Estate or Inheritance Tax Payment*.

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

#### Examples:

1. Decedent A died April 15, 2003. 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 January 31, 2004, 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	<u>114</u> (1% x 9 1/2 months)
Total	\$1,314

2. Decedent B died April 15, 2003, and did not obtain an extension to file from the IRS or from the Wisconsin Department of Revenue. The Wisconsin estate tax return was filed January 31, 2004, and showed no tax due. This estate owes the minimum penalty of \$25.

Copies of Form W706, instructions, Schedule TC, Form W4768, and Form 401T, as well as earlier versions of the forms, are available by accessing the department’s web site, [www.dor.state.wi.us](http://www.dor.state.wi.us). Click on “Forms,” then scroll to and click on “Estate, Inheritance and Gift Tax.”

#### *Certificate Determining Estate Tax*

Upon receipt of the Wisconsin estate tax return and after review for correctness, the Department of Revenue 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.

#### **Inheritance Tax Return**

There is no Wisconsin inheritance tax for decedents dying on or after January 1, 1992. If death occurred prior to January 1, 1992, you may obtain information and the appropriate forms by calling (608) 266-2772, or by accessing the department’s web site, [www.dor.state.wi.us](http://www.dor.state.wi.us). Click on “Forms,” then scroll to and click on “Estate, Inheritance and Gift Tax.” [☞](#)

### **Reminder: Personal Representative Fees Taxable to the Recipient**

Every year, the Department of Revenue discovers many instances in which the personal representative (executor or administrator) of an estate does not report on their individual income tax return the fees that they receive for the performance of their duties.

All personal representatives must include in their gross income fees paid to them from an estate. If paid to a professional executor or administrator, self-employment tax also applies to such fees. For a nonprofessional executor or administrator (a person serving in such

capacity in an isolated instance, such as a friend or relative of the decedent), self-employment tax only applies if a trade or business is included in the estate’s assets, the executor actively participates in the business, and the fees are related to operation of the business.

For more information on the taxability of personal representative fees, please contact the department at (608) 266-2772 or via e-mail at [income@dor.state.wi.us](mailto:income@dor.state.wi.us). [☞](#)

## Take Advantage of Wisconsin's Voluntary Disclosure Program

The Wisconsin Department of Revenue encourages businesses and individuals who are not in compliance with Wisconsin tax laws to voluntarily come forward. Taxpayers may remain **anonymous** throughout the voluntary disclosure process. Voluntary disclosure applies to all types of taxes administered by the Department of Revenue's Income, Sales, and Excise Tax Division.

### Benefits of Voluntary Disclosure

- Written agreement to restrict the statute of limitations.
- Waiver of penalties.
- Possible reduction in number of periods for which returns must be filed.
- Elimination of the risk of being discovered under audit.

### Taxpayer Qualifications

To be considered for voluntary disclosure treatment, a taxpayer must meet certain conditions and enter into a written agreement with the department. The following conditions must be met for a taxpayer to qualify for voluntary disclosure treatment:

- No tax returns filed for the period in question.
- No registration for the type of tax involved during the period in question.
- No contact by the department within the last 6 years regarding a registration/filing requirement or an assessment/audit assignment.

### How to Apply

A taxpayer or the taxpayer's representative may request voluntary disclosure treatment by submitting a **written** request to the department for consideration. The request must include the following information:

- Description of Wisconsin activities for the years involved.
- List of property owned or leased in Wisconsin.
- Taxable year-end.
- Date taxable activities began in Wisconsin.
- Whether the tax involved has been collected or withheld, and if so, for what periods.
- Prior contacts by the Department of Revenue.

- Other types of tax returns currently being filed with the department.
- Whether the taxpayer is registered with the Wisconsin Department of Financial Institutions (formerly the Secretary of State) to transact business in Wisconsin.

**Note:** If applying for voluntary disclosure for more than one tax type, **each tax type must be specified** in the written request. For example, a request for voluntary disclosure for income tax does not cover sales tax.

### Taxpayer Responsibilities

- File all returns for the periods agreed upon (usually 4 prior years) within ninety days.
- Pay all tax, late filing fees, and interest according to the agreement.
- File the current and any subsequent returns in a timely manner according to the agreement.
- Make books and records available to the department.

### Department Rights

All voluntary disclosure agreements include provisions reserving the department's right to:

- Audit factual representations made as part of the agreement.
- Audit the taxpayer and any returns filed.
- Void the agreement if factual misrepresentations have been made by the taxpayer and assess additional tax, penalties, and interest, as appropriate.
- Void the agreement if the taxpayer fails to comply with any of its terms.

### Confidential Inquiries About Voluntary Disclosure

Information regarding Wisconsin's Voluntary Disclosure Program can be found on the department's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). If you prefer, you may submit any questions you may have by phone at (608) 266-3969, by e-mail at [wivoldis@dor.state.wi.us](mailto:wivoldis@dor.state.wi.us), or by letter. Send written requests to the following address:

Voluntary Disclosure Program  
Wisconsin Department of Revenue  
2135 Rimrock Road  
P.O. Box 8906  
Madison WI 53708-8906



## Woman Sentenced for Theft and Fraud

Terri L. Messer of Columbus, Wisconsin, was sentenced in March 2004 to two years in prison on one count of felony theft and two counts of filing a fraudulent income tax return. She previously plead no contest to these charges and was found guilty in October 2003. Dane County Circuit Court Judge Gerald Nichol also imposed an additional thirteen years of extended supervision on Messer, upon completing her prison sentence.

According to the original criminal complaint, Messer was an employee in the finance department of the Sun Prairie, Wisconsin-based Wisconsin Conference of the United Methodist Church, an organization that governs almost 500 United Methodist churches in Wisconsin. Because of her position with the organization, she had access to four of their bank accounts. Between November 1999 and March 2002, she embezzled money from the organization by writing out unauthorized

checks to herself and her credit card and phone companies. She evaded approximately \$9,000 in income taxes for 1999 to 2001, based on unreported embezzlement income of \$136,429.

Messer's scheme ended after she and her ex-husband separated in late 1999 or early 2000. She purchased a car, paid off debts on some of her children's cars, bought a big-screen television, and continued to make house payments, despite making only about \$30,000 per year. She admitted writing three checks for a total of about \$12,000 and paid the money back. An audit by the Methodist Church Conference uncovered many more checks.

Judge Nichol also ordered Messer to repay the money she had not returned. The Department of Revenue has asked the Dane County District Attorney's Office to request the judge to also order restitution for the state income tax evaded. [↗](#)

## Computing a Corporation's Wisconsin Deductions Due to Differences Between Wisconsin and Federal Law

Although the Wisconsin corporate franchise and income tax is based on the Internal Revenue Code, several provisions of federal law do not apply for Wisconsin purposes. Federal provisions that do not apply for Wisconsin include the following:

- The 30% additional depreciation deduction for qualified property acquired after September 10, 2001.
- The 50% additional depreciation deduction for 50% bonus property acquired after May 5, 2003.
- The increase in the section 179 expense deduction from \$25,000 to \$100,000.
- The increase in the section 179 investment limitation from \$200,000 to \$400,000.
- The availability of the section 179 expense deduction for certain computer software.

Some effects of these differences are illustrated below.

### Section 179 expense deduction

**Facts:** As a result of claiming the federal 30% and 50% bonus depreciation, Corporation A's federal income is zero. For Wisconsin purposes, Corporation A must make a modification to its federal income to add back

the federal bonus depreciation and to subtract the depreciation allowable under the Internal Revenue Code as amended to December 31, 2000. Corporation A determines that its Wisconsin income is \$200,000. Corporation A has a section 179 expense deduction carryover that it cannot use on its federal return.

**Question:** May Corporation A elect to use its section 179 expense deduction carryover to offset the additional income that it is reporting for Wisconsin?

**Answer:** No. The depreciation difference is a modification to federal taxable income required by section 71.26(3)(y), Wis. Stats. Wisconsin law does not provide a modification to recompute the section 179 expense deduction in this situation. Therefore, Corporation A's Wisconsin section 179 expense deduction is limited to the amount allowable in computing its federal taxable income. If a corporation does not claim a section 179 expense deduction for federal purposes, it cannot elect to claim a section 179 expense deduction for Wisconsin.

### Charitable contribution deduction

**Facts:** Since Wisconsin does not allow the deduction for the federal 30% or 50% bonus depreciation, Corporation B's Wisconsin income is \$500,000 higher than its federal income. Corporation B's federal deduction for charitable contributions is limited to 10% of its federal net income before the deduction for contributions.

**Question:** May Corporation B recompute its deduction for charitable contributions on its Wisconsin return?

**Answer:** No. The depreciation difference is a modification to federal taxable income required by section 71.26(3)(y), Wis. Stats. Wisconsin law does not provide a modification to recompute the deduction for charitable contributions in this situation. Therefore, Corporation B's Wisconsin deduction for charitable contributions is limited to the amount allowable in computing its federal taxable income.

### MACRS depreciation deduction

**Facts:** Corporation C places two assets in service in 2003. One is a \$61,000 asset placed in service on October 15, 2003, and the other is a \$2,500 asset placed in service on June 30, 2003. Corporation C's taxable income before its section 179 expense deduction is \$63,000. All but \$500 is claimed as a section 179 expense deduction for federal purposes due to the taxable income limitation. For federal income tax purposes, the half-year convention is used to compute the allowable MACRS deduction. For Wisconsin purposes, only \$25,000 is allowed as a section 179 expense deduction. Corporation C must depreciate the remaining \$36,000 of the October 15 asset and all \$2,500 of the June 30 asset for Wisconsin tax purposes.

**Question:** For Wisconsin purposes, is Corporation C required to use the mid-quarter convention, rather than

the half-year convention, to compute its allowable MACRS deduction?

**Answer:** Yes. Corporation C is required to use the mid-quarter convention to compute its allowable MACRS deduction for Wisconsin purposes. Section 71.26(3)(y), Wis. Stats., provides that a corporation shall compute amortization and depreciation under the federal Internal Revenue Code as amended to December 31, 2000.

Under the Internal Revenue Code, the half-year convention is used for all MACRS property except that to which the mid-month or mid-quarter convention applies. If the mid-quarter test is met, the mid-quarter convention generally applies to all MACRS property to which the half-year convention would otherwise apply. The mid-quarter test is met if, during any taxable year, the aggregate bases of MACRS property placed in service during the last three months of the taxable year exceed 40% of the aggregate bases of MACRS property placed in service during the taxable year. Nonresidential real property and residential rental property are not taken into account for purposes of the mid-quarter test.

Since the basis of MACRS property placed in service in October exceeds 40% of the aggregate bases of MACRS property placed in service during the taxable year, Corporation C must deduct the remaining \$36,000 basis of the October 15 asset and all \$2,500 of the June 30 asset using the MACRS mid-quarter convention. [↗](#)

## Sales and Use Tax Report Mailed

The March 2004 *Sales and Use Tax Report (1-04)* was sent in late March and early April to all persons registered for Wisconsin sales and use tax purposes. The *Sales and Use Tax Report* contains summaries of the recent sales and use tax law changes in addition to other pertinent sales and use tax information. Topics covered in the March 2004 Report include:

- filing sales and use tax returns electronically;

- expansion of the use of Electronic Funds Transfer (EFT);
- new tax laws; and
- sales and installations of compact satellite dish systems.

A copy of the Report appears on pages 49 to 52 of this Bulletin. It is also available on the Department of Revenue's web site at [www.dor.state.wi.us/ise/sales/04-1.pdf](http://www.dor.state.wi.us/ise/sales/04-1.pdf). [↗](#)



### Wisconsin Tax Bulletin Annual Index Available

Once each year the *Wisconsin Tax Bulletin* includes an index of materials that have appeared in past Bulletins. The index will help you locate reference materials including articles, court case summaries, tax releases, and private letter rulings, to research questions about Wisconsin taxes.

The latest *Wisconsin Tax Bulletin* index available appears in *Wisconsin Tax Bulletin* 137 (January 2004), pages 39 to 72. It includes information for issues 1 to 136 (through October 2003). [↗](#)

## Hiring a Speaker? You May Be Required To Withhold Wisconsin Taxes

If your organization will be hiring a public speaker for an upcoming meeting, conference, or other event, they should be aware that they may be considered the speaker's "employer" for purposes of withholding Wisconsin taxes.

An "employer" is any Wisconsin resident person or firm that contracts for the services of a "nonresident entertainer." In the absence of such resident contracting person or firm, the employer is the last resident person or firm to have receipt, custody, or control of the proceeds of the event. If there is neither a resident contracting person or firm, nor a resident with control of the proceeds, the employer is any nonresident person or firm who contracts for or has control of the proceeds of the event.

A "nonresident entertainer" is a nonresident person who furnishes amusement, entertainment or **public speaking services**, or performs in one or more sporting events, and includes a foreign corporation (one not organized under the laws of Wisconsin) not regularly engaged in business in Wisconsin which derives income from any of these activities or from these services performed by a nonresident person.

Wisconsin law requires nonresident entertainers to file a surety bond or cash deposit if the total contract price for a performance in Wisconsin exceeds \$3,200. This bond or deposit must be filed to guarantee payment of income or franchise taxes, sales and use taxes, and any penalties and interest. The surety bond or cash deposit, along with a Form WT-11 (this is the application and receipt for the surety bond or cash deposit), must be filed with the Wisconsin Department of Revenue at least seven days before the performance.

If the nonresident entertainer does not file the required bond or deposit, and the total contract price for a Wisconsin performance exceeds \$3,200, the employer is required to withhold payment from the entertainer in an amount for which a bond or deposit should have been filed. If the employer fails to withhold the required amount, they will be held liable for the amount that should have been withheld.

Additional information is available in Publication 508, *Wisconsin Tax Requirements Relating to Nonresident Entertainers*. See the article titled "Tax Publications Available" on page 5 of this Bulletin, for methods of obtaining Publication 508. Additional information is also available by contacting the department by any of the methods listed below.

### Using U.S. Postal Service:


Wisconsin Department of Revenue  
Nonresident Entertainer Program  
Mail Stop 5-144  
P.O. Box 8906  
Madison, WI 53708-8906

### Using another service:

Wisconsin Department of Revenue  
Nonresident Entertainer Program  
Mail Stop 5-144  
2135 Rimrock Road  
Madison, WI 53713

**By telephone:** (608) 266-3645

**By fax:** (608) 267-0834 (write "Attention Nonresident Entertainer Program" at the top of the cover page of the faxed document)

**By e-mail:** [income@dor.state.wi.us](mailto:income@dor.state.wi.us) (enter "Nonresident Entertainer Program" on the subject line) 

## To File or Not to File - Corporation Tax Returns

The Department of Revenue ("DOR") sends corporation tax forms and instructions to corporations annually, to help the corporations comply with their filing requirements. Sometimes corporations that are no longer in business, or have never done business after incorporation, receive these tax forms as well. This is because the corporation has not filed a proper return with DOR.

If a corporation dissolves, the corporation must contact the Department of Financial Institutions ("DFI") and file an *Articles of Dissolution* form. Many corporations believe that by contacting DFI to dissolve, DOR records will also be updated to reflect the dissolution, and no further action is required. DFI does notify the Department of Revenue of the dissolution; however, the corporation is required to file a tax return with the Department of Revenue as well. Until this is done, DOR will continue to send the corporation tax forms.



Following are various circumstances a corporation may be in, and the proper filing action.

Circumstance	Filing Requirement
Activity in Wisconsin and elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T).
Activity in Wisconsin but not elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T).
No activity in Wisconsin, but activity elsewhere	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T), and indicate no activity by entering zeros or "none."
No activity in Wisconsin or elsewhere, but may become active in Wisconsin later.	File Form 4H, <i>Wisconsin Corporation Declaration of Inactivity</i> .
No activity now in Wisconsin or elsewhere, and will not become active in Wisconsin later. *	File the appropriate corporation tax form (4, 5, 5S, 4I, or 4T), and check "Final return" in Box E (or Box H of Form 4T).

\*This applies whether the corporation had no activity during the year, or it had some activity but is now out of business.

**Questions regarding incorporation or dissolution may be directed to:**

Wisconsin Department of Financial Institutions  
 Division of Corporate and Consumer Services  
 Corporate Section  
 P.O. Box 7846  
 Madison, WI 53707

Phone (608) 261-7577

Fax (608) 267-6813


**Questions regarding corporation tax filing requirements may be directed to:**

Wisconsin Department of Revenue  
 Corporation Review & Adjustment Unit  
 Mail Stop 3-14  
 P.O. Box 8908  
 Madison, WI 53708-8908

Phone (608) 266-0800

Fax (608) 264-6884

Email: [corptax@dor.state.wi.us](mailto:corptax@dor.state.wi.us)

All corporation tax forms and instructions may be found on the Department of Revenue's web site at [www.dor.state.wi.us](http://www.dor.state.wi.us). 


**New Internet Page for Delinquent Tax Help**

The Department of Revenue ("DOR") Compliance Section has launched a new web page, [www.dor.state.wi.us/html/delhelp](http://www.dor.state.wi.us/html/delhelp), to assist taxpayers in resolving their past due tax accounts. The site provides useful information regarding the delinquent tax process, the ability to submit on-line installment agreement requests, and answers to frequently asked questions. Some of the topics covered include:

- bank levies;
- tax liens;
- collection agencies;

- informal hearings;
- wage certifications;
- divorce decrees; and
- credit card payments.

There are also links to frequently used forms, which may be filled in on-line, printed, and mailed or faxed to DOR.

For any additional questions you may have after visiting the web page, please contact the Central Collection Section at (608) 266-7879 or [delnqtax@dor.state.wi.us](mailto:delnqtax@dor.state.wi.us). 

## Question and Answer

*Caution: The answers in this article reflect interpretations by the Wisconsin Department of Revenue, of laws enacted by the Wisconsin Legislature as of the date of this Bulletin. Laws enacted after that date, new administrative rules, and court decisions may change the interpretations.*

### (Sales and Use Tax)

**Q** I was charged tax on my purchase of a magazine at the grocery store. I liked the magazine and ordered an annual subscription, but I was not charged tax on the subscription of the same magazine. Is my purchase of the magazine subscription subject to tax?

**A** No. Sales of magazines that are sold by subscription and regularly issued at average intervals not exceeding 3 months are exempt from Wisconsin sales and use tax. However, magazines that are not sold by subscription (for example, sold at the newsstand or grocery store) are taxable.

### Administrative Rules in Process


Listed below are administrative rules that are currently in the rule promulgation process. The rules are shown at their stage in the process as of April 1, 2004 and at each step where action occurred during the period from January 2, 2004, through April 1, 2004.

The listing includes rule numbers and names, and whether a rule is amended (A), repealed and recreated (R&R), or a new rule (NR).

To order up-to-date administrative rules of the Department of Revenue, you can use the order blank on

**Q** Is there a list of Wisconsin cities or zip codes by county that can be used to determine the proper rate to apply for sales tax purposes?

**A** The Department of Revenue currently has no list available for distribution that accurately gives the county for a particular municipality or zip code. This is because many municipalities and 5-digit zip codes cross county boundaries.

To accurately determine the county in which a sale takes place, a seller should ask the customer for the name of the county where the sale takes place. If that is not possible, there is a U.S. Postal Service web site ([http://www.usps.gov/ncsc/lookups/lookup\\_zip+4.html](http://www.usps.gov/ncsc/lookups/lookup_zip+4.html)) that allows you to enter a street address, city, and state and it will give you the 9-digit zip code and county for that street address. Note that the department cannot attest to the accuracy of the data on that web site. 

page 53 of this Bulletin to order the Tax section of the Wisconsin Administrative Code.

### Sent to Legislative Council Rules Clearinghouse

- 2.49 Apportionment of net business incomes of interstate finance companies – R&R
- 2.495 Apportionment of net business incomes of interstate brokers-dealers, investment advisers, investment companies, and underwriters – NR 