Wisconsin NATP National Association of Tax Professionals

WISCONSIN TAX REPORT

WISCONSIN CHAPTER of NATP

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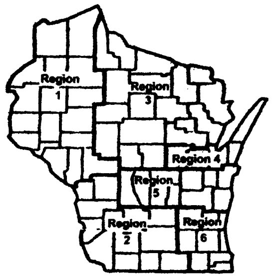
THINGS TO REMEMBER FOR TAX SEASON 2009

--Social Security benefits are no longer taxable to Wisconsin. A full subtraction is allowed for any amounts taxable to federal.
--The IRS exclusion from income for discharge of indebtedness on a qualified personal residence does not apply for Wisconsin.
--The two year extension of time after the death of a spouse for a joint exclusion of gain on a personal residence does not apply for Wisconsin.
--Mortgage insurance premiums cannot be treated as interest and cannot be used in the computation of the Wisconsin itemized deduction credit.
--If a taxpayer or practitioner is required to disclose an item on the federal return and it is a material part of the Wisconsin return, disclosure is also required.
--The tuition subtraction for Wisconsin has been expanded to include required student fees and is set at a maximum amount of $5114 for tax year 2008. This subtraction is not allowed if the money used to pay the tuition was withdrawn from a Wisconsin college savings account or EdVest or Tomorrow's Scholar. The tuition and fees adjustment for federal does not apply.
--The educator adjustment for supplies purchased for use in the classroom does not apply to Wisconsin.
--If a person allows public all-terrain vehicle corridors on their land and the incentive payment was included in federal income, it is allowed as a subtraction for Wisconsin.
--The medical care insurance subtraction for persons who are not self-employed is 66.7% of the premiums paid. (Remember this includes the withheld amounts for Medicare Part B and Part D.) This goes to 100% for 2009.
--A self-employed person would have already deducted the costs of medical care insurance on the 1040.
--An employee whose employer pays part of the insurance premiums and part is paid by the employee may subtract 10% of the premiums paid by the employee only. This percentage is increased to 25% in 2009, 45% in 2010, and 100% in 2011.
--For property used in farming, the 179 expense deduction is increased to a maximum of $115,000 with a phase-out purchase limit of $460,000 for 2008. For all others, the 179 expense is limited to $25,000.
--Wisconsin does not allow the 50% bonus depreciation for 2008.
--There is a new schedule OS for electronic filing of returns with taxes paid to other states. Because this form requires more information, a copy of the other state return will not be required to be submitted.
--If you are filing a Homestead Credit only, the subtraction for medical care insurance is still able to be used to reduce household income.
--BE SURE TO VERIFY TAXPAYER'S MAILING ADDRESS AND DIRECT DEPOSIT INFORMATION!!!!
--Wisconsin will really not be sending out estimated tax vouchers for 2009. (There is a exception for those who used the department vouchers for 2007). The DOR is also discontinuing the mailing of the WT-6 withholding booklet and the Wisconsin Tax Bulletin.
--IRAs for those taxpayers required to take required minimum distributions and donated directly to a charity are not taxable to federal. For Wisconsin the amount withdrawn must be added back to income and then a charitable contribution added in on the itemized deduction credit.
--There is no Wisconsin estate tax for years 2008-2010. For 2008 and 2009 Wisconsin will still allow a stepped-up basis.
--The farmland tax relief credit percentage is lowered to 19% with the same maximum credit of $1500.
--Health Savings Account still are not a deduction for Wisconsin so the contribution as well as interest on the account must be added back for the Wisconsin return and withdrawals for non-medical reasons are not taxed to Wisconsin.
--The extra benefits for Midwestern federally declared disaster areas that are available on the federal return are not allowed for Wisconsin.
--The deemed depreciation for Homestead purposes if the standard mileage rate has been used is 21 cents for 2008.



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The information published in Wisconsin Tax Report is believed to be accurate and authoritative. Independent research is encouraged before application.

NEW BOARD OF DIRECTORS AND OFFICERS

At the annual meeting in November, several new directors were elected to the state chapter board.

In Region 1, Betsy Tarkowski will be serving a one-year term as director-at-large. Betsy is from Eagle River. James Glorioso of Oconomowoc will be serving a two year director-at-large term.

In Region 2, the two new directors are Steve Brokish of Lodi and Barbara Stockhausen of Platteville. They each will serve a full three year term.

In Region 3, Patricia Harris of Three Lakes was elected to a full three year term.

In Region 6 Michelle Gross of Germantown was elected to a three year term.

The new Executive Committee was elected at the board meeting following the fall conference.

President: Patti Harris
Vice-President: JeanMarie Hinds
Secretary: Marlene Dunn Till
Treasurer: Julie Wallock

Welcome to the new board members and officers. We will help you in your efforts to continue making Wisconsin a chapter of which to be proud.

Thank you to the outgoing board members Tina Heinrich, Harvey Kubly, LaVerda Pence and Jan Anderson. We appreciate all the work you have done and wish you well. Hope to see you at future conferences.

SPRING SEMINAR

Before you get busy with the tax season, be sure to mark your calendars for June 11 and 12 for the spring conference which will once again be held at the Breezewood Best Western in Neenah. The spring 2008 conference was held there and many positive comments were received so the board decided to keep that as the spring site.

This conference will highlight Alice Orzechowski, a very popular NATP speaker discussing financial aid and other education topics as well as dissecting the W-2 and 1099. Alice has published a book on financial aid which is available from the NATP bookstore.

This conference will also be a 2 for 1 in that two attendees can register for the price of one, both attendees must sign up on the same registration form. The registration fee will be $125 for members and $150 for non-members, with an early bird discount of $5 if paid by May 1st. This is a good chance to bring someone else from your office or one of your friends in the tax business-both to introduce them to NATP as well as get a great education on Education.

FALL SEMINAR

Another successful annual meeting and conference was held at the Weston Inn near Wausau on November 6 and 7. With speakers Helen O'Planick, and Marlene Dunn Till sharing their knowledge on topics ranging from changes in the federal tax law, foreclosures and abandonments to changes in the unemployment laws for Wisconsin, attendees were given the opportunity to enhance their education. We were visited by Calvin Lopes of Louisiana as the NATP national board representative who reminded us of some of the benefits of NATP membership.

One of the highlights of the day was the first annual silent auction to benefit the newly inaugurated scholarship program. With prizes such as chocolate, candles, Christmas decorations and even a weekend vacation, over $500 was raised. Thank you to Terry Ostrander and the scholarship committee for their great job.

PLANNING AHEAD FOR TAX YEAR 2009

There will be a subtraction for the first $5000 of certain retirement income for persons at least 65 years of age and an AGI on federal of less than $15,000 (S) and $30,000 (MFJ). Of course the retirement needs to be first taxable to Wisconsin, e.g. military retirement benefits are already not taxable.

For persons claiming the federal child care credit, Wisconsin will allow a subtraction for the employment related expenses up to $750 for one individual and up to $1500 for more than one qualified individual. These amounts will increase for 2010, 2011 and 2012.

The new rules for disqualified use of a personal residence after December 31, 2008 will not apply for Wisconsin.

WISCONSIN'S BUSINESS WIZARD

The WI Department of Revenue receives many inquiries from owners and operators of Wisconsin-based businesses that are just getting started. They are typically trying to find out about all the federal, state and local regulations and reporting requirements that pertain to them. The State of Wisconsin Business Wizard is a quick and easy way to get customized state-related business information, including: licensing, permitting, and regulatory requirements, necessary application forms, available state resources, and other valuable business-related information.

Although the Business Wizard is not all-inclusive, it also provides information concerning certain federal and local regulations.

Can the Business Wizard be of service to you or your clients? Check it out at *www.wisconsin.gov/state/app/wizard/LoadIntro*.

PRACTITIONER WEB PAGE

Did you know Wisconsin DOR has a practitioner web page to provide updates on tax news and information, including electronic filing mailings, publications, and announcements of approved software and Electronic Return Originators.

The practitioner web page is located at *www.revenue.wi.gov/taxpro/index.html*. From this website you can also subscribe to the electronic mailing list.

The *Wisconsin Topical and Court Case Index* has been updated and is available on the department's website at *http://www.revenue.wi.gov/ise/top-cc/index.html* .

THE GIFT THAT KEEPS ON GIVING: ENDANGERED RESOURCES TAX CHECK OFF

By Susan Foote-Martin

You play an important role in the success of the Endangered Resources Program by making your client aware of the opportunity to contribute to the Endangered Resources Tax Check Off. And, every dollar contributed is matched with state dollars making their gift twice as important!

By making a donation to the Endangered Resources Program on the tax form, you will be helping your client make a vital investment in the health and well-being of Wisconsin's environment, economy and quality of life – benefits everyone can appreciate and enjoy, now and for generations to come.

Past support through this vital funding mechanism has helped us reverse the decline of the Bald Eagle, Timber Wolf and Trumpeter Swan, among others. And more than 590 State Natural Areas protect outstanding examples of native biological communities such as prairies, forests and waters that are in place for us to enjoy now and are preserved for the future.

Thanks for making taxpayers aware of the Endangered Resources Tax Check Off. Please contact me at *susan.footemartin@wi.gov* for a free poster for your office!

REQUIRED MINIMUM DISTRIBUTIONS

Taxpayers normally subject to the required minimum distribution (RMD) provisions for 2009 (at least age 70 ½ by December 31, 2009) do not have an RMD for the calendar year 2009 (no penalty for 2009). (There is no relief for those who failed to take a 2008 RMD.)

WISCONSIN TAX PRACTITIONERS RECEIVE EXPEDITED ASSISTANCE WITH DEDICATED TELEPHONE NUMBER AND EMAIL ADDRESS

The State of Wisconsin Department of Revenue (DOR) is proud to once again offer special avenues of assistance for tax practitioners.

Tax Practitioner Dedicated Phone Line: 608-261-5199

This phone line is staffed by the Customer Service Bureau and available weekdays, from 7:45am to 4:30pm. All calls are answered and programmed as priority.

Tax Practitioner Email: *DORtaxpractitioners@revenue.wi.gov*

You can send us an email 24 hours a day. Our goal in most instances will be to respond to your request before the close of business on the next business day. When emailing, please keep your client's privacy in mind. Do not include complete social security numbers. Instead indicate a client's name, address, and last four digits of the social security number, or their complete Tax Account Number (if known). If you would prefer us to call you in response to your email, please indicate such and include a phone number and the respective best time or hours you will be available.

Please keep in mind that this phone number and email address is exclusively **For Practitioner Use ONLY**. Please do not give out or make this information available to your clients. We are only able to offer expedited assistance because of the limited number of contacts we receive through these means.

APPLICATION TO VERIFY ESTIMATED TAX PAYMENTS

The Department of Revenue has an online application that allows taxpayers and tax practitioners to verify estimated tax payments when completing a tax return. This application is available at *https://ww2.revenue.wi.gov/PaymentInquiry/application*. It is available seven days a week, 365 days a year. If you experience problems when using this application, please contact the department at (608) 266-2772 so that we are made aware of the problem and can get it resolved. (If you experience problems outside of the department's regular office hours, please contact us as soon as possible during regular office hours, 7:45 am – 4:30 pm, Monday through Friday.)

EXTENSION OF TIME TO FILE PARTNERSHIP AND FIDUCIARY RETURNS

The federal Internal Revenue Service has changed the extended due dates of certain partnership and fiduciary returns. This change reduces the extension period from six to five months. The change was made to ease the burden on taxpayers who must report information from Schedules K-1 and similar documents on their individual tax returns.

Wisconsin law provides that any extension of time granted by the Internal Revenue Service for the filing of a corresponding federal return extends the time for filing the Wisconsin return. Therefore, the federal change in the extension period also applies for Wisconsin. As a result, the previous six-month extension of time to file a partnership or fiduciary return no longer applies for Wisconsin. A five-month extension of time to file is allowed for filing Form 2, *Wisconsin Fiduciary Income Tax for Estates and Trusts,* and for filing Form 3, *Wisconsin Partnership Return*. This change is effective for extensions with respect to tax returns due on or after January 1, 2009.

SALES TAX FILING MAINTENANCE DURING TAX SEASON/SUNDAY MORNINGS

Periodically the Sales Internet Process (SIP), used to electronically file sales and use tax returns, needs to have routine maintenance or updates made. During these times, the application is not available for filing returns or payments. The periods when routine maintenance may be scheduled are Fridays from 4:00 am to 4:15 am, Saturdays from 8:00 am to noon and/or Sundays from 4:00 am to 9:00 am. Routine maintenance is not done every Friday, Saturday or Sunday. When it is scheduled, you will generally get a message when trying to access SIP that indicates it is unavailable because of routine maintenance.

If updates need to be made to SIP, such as adding a new county subject to county sales and use tax, those updates are done between 5:00 am to noon on Sundays. Updates are done infrequently and generally are not long in duration.

Beginning in early February, the department will have a new online application for electronically filing sales and use tax returns, called My Tax Account. The department will need to load updates to this application daily so that you and your clients will have access to current information. Updates will be done at 6:30 am every business day. It will generally take only 5 to 10 minutes for these updates to be made. Anyone attempting to access My Tax Account during this time will receive a message indicating the system is unavailable.

NEW UNDERPAYMENT INTEREST EXCEPTION/WAIVER CODES

If your client qualifies for an exception or waiver for underpayment interest, a one-digit code must be entered in the box on the underpayment interest line (Form 1, line 57 or Form 2, line 34).

The acceptable codes and their explanations are as follows:

Code	Explanation
2 - - - - - -	UPI exception because there was no prior year tax liability
3 - - - - - -	UPI exception because an estate/trust is funded on account of a decedent's death
4 - - - - - -	UPI exception because 2/3 of gross income is from farming/fishing
5 - - - - - -	UPI waiver because of a casualty/disaster
6 - - - - - -	UPI waiver because of retirement or disability and underpayment was due to reasonable cause
7 - - - - - -	UPI waiver because of active military duty, stationed outside of the US
8 - - - - - -	Annualized income installment method used
9 - - - - - -	Net operating loss carryforward

TOP REASONS FOR ELECTRONIC FILING REJECTS FOR TAX YEAR 2007

The table below shows the top six reasons electronic filed returns were rejected by the Wisconsin Department of Revenue for tax year 2007. The table includes the rejection code and the description of the rejection.

Code	Description
656 - - - -	Form 1NPR – Moved out of WI before the end of the year; however, no Legal Residence (Domicile) Questionnaire submitted.
970 - - - -	Form 1 – Net Tax Paid to Another State Credit is claimed; however no Schedule OS-E submitted.
985 - - - -	Schedule H, Property Tax Bill – All of the following information isn't provided: the year, owner(s), owner type, property address, assessed land and improvement value and acres (when more than one).
992 - - - -	Schedule H is filed, but missing a Rent Certificate or Property Tax Bill.
996 - - - -	Direct Debit payment date is blank.
997 - - - -	Direct Debit payment date is invalid. Must be no later than April 16 th for timely returns and no later than submission date for late and extension returns.

NEW ELECTRONIC FILING REJECT CODES FOR TAX YEAR 2008

The table below shows the new electronic filing reject codes for tax year 2008. The table includes the rejection code and the description of the rejection.

Code	Description
050 - - - - -	The city, village, or township code cannot be blank.
055 - - - - -	The municipality cannot be blank.
060 - - - - -	The county cannot be blank.
065 - - - - -	The school code cannot be blank.
970 - - - - -	Net Tax Paid to Another State Credit (Form 1, line 33) is claimed, and no Schedule OS is filed.
657 - - - - -	Income of only wages, interest, & dividends is allowed on Form 1NPR.
658 - - - - -	Residence status is missing for one or both of the filers on a joint Form 1NPR return.
659 - - - - -	Residence status is missing for the filers on a single Form 1NPR.
660 - - - - -	Dates filer lived in WI are missing on a return where one or both filers are part year residents on Form 1NPR.
661 - - - - -	The state code is missing on a non-resident return on Form 1NPR.
662 - - - - -	The date format is incorrect on Form 1NPR.
663 - - - - -	The state code is missing when Net Tax Paid to Another State credit is claimed on Form 1.
664 - - - - -	Schedule OS is missing the state code.
665 - - - - -	Veteran's Credit is claimed on a Form 1 along with another type of property tax credit such as school property tax credit, Homestead credit, farmland preservation credit, or farmland tax relief credit. Only one is allowed.
666 - - - - -	The underpayment interest (UPI) box is filled with an incorrect value. Only the numbers 2 through 9 or blank are acceptable.
667 - - - - -	The bank account number is missing on a return that has selected electronic payment or deposit.

ELECTRONIC W-RAs: HOW TO "ZIP" A FILE

Beginning in 2008, the department can now accept electronic Form W-RAs, along with the required documents. First you must save the Form W-RA and attachments to your PC or network in the proper format as explained at: *www.revenue.wi.gov/eserv/w-ra.html*. Then, the saved documents (files) must be zipped. Here are the instructions of how to "zip" a file:

On your PC:
>Click "Start"
>Go to "Programs"
>Go to "Win Zip"
>Click "Win Zip 9.0 SR-1" (or whatever program they have)
>Click "Wizard" button (unless it goes directly to the Wizard)
>Click "Next"
>Click "Quick Search"
>Click "Next"
>Click "Create New Zip File"
>Click "Next"
>Enter the "File Name" – You can name it whatever you want (i.e. WRAs).
>Make sure it defaults to the location you want.
>Click "Next"
>Add Files – Add all of the documents (files) you want, limited to 50 MB.
>Click "Zip Now"
>Click "Finish"

Once you have zipped the Form W-RAs and all documents you want, you would:

>Go to WRA File Transfer within DOR Internet at: *www.revenue.wi.gov/eserv/w-ra.html*
>Click "Ready to Transfer" button
>Click "Browse"
>Select your Zip File (created using instructions above)
>Click "Transfer" button

Once you have completed these instructions, you have electronically transmitted the Form W-RA and required attachments. There is no paper to mail. Either you or your client should keep the originals of all documents for a minimum of four years.

DELINQUENT TAX NOTICES

The department made several improvements to bills and delinquent tax notices to provide taxpayers with more information about adjustments and bills. The new letters were put into production as tax types were converted into WINPAS, the department's integrated audit, processing, and collection system, over the past couple of years.

The initial tax bill, called a *Notice of Amount Due*, contains information about the specific tax period, the amount due, including interest and penalties, and appeal rights.

A statement of account is issued at the beginning of each month, provided there is activity (payments or credits) to the account. The *Statement of Account* includes the total amount due and a list of all unpaid periods, the tax, interest, penalty/fee due and credits applied to each period, and whether the period is an estimated assessment.

Once a bill passes the due date, a *Notice of Overdue Tax* is sent to the taxpayer. This notice provides the taxpayer with the date of assessment, tax type, period assessed, and total amount due. The notice provides the taxpayer with a department collection agent name and/or contact telephone number, and also provides information about collection actions that may occur if the department does not receive full payment or contact from the taxpayer.

If a taxpayer does not respond to the *Notice of Overdue Tax*, the department may take a variety of actions depending on the type of account, collection sources available, and potential for the account to rapidly pyramid debt. An involuntary collection may be taken, or a letter called *Notice to Contact Assigned Agent* may be sent. This letter provides only the amount due on the account and allows the taxpayer ten days to contact the assigned agent.

Hearing letters are also used on an infrequent basis. This letter advises the taxpayer to appear at a meeting with the assigned revenue agent, and also provides the total balance due.

FORM WD NOT ATTACHED TO FORM W-RA

Q: Must Wisconsin Form WD or federal Form 4797 be attached to the Form W-RA sent to the department when a return is e-filed?

A: Normally, the data from the Wisconsin Form WD and federal Form 4797 is included with the electronically filed tax return so a Form W-RA is not required. However, if you have more than 13 short term or long term capital gain/loss transactions on the Wisconsin Form WD, you can combine those transactions onto one line of the Form WD and send a detailed list of each transaction with the Form W?RA. This enables you to still be able to electronically file that return. For the federal Form 4797, when you have more than four transactions, you would attach a statement with your electronic submission, which is a normal part of the software package.

MUNICIPAL COMPUTER PRINTOUTS MAY REPLACE PROPERTY TAX BILLS

Q: Can a municipal computer printout of property tax bill information be attached to the Form W-RA sent to the department in lieu of the actual property tax bill?

A: Yes. A municipal document will be accepted in place of an actual tax bill if all the following five items are shown on the document:

Name of owner.
Legal description or property address.
Year of the tax bill.
A separate line for special assessments.
A separate line for lottery/gaming credit.

FILING FREQUENCY CHANGES AND WHERE TO FIND FILING FREQUENCY

Each year the department runs an annual scan process that evaluates the amount of withholding tax deposits and/or total sales and use tax and may adjust a taxpayer's periodic filing frequency accordingly. The annual scans ran on December 12, 2008. A letter was mailed to each taxpayer that had a change to filing frequency for either sales and use tax or withholding. The threshold amounts used to determine filing frequency are as follows:

Sales and Use Tax
Early Monthly: $14,401 or more
Monthly: $2,401 - $14,400
Quarterly: $301 - $2,400
Annual: $300 or less

Withholding
Semi- Monthly: $20,001 or more
Monthly: $2,401 - $20,000
Quarterly: $301 - $2,400
Annual: $300 or less

To find out the filing frequency for your clients, you can call the department using the Tax Practitioner Dedicated Phone Line: 608-261-5199 or by using the Tax Practitioner Email: DORtaxpractitioners@revenue.wi.gov

Starting in early February, you will be able to access this information directly using the new My Tax Account online application. Details on how to use this new application will be shared with taxpayers and tax practitioners closer to the implementation date.

UNLAWFUL DISCRIMINATION SUITS AND ATTORNEY FEES

Federal law (Internal Revenue Code (IRC) section 62(a)(20)) allows a deduction for attorney fees and court costs paid to recover a judgment or settlement for a claim of unlawful discrimination under various provisions of federal, state, and local law listed in IRC section 62(e), a claim against the United States government, or a claim under section 1862(b)(3)(A) of the Social Security Act.

This deduction may be claimed as an adjustment to federal income on Form 1040 (line 36 of the 2008 form).

This federal treatment of attorney fees and court costs for these unlawful discrimination claims also applies for Wisconsin tax purposes. Full-year Wisconsin residents would file federal Form 1040 and include the amount of the judgment or settlement in income and claim the fees and costs as an adjustment to income. These amounts would then carry over to the Wisconsin Form 1.

Effective for taxable years beginning in 2008, part-year residents and nonresidents of Wisconsin may claim the attorney fees and court costs for unlawful discrimination claims as an adjustment to income on Form 1NPR only if the judgment or settlement resulting from the claim is taxable to Wisconsin.

DONATIONS ON 2008 TAX RETURNS

The Wisconsin income tax forms provide opportunities for taxpayers to contribute to various causes. Tax practitioners play an important role in the success of these programs by making taxpayers aware of the opportunity to contribute to them.

Following is a list of the various programs to which taxpayers may donate on their 2008 Wisconsin income tax forms.

State Election Campaign Fund Taxpayers may designate $1 to be donated to this fund to be used by certified candidates for public office. If married, each spouse may designate $1 for the fund. A donation to this fund does not increase the taxpayer's tax liability.

Donations to the following will either reduce the taxpayer's refund or increase the tax due.

Endangered Resources T he Endangered Resources Program works to protect and manage native plant and animal species, natural communities, and other natural features. All donations are matched by state dollars up to $500,000, making all donations twice as important. Donations are used by the Bureau of Endangered Resources of the Department of Natural Resources.

Packers Football Stadium A Packer football stadium donation will be used for maintenance and operating costs of the professional football stadium in Green Bay.

Breast Cancer Research Breast cancer research donations are divided equally between the Medical College of Wisconsin, Inc., and the University of Wisconsin Comprehensive Cancer Center for breast cancer research projects.

Veterans Trust Fund Donations to the Veterans Trust Fund are used by the Wisconsin Department of Veterans Affairs for the benefit of veterans or their dependents.

Multiple Sclerosis Donations are forwarded to the National Multiple Sclerosis Society to distribute to entities located in Wisconsin that operate health-related programs for people in Wisconsin with multiple sclerosis.

Firefighters Memorial Donations are forwarded to the Wisconsin State Firefighters Memorial, Inc., to be used towards a firefighters' memorial.

Prostate Cancer Research Donations to prostate cancer research are divided equally between the Medical College of Wisconsin, Inc., and the University of Wisconsin Comprehensive Cancer Center for prostate cancer research projects.

IRS/WDOR TAX PRACTITIONER MEETING DECEMBER 10, 2008

By Marlene Dunn Till

Kerstin Lanser, IRS Stakeholder Liaison, called the meeting to order. The representatives from IRS, WDOR, and various associations and franchise tax services introduced themselves. You will see references in this report about practitioner concerns. The purpose of this meeting is to provide a forum for questions, ideas, concerns, and discussion that will assist government agencies and practitioners alike in our common goal – service to taxpayers. Jan Anderson and I attended this meeting representing WINATP. There were no representatives from the Wisconsin Department of Revenue.

Mark Miller, Office of Chief Counsel, Milwaukee reported on **Marital Property in Wisconsin for Income Tax Purposes**. Here is an overview. Wisconsin Uniform Marital Property Act (WUMPA) established marital property effective 1-1-86. IRS has ruled that WUMPA is a form of community property and basically follows those guidelines. Subject to exceptions, all property acquired by spouses after either 1-1-86, marriage date after 1-1-86, or the date spouses become domiciled in Wisconsin, is marital property, and each is considered to own an undivided ½ interest in each item. The above 3 dates are known as the "determination date".

There are 4 types of property that exist after WUMPA was enacted. 1) Marital property – generally all property acquired after the determination date. There is Survivorship Marital property and Ordinary Marital property. However, for income tax purposes these are the same. 2) Individual property - property owned by the spouse at the time of marriage occurring on or after 1/1/86 IF both spouses have a marital domicile in Wisconsin at the time of the marriage. 3) Property owned by a spouse during marriage & immediately before the determination date is treated "as if it were" individual property. For tax purposes, it is the same as individual property & will be included in this characterization. 4) Generally, the characterization & ownership rights in predetermination date property, or property received in exchange for or with proceeds of predetermination date property, are not altered by WUMPA.

Income Reporting Consideration of Marital Property: 1) No impact if a joint return is filed. 2) If separate returns filed, each spouse reports one half of each income item that is marital property. 3) Income that is not marital property is reported by the spouse who earned or accrued the income.

What Income Items are Marital Property? 1) General Rule: Income earned or accrued by a spouse after the determination date is marital property. 2) Income as defined by statute – wages, interest, dividends, and economic benefits attributable to the efforts of a spouse. 3) Interest & dividends even if the property that generates the income is NOT marital property. 4) Appreciation in value of individual property of a spouse is individual property, unless there is substantial appreciation that can be attributed to the effort of EITHER spouse that was not compensated. 5) If marital property is mixed with other property, the other property will be RECLASSIFIED as marital, unless the component of the other property can be traced. 6) Property received in exchange for individual property of a spouse is individual property. 7) Property received as a gift or inheritance by one spouse but not the other is individual property. This includes a distribution from a trust.

Alimony or Separate Maintenance: 1) Made prior to divorce are deductible by the payer and taxable to the payee only to the extent they exceed 50% of the reportable marital property income. This is so because the spouse is already required to report half of the marital property income, and will already be taxed on the payments. 2) If payments exceed the payee spouse's 50% share of the marital property income, the excess is treated as being paid first from the payer spouse's share of the current community property income (which is taxable to the payee spouse) and then from the couple's accumulated marital property (which is 50% taxable to the payee spouse.)

Claiming Deductions: 1) If joint return – no impact. If separate returns, it must be determined whether the deduction should be split (based on determination date & property). 2) Expenses associated with marital property are equally divided. 3) Losses sustained on the sale of individual property are reportable by the spouse who owned the property. 4) Business losses funded with marital property or which the taxpayer does not establish as being funded with individual property are split. 5) Expenses associated with income that is individual property are deductible by the spouse who owns or earned the income, provided the spouse paid the expenses from his or her own individual property. 6) Deduction not associated with specific income such as medical, charitable contributions, state taxes paid, are generally considered paid from marital funds and should be split, unless it can be shown that they were paid from separate funds. If so, they are deductible by the spouse who paid them. 7) Bad debt deductions are generally split if the money was loaned during the marriage; premarital loans are not split if they go bad after the marriage. 8) IRAs, withdrawals and related penalties by law are deemed to be separate property, even though the funds in the account would otherwise be marital property. Thus, withdrawals and penalties are taxable to the spouse whose name is on the account.

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Claiming Credits: 1) Withholding credits from marital property income are split 50/50. 2) Estimated tax payments made in a separate declaration of estimated tax are the separate property of the spouse making the declaration (based upon how the Estimate from is filled out), even if the money for the estimated tax payment is from marital property. (Although ½ of the net income from a spouse's business may be attributed to the other spouse for income tax purposes, the same rule does not apply in determining which spouse is liable for estimated taxes.) 3) Earned Income Credit. Marital property income splitting is disregarded in calculating the amount of earned income for purposes of the EIC. However, marital property income splitting is considered in determining adjusted gross income for purposes of income limitations under the Internal Revenue Code, if a taxpayer qualifies to file as head of household and is subject to marital property rules. It should be noted, however, that these limitations are the greater of adjusted gross income or earned income.

Self-Employment Tax: 1) Net income from trade or business (other than a partnership) is treated as income of the husband unless the wife exercises substantially all of the actual management and control of the trade or business, in which case it is treated as income of the wife. The spouse who is carrying on the business activity (other than a partnership) is liable for any SE tax based on net income of the business. 2) The distributive share of each partner's income or loss from a partnership is attributable to the partner for computing the SE tax, even if a portion of the partner's distributive share of income or loss is otherwise attributable to the partner's spouse for income tax purposes.

Marital Property Agreements: 1) The Marital Property Act allows spouses to reclassify property currently held and property to be received in the future (including wages). The agreement MUST be in writing and signed by both spouses. 2) A spouse may execute a "unilateral statement" which classifies the INCOME from individual property as individual property. 3) Spouses can "opt in" or "opt out" of marital property rights by executing a statutory terminable marital property classification agreement or a statutory individual property classification agreement. The agreement to "opt out" could only be effective during 1986. The effective period of the "opt in" agreement may vary. 4) The "opt in" or "opt out" agreements and the unilateral statements are honored for federal income tax reporting purposes from the DATE EXECUTED, not from the 1st of the year as some divorce decrees state. 5) Spouses may reclassify property by gift or conveyance. If a gift from one spouse to the other is intended to give the donee an individual property interest, than the income from that property is presumed to be that spouse's individual property. 6) The IRS does not require prior notice of a marital property agreement. In the case of collecting an assessed liability, the IRS does not require prior notice of a marital property agreement.

Dissolution or Termination of Marital Property: 1) Dissolution includes the following events: dissolution of marriage, divorce, decree of invalidity, annulment, decree of legal separation and decree of separate maintenance. 2) Upon dissolution, marital property ends. 3) Dissolution does not normally take place in a divorce action until the entry of a decree of divorce. 4) A divorce decree or a marital property agreement cannot retroactively reclassify income or property as separate income or property. 5) An annulment means that the spouses were never subject to marital property and should not report income on a marital property basis for the period of the putative marriage. However, payments after annulment qualify as alimony. Parties to an annulment should file amended returns if they filed joint returns for any period during the putative marriage. 6) The death of a spouse is not a dissolution. But the effect from an income reporting standpoint is the same. Income earned or accrued by the surviving spouse or his/her individual property is reportable as income by the surviving spouse. The same principle would be applicable to the income of the estate. Items of marital property (assuming they are not survivorship marital property) are converted to a tenancy in common between the decedent's successor in interest and the surviving spouse. Income earned by this property after the death of a spouse would be split equally between the surviving spouse and the successor in interest.

Rick Holzbauer, Dept of Workforce Development updated us on Act 59, which amends Chapter 108 of WI Unemployment Insurance law. Mr. Holzbauer stated that the department decided to waive any penalties on late filed or paid returns for the 3rd quarter 2008 based on the new law that requires reports and payments are in the hands of the department ON the due date, not postmarked date. However, beginning with the 4th quarter 2008, the penalties and late fees will be assessed. He also reminded us that in 2009, if an employer has a liability in the first quarter of $1,000 or more and no liability for the next 3 quarters, they may elect to pay the liability as 40%, 30%, 20% and 10% per quarter payment. You must file a letter with the department saying you are taking advantage of deferral payments. To implement this and to see the other changes to the unemployment tax law, please go to http://dwd.wisconsin.gov/ui/ and type in UCD-8303-P in the search box. This publication shows more detail about the information above. He also stated that the department has replaced the WISER system for employer applications with a new on-line system that will give you an account number right away for new employers. The new system allows you to make changes to the account, view the account summary and rates. You can also update the employer information, close the UI account, get account access and change account access. The department will no longer give access codes over the phone; they will have to be in writing. So please give yourself enough time to obtain the access code.

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IRS ROUNDTABLE – Reports from various departments at the IRS.

Taxpayer Advocacy Panel – Marge O'Brien of the Taxpayer Advocate Office asked that we spread the word that they are ready to assist with any problems we or our clients run into related to IRS procedures or communications.

Examination – Dan Sostock discussed the aggressive approach the IRS is using for audits. They are targeting certain groups, situations, and increasing the percentages of taxpayers being audited. They are targeting taxpayers who deal with cash customers. They also are no longer going to complete an audit without a "face to face" question/answer interview with the taxpayer. Both David Fayram, WSEA, and myself raised a "red flag" here. We stated that Circular 230 gives us implicit authority to represent taxpayers by "stepping into their shoes". We should be able to know what is being asked and be able to have communication with our client in a "client privilege" format, not an open question/answer period. We also should be able to represent the client without them being present as long as we provide the documentation and other information requested by the auditor. Dan said that would no longer be the case as it is apparent that representatives of taxpayers say they "know their clients, but actually do not." He said that without the taxpayer present to question him/her about their tax situation, all the IRS hears from the representative is "I will get back to you on that". He said, "then we never hear". Dave and I reiterated that very often it is not in the client's "best interest" to be questioned without understanding from his representative what is asked of him. Many taxpayers do not understand terms that are used, accounting procedures, etc. I stated that I have represented many clients in audits and I have never had a situation where it was insisted that the taxpayer be present. Mr. Sostock said, "Evidently you do not have the kind of taxpayer I am talking about".

Mr. Sostock said that the only way the IRS feels they can move an audit along is with the "face to face". The auditors want to be fast, and move on to the next taxpayer. If the taxpayer balks at a "face to face" interview, they will summons the taxpayer to appear. Mr. Sostock said it does not matter what the costs are involved, they are moving forward with this format.

Mr. Sostock said that the NPR audit is in its 3rd year (replaced the TCMP audit). Auditors are now being assigned 2007 returns and contacts for those should be coming out now. The service is going to be much more aggressive with nonfilers. The IRS has changed their approach to audit locations. They are now going to insist the audit take place at the taxpayer's location.

Collection – Tim Sherrill introduced himself. He is new and heads collection in all of Wisconsin except for Eau Claire. He said collection will be pushing for payments on delinquent payroll taxes. He also indicated that for a business that is an LLC, the service will collect from assets of the LLC only. However, the owners will be held responsibility for trust fund penalties as the responsibility parties. He said that a taxpayer who is denied relief in an Offer In Compromise may ask for an appeal and ask that the appeal be assigned to the Milwaukee office.

Roy Block stated that he would like to see the Online Installment Agreements to go to a maximum limit of $30,000 and allow payment for 6 years. For now the limit is $25,000 and 5 years. Tax preparers are asked to call 414-231-4547 and speak to Jesse Lang to report any fraud we might find by either preparers or taxpayers.

IRS Updates – Kerstin Lanser read information regarding the following:

1.) The IRS will no longer mail Form 1040-ES to taxpayers who use a paid preparer, used software to file a paper return, e-filed, or used an e-payment method. Due to taxpayer overwhelming requests, 2009 will bring 1040-ES vouchers to all except those who use a preparer.

2.) The extended due dates for Form 1065, Form 1041, and Form 8804 have changed to 5 months beginning with returns due after 1/1/09.

3.) The mileage rate for business is 50.5 for 1/1/08 thru 6/30/08 and 7/1/08 thru 12/31/08 it is 58.5 cents. Medical and moving rate was 19 the 1st half and 27 the 2nd half of 2008. For 2009 business rate is 55 cents, medical and moving is 24 cents and charity remains 14 cents.

4.) IRS website will have 2 new tools regarding the Economic Stimulus (now called the Recovery Rebate). You can check "How Much was My Stimulus Payment?" and use the Recovery Rebate Calculator. These will be helpful when filing the 2008 return.

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5.) If your client has been assessed tax based on an audit or a return IRS created for the client, you should obtain Publication 3598. The publication outlines the procedure for audit reconsideration. The process allows the IRS to reconsider the taxpayer's information informally.
6.) Don't forget the new Section 179 expensing and special depreciation allowances created as part of the Economic Stimulus Act. Taxpayers must "elect out" of the 50% special depreciation.
7.) Be sure to tell clients about the First-Time Homebuyer credit, basically a free loan up to $7,500 repayable beginning on the 2010 return ($500 per year). Know that rules apply if home is sold, etc.
8.) Mortgage Forgiveness – applies to 2007, 2008, 2009 and the Bailout extends this to 2012. Must be qualified debt and reported on a 1099-C. Must file Form 982 by completing Lines 1e and 2. See Publication 4681 for all cancellation of debt issues.
9.) LLC's with employees. Notice 99-6 allowed single member LLCs to file and pay employment taxes under either the name and EIN assigned to the LLC or the name and EIN of the single member owner. The new regs make Notice 99-6 obsolete and require the LLC to report and pay employment taxes under the name and EIN of the LLC.
10.) Form 8332 has been changed to allow a Revocation of Release of Claim to Exemption for FUTURE YEARS. Must be signed and sent to individual who would have claimed the child prior to 12/31 of the year the exemption is revoked (12/31/08 for tax year 2009). Divorce decree attachments for divorces prior to 12/31/08 can be attached to returns for clarification of dependent exemptions. Attachments for clarification of exemptions for divorce dates after 12/31/08 are NOT allowed. See the Form 8332 instructions.
11.) The 94X Series is now available. Please see Publication 4676 for more information. The amended returns may only be used for corrections for years beginning 1/1/09. The forms reflect line for line correlation to the original form filed.
12.) Standard Deduction increases for homeowners who pay property tax, single $500, and Joint $1000.
13.) Disclosure rules are now in place for preparers. The disclosure applies to such information sharing as RAL's, Investments offered by the preparer, or any use of return information to a 3rd party. The taxpayer must consent in writing, the purpose must be clearly identified, and the disclosure must be typed on 8 ½ x 11 paper using 12 pt type. Penalties for violations will be enforced.
14.) Be sure to understand the new rules regarding Kidde Tax (under age 19 or under age 24 if full time student).
15.) If you are in the Midwestern Disaster Area, please review the special treatment for all of these items: Casualty Losses and Involuntary Conversions, Charitable Contributions (suspension of limits, mileage rates, and volunteering), Discharge of indebtedness, EIC and Refundable Child Credit (lookback rules are available for determining earned income), Education Credits (doubling of credits), Exemption for housing displaced victims, NOLs, Retirement Plan loans or withdrawals, Demolition and Clean-up costs, Employee housing credit, Employee retention credit, Environmental remediation costs, and Rehabilitations tax credit.