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IPT/DOR Tax Seminar to Be Presented in Madison

The Institute for Professionals in Taxation (IPT), in cooperation with the Wisconsin Department of Revenue (DOR), is presenting a one-day tax seminar in Madison on September 23, 2010, at the Monona Terrace Community and Convention Center. The all-day seminar will include presentations on a variety of topics, including updates on Streamlined Sales Tax, combined reporting, and other multi-state tax issues.

An announcement including the specific agenda and registration information for the seminar will be posted on IPT's and DOR's web site by early August. [☞](#)

IRS/DOR Workshops in October 2010

The Internal Revenue Service and Wisconsin Department of Revenue will be sponsoring several workshops around the state this fall. The workshops will cover tax law updates, e-filing updates, and other topics of interest to tax practitioners. All tax practitioners are invited to attend. All workshops will run from 9:00 a.m. to 3:30 p.m., dates and locations are as follows:

- October 13 – Wausau
North Central Technical College
- October 14 – Eau Claire
Ramada Inn Convention Center
- October 19 – Madison Area
Epic Systems Corporation (Verona)
- October 21 – Appleton
Fox Valley Technical College
- October 27 – Milwaukee
Wilson Park Senior Center

Although a live online session will not be offered this year, there are tentative plans to provide a recorded session online. More information and the registration process will be sent through the department's tax practitioner electronic mailing list. If you are not receiving e-mail communications through this mechanism, please [sign up](#) today. [☞](#)

Sales and Use Tax Report Available

The latest issue of the [Sales and Use Tax Report](#) became available on the Department of Revenue's web site in June. The *Sales and Use Tax Report* provides information concerning recent sales and use tax law changes and other pertinent sales and use tax information, including the following:

- A reminder that effective July 1, 2010, the 0.25% local food and beverage tax was increased to 0.5%.
- An overview of the sales and use tax treatment of procurement card programs (this topic was also the subject of an online [article](#) in News for Tax Professionals).
- A reminder that retailers may not absorb the sales tax for their customers.
- Clarification how use tax is computed on items previously purchased using an exemption certificate.
- A reminder that the sale of lawn care services is subject to Wisconsin sales tax. [☞](#)

Updated Publications

The following publications of the Income, Sales, and Excise Tax (IS&E) Division of the Department of Revenue have recently been revised:

Sales and Use Taxes

- 216 Filing Claims for Refund of Sales or Use Tax (5/10)
- 410 Local Exposition Taxes (5/10)

Other Topics

- 401 Extensions of Time to File (3/10)
- 511 Office Audit of Wisconsin Income Tax Returns (4/10)

All of the IS&E Division's publications may be [downloaded](#) or [ordered](#) online. There are over 70 publications available, covering a wide range of topics. [☞](#)

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DOR Takes On Statewide Debt Collection

Section 71.93 (8), Wis. Stats., as created by 2009 Wisconsin Act 28, required the Department of Revenue (DOR) to, by June 30, 2010, enter into written debt collection agreements with state agencies. 2009 Act 28 also allows counties and municipalities, the Legislature, the courts, and certain authorities to enter into agreements with DOR to collect amounts owed. Debt collection consolidation with DOR allows other governmental entities to utilize and take advantage of efficiencies and automated collection practices that DOR currently has in place.

At least 30 days prior to the referral of debt to DOR for collection, the agency must send the debtor a warning of the potential referral of the debt. The debt must have been reduced to a judgment or the referring agency must have provided the debtor with reasonable notice and an opportunity to be heard with regard to the amount owed. This warning will include potential collection actions DOR may initiate, including but not limited to:

- wage attachment;
- seizing of bank account(s);
- interception of tax refunds; and
- filing of a lien by DOR.

Debt referred to DOR for collection must be more than 90 days past due. Agencies will not refer debt when a repayment plan exists, there are active negotiations with the agency, or if there are on-going administrative proceedings or legal action concerning the debt. A collection fee of 15% of the referred balance will be added to the debtor’s balance to cover DOR’s collection costs. In addition, if the referring agency assesses interest per statute, DOR will charge the same interest rate. [☞](#)



Wisconsin/Minnesota Sales Tax Seminars

The Wisconsin and Minnesota Departments of Revenue will again present a series of joint sales and use tax seminars in October and December. The seminars will include information on similarities and differences in the two states’ sales and use tax laws. All of the seminars are for general businesses.

The specific dates, times, and locations of the seminars, as well as registration information, is available on the “[Training](#)” page of the Department of Revenue’s web site. [☞](#)

Sales and Use Tax Guidelines for Summer Camps

The Department of Revenue has found that many summer camps were not aware of how 2009 Wisconsin Act 2, effective October 1, 2009, affected the Wisconsin sales and use tax due on their sales and purchases. This may have resulted in summer camps collecting and remitting more sales tax on their charges to campers to attend the camps than was due and/or paying less Wisconsin sales or use tax on their purchases than what was due. As a result of this, the department is providing guidelines that summer camps may follow with respect to their sales and purchases.

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Sales and Use Tax Guidelines for Summer Camps

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An explanation of the proper Wisconsin sales and use tax treatment of sales and purchases by summer camps both prior to and on or after October 1, 2009, is available on the department's web site in an [article](#) titled "Summer Camps." For sales occurring prior to October 1, 2009, and on or after December 1, 2010, the proper amount of Wisconsin sales and use tax must be paid to the department based on the information provided in this article. If sales and purchases from October 1, 2009 through November 30, 2010 are treated in a manner consistent with how summer camps were supposed to treat their sales and purchases prior to October 1, 2009, as described in the article, there are two options:

1. Do nothing. The department will not adjust the sales and use tax liability for these items as long as both sales and purchases were treated consistently with these provisions.
2. File a claim for refund for the amount of tax that may have been charged a customer in error. However, Wisconsin use tax would be owed based on the purchase price of the taxable property, items, goods, and services used in operating the summer camp (i.e., purchases of candy, soft drinks, etc.).

Caution: If the sales tax for which a refund is requested was collected from buyers, the tax and related interest refunded by the department must be returned to the buyers from whom the tax was collected, except that the taxes and interest required to be returned to the buyer may be reduced for the amount of tax subsequently due and owing on the purchases of the property, items, goods, and services transferred to the buyers. If the tax and interest is unable to be returned to the buyer, it must be returned to the department.

If no part of the charges to attend a summer camp from October 1, 2009 through November 30, 2010, were taxed and Wisconsin sales or use tax was paid on the purchases of the property, items, and goods used to operate the camp, nothing has to be done since the items were treated consistent with the law changes effective October 1, 2009.

Example 1: In June of 2010, Summer Camp A charged Camp Attendee B \$4,000 for a 4-week (28 nights) camp program. The \$4,000 charge included the camp program and all meals and lodging. The cost of the food, food products, and beverages and labor to make the meals was \$200. Summer Camp A charged Camp Attendee B Wisconsin sales tax on \$140 relating to the lodging they provided (28 nights times \$5 per night) and \$220 related to the meals they provided (\$200 cost plus 10 percent (\$20)). Summer Camp A did not pay any Wisconsin sales or use tax on its purchases of the food, food products, and beverages used to make the meals.

Since Summer Camp A treated their charge to Camp Attendee B and related purchases consistent with how summer camps were supposed to treat their sales and purchases occurring prior to October 1, 2009, Summer Camp A may either:

1. Do nothing. The Department of Revenue will not assess use tax on Summer Camp A's purchases of taxable food and food ingredients since they charged Camp Attendee B sales tax on these products; or
2. File a refund claim for the \$18 of sales tax (\$360 times 5 percent tax equals \$18) charged in error to Camp Attendee B. However, if Summer Camp A files a claim for refund on its sale of the lodging and meals to Camp Attendee B, Summer Camp A is deemed the consumer of the food and food ingredients used to provide the meals and would owe Wisconsin use tax on its cost of the taxable food and food ingredients. In addition, Summer Camp A would be required to refund the net sales tax along with the related interest refunded to them to Camp Attendee B. If they could not return the tax and interest to Camp Attendee B, they would be required to return it to the Department of Revenue.

Example 2: Same as Example 1, except that Summer Camp A did not charge Wisconsin sales tax on any part of the \$4,000 charge to Camp Attendee B and Summer Camp A properly paid Wisconsin sales or use tax on its purchases of taxable food and food products.

Since Summer Camp A treated the transaction in a manner consistent with the law changes effective October 1, 2009, Summer Camp A does not have to do anything. [↩](#)

Controlled Group Election Under Combined Reporting

Wisconsin law allows a commonly controlled group of corporations to elect to include every member of the commonly controlled group for combined reporting purposes.

History

The original act that created Wisconsin's combined reporting law, 2009 Wisconsin Act 2, did not contain the controlled group election. Wisconsin's combined reporting statute, s. 71.255, was shortly thereafter amended by 2009 Wisconsin Act 28 (the 2009-2011 Budget Bill) to include the controlled group election.

Election

The provisions for the election are found in sec. 71.255(2m), Wis. Stats., as created by 2009 Wisconsin Act 28, and sec. Tax 2.63, Wis. Adm. Code (June 2010 Register). The scope of the election allows every member of the commonly controlled group to be included in the combined group regardless of whether they are all engaged in the same unitary business.

A "commonly controlled group" may be any one of the following, based on ownership of stock representing more than 50% of voting power:

- Parent-subsidiary chain, based on direct or indirect ownership.
- Brother-sister corporations with a single common owner, based on direct or indirect ownership.
- Corporations where stock cannot be separately transferred ("stapled entities").
- Brother-sister corporations owned by, or for the benefit of, family members.

The designated agent of the combined group makes the election. Preapproval of the election by the department is not needed. The designated agent makes the election on Wisconsin Form 4R, *Federal Taxable Income Reconciliation for Wisconsin Combined Groups*, Part I, line 1. For the first year of the election, a statement must be included with Form 4R that (a) lists every corporation that is a member of the commonly controlled group, (b) indicates that each corporation of the commonly controlled group has agreed to be bound by the election, and (c) indicates the election shall apply to any member that subsequently enters the commonly controlled group.

Form 4R must be submitted either with an original return filed by the due date, including extensions, or an amended return filed on or before the end of the automatic 7-month extension period for filing the original return.

Example: A combined return without a controlled group election is timely filed without an extension. The designated agent may make the election by filing an amended combined return on or before the end of the automatic 7-month extension period applicable to the original return.

Once the election is made, it is binding and applicable to all commonly controlled group members for ten years. The designated agent may renew the election without prior approval from the department by following the procedures for making the initial election.

The department may disregard, and subsequently revoke, an election if it has the primary effect of tax avoidance rather than simplifying the determination of which items are includable in a combined return. A revocation of an election is applicable to every member of the commonly controlled group, not just the members responsible for the tax avoidance transaction. The commonly controlled group may not make a new election during the three taxable years following a revocation.

Apportionment and Nexus

Any enterprise engaged in business both in and outside Wisconsin must apportion its apportionable income when the business in Wisconsin is an integral part of a unitary business. For a combined group, nexus is determined for the unitary business as a whole, as provided in sec. 71.255(5)(a), Wis. Stats., as created by Wisconsin Act 2. Hence, if a member of a combined group has nexus in Wisconsin and that nexus is attributable to the combined group's unitary business, all members of the combined group have nexus in Wisconsin.

For a combined group that has made the controlled group election, the entire commonly controlled group's business is deemed to be a single unitary business, and the commonly controlled group becomes the combined group. Therefore, if a combined group has made the controlled group election and at least one member of the combined group has nexus in Wisconsin, all members of the combined group have nexus in Wisconsin. [↗](#)



Enforcement Report

Prisoners Facing Tax Fraud Charges Make Court Appearances

Attorney General J.B. Van Hollen made announcements in May and June 2010 concerning the court appearances of four Taycheedah inmates charged with multiple counts of homestead credit tax fraud. The charges were a result of claims that the inmates were living in private residential properties when in reality they were incarcerated.

- Nicole Ousley entered a guilty plea before Judge Robert J. Wirtz. She was convicted and sentenced to twenty four months of incarceration followed by thirty six months of extended supervision.
- Kristine Flynn entered a not guilty plea and a plea of not guilty by reason of mental disease or defect before Fond du Lac County Circuit Court, Branch 4. The court appointed the Wisconsin Forensic Unit to evaluate Flynn's mental status.
- Wendy Nelsen entered a guilty plea before Judge Peter L. Grimm. She was convicted of six counts of homestead credit tax fraud as a repeater on each count. At sentencing she faces a maximum of sixty years imprisonment and \$60,000 in fines.
- Amy Prelwitz entered a not guilty plea on charges of tax fraud before Fond du Lac County Circuit Court Judge Peter L. Grimm. A jury trial has been set for August 2010.

These matters were investigated by the Wisconsin Department of Revenue and the Wisconsin State Capitol Police Department. Assistant Attorney General Eric D. Defort represents the State of Wisconsin in these cases.

Mauston Man Charged With Possession of Unstamped Cigarettes

Note: Information for the following section of this article was obtained from an entry posted on WRJC.com.

A Mauston man was charged in June 2010 with possession of unstamped cigarettes, a misdemeanor. According to the criminal complaint, in the fall of 2009 a Special Agent with the Alcohol and Tobacco Enforcement Unit of the Wisconsin Department of Revenue confronted John Randall, the owner of Randall's Uptown Bar, with invoices for the online purchase of 754 cartons of cigarettes. Investigation revealed Randall's Uptown Bar is not a licensed cigarette distributor, and the cigarettes in Randall's possession did not have a tax stamp.

Milwaukee Man Pleads Guilty to Tax Fraud

Dwayne Green, 49, pled guilty in June 2010 to filing fraudulent tax claims and identity theft. Green was charged in Milwaukee County with nine felonies alleging that he defrauded the State of Wisconsin out of \$79,591.

According to the criminal complaint, between 2005 and 2009 Green filed 44 fraudulent homestead credit claims using stolen identities. The complaint further alleges that between 2004 and 2009 Green was responsible for filing 102 tax returns for other persons in which he claimed fraudulent earned income credits or fraudulent deductions for dependents. The returns showed a pattern of claiming the same persons as dependents on multiple claims.

Green was prosecuted by the Public Integrity Unit of the Milwaukee County District Attorney's Office after an investigation by the Wisconsin Department of Revenue and Wisconsin Department of Justice.

Green is scheduled to be sentenced on August 24, 2010, and faces up to 18 years in prison and \$30,000 in fines. [☞](#)