Tax Law

by Carl D. Fortner, Zhu (Julie) Lee, Timothy L. Voigtman, and Theresa A. Andre

Carl D. Fortner is a corporate tax attorney with Foley & Lardner LLP, Milwaukee. He received his undergraduate degree in accounting, with distinction, and his master's degree in taxation from the University of Wisconsin–Madison and his law degree, cum laude, from the University of Wisconsin Law School. Mr. Fortner is also a certified public accountant and has frequently lectured on corporate and income tax topics.

Zhu (Julie) Lee practices tax law with Foley & Lardner LLP, Milwaukee. She received her undergraduate degree in urban and regional planning from Beijing University, People's Republic of China; her master's degree in energy and environmental policy from the University of Delaware; and her law degree, cum laude, from Northwestern University School of Law, where she was an articles editor of the *Northwestern Journal of International Law and Business*.

Timothy L. Voigtman is a tax attorney with Foley & Lardner LLP, Milwaukee. He received his undergraduate degree in accounting from the University of Wisconsin–Madison and his law degree, cum laude, from the University of Wisconsin Law School. Mr. Voigtman is also a certified public accountant.

Theresa A. Andre is senior counsel with Foley & Lardner LLP, where she is a member of the insurance and reinsurance litigation, business litigation and dispute resolution, and distribution and franchise practices and the insurance and reinsurance industry team. She is also a former member of the firm's National Associates Committee and Recruiting Committee.

This chapter covers in varying detail the principal 2012 court decisions and legislative changes affecting Wisconsin taxpayers and tax attorneys. Although most 2012 income tax, franchise tax, sales and use tax, and property tax developments are discussed, this chapter is not all-inclusive.[1]

CASE LAW

Sales and Use Tax

Substance over Form. In *Sullivan Bros. v. Wisconsin Department of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-600 (Tax App. Comm'n Aug. 14, 2012), *aff'd*, No. 12-CV-3663 (Wis. Cir. Ct. Dane Cnty. Feb. 22, 2013) the Wisconsin Tax Appeals Commission (the commission) applied the income tax doctrines of *substance over form* and *step transaction* to a sales tax matter. Wisconsin law has long imposed sales and use tax on tangible personal

[1] Textual references to the Wisconsin Statutes are indicated as "chapter xxx" or "section xxx.xx," without the designation "of the Wisconsin Statutes." Unless otherwise indicated, in the Statutory Developments section of this chapter, all references to the Wisconsin Statutes are to the 2011–12 Wisconsin Statutes.

property used by contractors in real property construction activity. *See* Wis. Stat. § 77.51(2). Nonprofit entities may avoid indirectly paying for this tax by separately purchasing the construction materials. Here, the taxpayer, Sullivan Brothers, would purchase and install ceiling materials for its customers. For sales to nonprofit entities, Sullivan Brothers would first "sell" materials to Sullivan Supply, which would in turn sell the materials to the nonprofit, for subsequent installation by Sullivan Brothers. Sullivan Brothers and Sullivan Supply are jointly and equally owned by the same individuals.

On cross-motions for summary judgment, the commission held against Sullivan Brothers on three grounds. First, the commission said that a plain and commonsense reading of section 77.51(2) compels the conclusion that a "wholly owned subsidiary" set up to avoid the tax is not a "customer" and therefore would not be eligible for a sale-for-resale exemption.

Second, the commission applied the income tax concepts of substance over form and step transaction to sales and use tax. The commission cited little authority and did not consider the extensive legislative history of treating legal entities separately. For example, the decision did not review changes the Wisconsin Legislature made in 2009 to treat disregarded entities (but not other entities) as disregarded for sales and use tax purposes. *See* Wis. Stat. § 77.61(19m).

Third, the commission held that, with respect to building materials, a contractor cannot claim a sales tax exemption for a sale to a third-party intermediary for situations in which the contractor subsequently installs the same materials (even if the materials have been transferred to a different entity).

- ***Comment.*** The decision in *Sullivan Brothers* creates many more questions than it answers because the commission provided little analysis or insight concerning which situations the substance-over-form doctrine should apply to and when related entities should be included in the analysis. If this reasoning is applied liberally, the decision could be used as grounds to attack captive transportation companies, sale-leaseback arrangements, or similar purchase-lease arrangements (in which a special-purpose entity purchases a taxable good and leases it to a related party).

Successor Liability. In *Villager Food Mart/Beer & Liquor v. Wisconsin Department of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-547 (Tax App. Comm'n Apr. 4, 2012), the commission held that the purchaser of all the assets of a convenience store had successor liability for the seller's unpaid sales taxes. Absent a receipt from the Wisconsin Department of Revenue (DOR) indicating that all sales tax had been paid or a certificate stating that no amount was due pursuant to section 77.52(18), a purchaser can be liable, up to the purchase price, for the seller's unpaid sales taxes.

Equitable Estoppel Not Established. The commission held that the DOR is not barred by equitable estoppel from assessing tax for years starting in 2004 despite advice the DOR allegedly gave to the taxpayer in the early 1990s. At trial the commission found the taxpayer's unsupported evidence concerning the oral advice did not rise to the clear and convincing level necessary to support an equitable estoppel claim. *King's Enters. of Wausau v. Wisconsin Dep't of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-579 (Tax App. Comm'n May 11, 2012).

Constitutionality of Responsible-Person Statute. The Dane County Circuit Court upheld the constitutionality of section 77.60(9), which assigns personal liability without a statute of limitation on persons who intentionally fail to pay to the DOR sales tax collected from customers. The taxpayer argued that the lack of a statute of limitation violates the Equal Protection Clause because the legislature provided a statute of limitation for the general imposition of sales and use tax. The court reasoned the legislature had a rational basis to treat responsible persons differently. *Rashaed v. Wisconsin Dep't of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-645 (Cir. Ct. Dane Cnty. Nov. 14, 2012), *aff'g* [2 Wis.] St. Tax Rep. (CCH) ¶ 401-455 (Tax App. Comm'n July 13, 2011).

Procedure

Timely Filing. In *Vasudeva v. Wisconsin Department of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-601 (Tax App. Comm'n Aug. 17, 2012), the commission dismissed a petition for redetermination on grounds the taxpayer did not file the petition within the 60-day statutory period. The taxpayer mailed the petition before the deadline using U.S.

Priority Mail but the commission did not receive the package until after the deadline. The commission reasoned that the so-called mailbox rule of section 73.01(5)(a) applies only if the petition is mailed via certified or registered mail and that it does not apply to items sent by U.S. Priority Mail. Attorneys and taxpayers using any means of submitting a petition other than certified or registered mail do so at the risk that the commission will reject the petition if the petition arrives after the deadline.

Property Tax

Exemptions: Medical Devices; Burden of Proof. In *City of La Crosse v. Wisconsin Department of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-589 (Wis. Tax App. Comm'n June 8, 2012), the commission considered the DOR and the Gundersen Clinic, Ltd.'s argument that eight categories of medical devices, including magnetic resonance imaging (MRI) and CAT-scan equipment, are exempt from property tax under section 70.11(39). That section exempts "personal computers," "servers," and "electronic peripheral equipment" but does not exempt "equipment with embedded computerized components." The State Board of Assessors determined that the medical devices are exempt under the statute and the Computer Exemption Guidelines (the guidelines) incorporated in the *Wisconsin Property Assessors Manual*. On review, the commission entered summary judgment in Gundersen's favor. The circuit court affirmed the commission's determinations. *See City of La Crosse v. Wisconsin Dep't of Revenue*, No. 12-CV-2511, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-658 (Cir. Ct. Dane Cnty. Dec. 7, 2012).

As a preliminary matter, the commission held, and the circuit court agreed, that the city, as the petitioner, had the burden of proving the board of assessors' exemption determinations were incorrect. The commission noted that Gundersen was not even a necessary party to the city's appeal, and that it would be contrary to established case law to suggest the DOR has the burden of defending its own assessment determinations. The commission and the circuit court distinguished this burden of proof from the taxpayer's initial burden to prove the applicability of the exemption, which Gundersen satisfied by persuading the board of assessors that the devices are exempt.

The commission's ruling that the medical devices are exempt rested on its construction of section 70.11(39) and application of the guidelines. The commission rejected the city's proposed statutory construction and held that the statute establishes mutually exclusive categories of exempt and taxable computer equipment, following its prior decision in *Xerox Corp. v. Wisconsin Department of Revenue*, Wis. Tax Rep. (CCH) ¶ 400-814 (Wis. Tax App. Comm'n Feb. 17, 2005), *aff'd*, Wis. Tax Rep. (CCH) ¶ 401-042 (Cir. Ct. Dane Cnty. Sept. 21, 2007), *aff'd*, 2009 WI App 113, 321 Wis. 2d 181, 772 N.W.2d 677. (In *Xerox Corp.*, the commission held that all-in-one scanner/fax/printer devices known as multifunction devices (MFDs) are not exempt.) The commission similarly rejected the city's challenges to the guidelines, which specify that medical devices are exempt if they are computers or are connected to and operated by computers and which list MRI, CAT, and ultrasound-imaging devices as examples of exempt devices. The commission disagreed with the city's argument that the guidelines have been inconsistent and noted that the guidelines must be updated frequently to keep pace with evolving technology and terminology. The commission rejected the city's reliance on expert testimony in challenging the guidelines, finding that the city's expert lacked relevant expertise and that his opinions were based on his view of common and approved usages of terms as to which no expert testimony was required. The commission held that, as a matter of law, such expert testimony did not satisfy the city's burden of introducing "competent, credible and unambiguous evidence" to overturn the board of assessors' determinations, and it therefore granted summary judgment to Gundersen.

On review, the circuit court applied great weight deference to the commission's determinations, following the court of appeals' ruling to that effect in *Xerox*. Referring to the fact the commission held MFDs to be taxable in *Xerox Corp.* but held the medical devices in this case to be exempt, the court observed:

> Having applied its expertise to adopt a particular construction of § 70.11(39) that favors taxation, the Commission is not free to materially vary that meaning simply because applying it in the case at bar supports taxation. The law is not a chameleon, having one meaning when it favors taxation, and a contrary or inconsistent meaning when needed to avoid exemptions in a different case.

Exemptions: Educational Association. The Wisconsin Statutes exempt from tax property that is owned and used exclusively by "educational institutions offering regular courses 6 months in the year; or by … educational or

benevolent associations." Wis. Stat. § 70.11(4)(a). In *Educational Credential Evaluators, Inc. v. City of Milwaukee*, No. 2011AP1706, 2012 WL 1033442 (Wis. Ct. App. Mar. 29, 2012) (unpublished opinion citable for persuasive value per section 809.23(3)(b)), the taxpayer sought exemption as an "educational association," not as an "educational institution." The taxpayer's "goals and activities" included evaluating educational credentials of persons educated in other countries or in nontraditional domestic (i.e., in the United States) programs; studying domestic and foreign educational systems; providing funds to persons and entities for use in studying educational systems; conducting seminars and workshops regarding educational systems; and assisting persons in other countries seeking to apply to domestic educational institutions for employment or further education.

The court explained that to qualify for exemption as an "educational association," the taxpayer must satisfy a two-part test. First, the "organization must be a nonprofit organization substantially and primarily devoted to educational purposes," which requires an evaluation of the actual activities of the taxpayer as well as the taxpayer's stated goals. Second, "the organization must be devoted to traditional educational activities." Such activities are not restricted to formal academic curricula, but the activities must involve "systematic instruction, either formal or informal, directed to an indefinite class of persons … which benefits the public directly and must be the type that would ordinarily be provided by the government or that would in some way lessen the burdens of the government."

In applying these tests, the court relied on the dictionary definition of *education* as "learning" and the dictionary definition of *educational* as "instructive" or "of or pertaining to education." The court concluded that not all the taxpayer's goals and activities were educational, distinguishing evaluation of credentials from instruction or education. Although some of the taxpayer's activities did have an educational purpose, the taxpayer failed to present evidence showing the proportion of such qualifying activities. It therefore failed to meet its burden of proving that, considered as a whole, its activities were substantially and primarily devoted to educational purposes rather than being merely incidental.

Exemptions: Property Owned by Community-Based Residential Facility (CBRF). In *Beaver Dam Community Hospitals, Inc. v. City of Beaver Dam*, 2012 WI App 102, 344 Wis. 2d 278, 822 N.W.2d 491 (review denied), the court examined the scope of the exemption in section 70.11(4)(a) for chapter 50 CBRFs. There was no dispute that the taxpayer's facility qualified as a CBRF. The city argued that the property was not exempt because it was not used for benevolent purposes. The court held that the statute unambiguously exempts any qualifying CBRF, and the exemption of such property is not conditioned on benevolent use.

Appeal Procedures: Untimely Appeal; Mailing Versus Filing. In *Rybak v. Wisconsin Department of Revenue*, [2 Wis.] St. Tax Rep. (CCH) ¶ 401-612 (Tax App. Comm'n Sept. 27, 2012), the commission upheld the board of assessors' dismissal of an objection for lack of jurisdiction because the objection was not timely filed. The deadline for filing the objection was August 26. The objection was postmarked September 2 and the board received it on September 6. The petitioner argued on review to the commission that mailing was equivalent to filing and submitted an affidavit stating the objection was mailed on August 25. The commission rejected the petitioners' argument, finding that even if "filing" occurs on the date the appeal was postmarked (September 2, 2011), the appeal was still untimely and, therefore, the board correctly dismissed the petitioners' objection for lack of jurisdiction.

Appeal Procedures: Untimely Appeal; Certiorari Versus De Novo Review. In *Slocum v. Town of Star Prairie Board of Review*, No. 2011AP2676, 2012 WL 4870797 (Wis. Ct. App. Oct. 16, 2012) (unpublished opinion not citable per section 809.23(3)), the court of appeals affirmed the dismissal of the taxpayer's refund complaint on grounds it was untimely. The complaint did not specify whether the taxpayer sought certiorari review of the board of review's determination under section 70.47(13) or de novo review of the denial of a claim for excessive assessment under section 74.37(2)(a). The filing deadlines are different depending on the nature of the review sought. The taxpayer had failed to introduce before the circuit court evidence of compliance with the requirement of filing a claim for excessive assessment with the municipality, which is a prerequisite to filing a de novo refund action. Moreover, on appeal, the taxpayer repeatedly referred to his action as a certiorari action. Because the complaint was not filed within the 90-day deadline for filing certiorari petitions, the court upheld the dismissal.

Appeal Procedures: Service of Process Insufficient. In *Hall v. Village of Ashwaubenon Board of Directors*, No. 2011AP2746, 2012 WL 4800426 (Wis. Ct. App. Oct. 10, 2012) (unpublished opinion not citable per section 809.23(3)), the court of appeals affirmed dismissal of the taxpayers' complaint for lack of personal jurisdiction

because the taxpayers did not properly serve the village with a copy of the complaint. The taxpayers attempted to effectuate service of their complaint by mailing an authenticated copy of the complaint to the village clerk. Four days later, the taxpayers personally hand-delivered an authenticated copy of the summons to an office worker in the village clerk's office. Section 801.11(4) requires personal service of a summons on a village by serving the village president or clerk, however, and section 801.10(1) provides that an authenticated copy of the summons may be served by any adult resident of the state where service is made if the adult resident "is not a party to the action." One of the taxpayers admitted that she served the summons and complaint herself, and the court held this was a fundamental defect pertaining to the commencement of the action that deprived the court of personal jurisdiction.

STATUTORY DEVELOPMENTS

Individual and Fiduciary Income Tax

Federal Treatment of Medical Benefits for Adult Children Adopted. Effective for taxable years beginning on or after January 1, 2011, the Wisconsin Legislature adopted section 1004(d) of Public Law No. 111-152 and section 105(b) of the Internal Revenue Code (I.R.C.), as amended to December 31, 2010, for Wisconsin income tax purposes. With the adoption of these provisions, the Wisconsin treatment of health insurance benefits for adult children under the age of 27 is the same as the federal treatment. 2011 Wis. Act 49 (creating Wis. Stat. § 71.98(2)).

Donations to Special Olympics. Effective for taxable years beginning on or after January 1, 2012, every individual filing a Wisconsin income tax return who has a tax liability or is entitled to a tax refund may designate on the return any amount of additional payment or any amount of a refund due that individual for the Special Olympics Wisconsin, Inc. 2011 Wis. Act 76 (amending Wis. Stat. § 20.566(1)(hp) and creating Wis. Stat. §§ 20.255(3)(ge), 71.10(5k)).

Corporate Franchise and Income Tax

Definition of Internal Revenue Code. The legislature failed to update the definition of the I.R.C. Thus, federal laws enacted after December 31, 2010, do not apply.

Manufacturing and Agriculture Credit (Formerly Qualified Production Activities Credit) Revised. The qualified production activities credit created in 2011 (*see* 2011 Wis. Act 32, §§ 1896f, 2013f, 2015e (amending Wis. Stat. §§ 71.26(2)(a)4., 71.34(1k)(g), 71.45(2)(a)10.); *see id.* §§ 2011d, 2012d, 2122d, 2123d (creating Wis. Stat. §§ 71.28(5n), 71.30(3)(dn), 71.47(5n), 71.49(1)(dn)) (effective for taxable years beginning on or after Jan. 1, 2013)) was revised before it became effective. The legislature renamed the credit the manufacturing and agriculture credit, changed how it is calculated, and redefined several terms. 2011 Wis. Act 232, §§ 12, 17 (amending Wis. Stat. §§ 71.28(5n) (title), 71.30(3)(dn)) (effective for taxable years beginning on or after January 1, 2013).

The calculation of the credit can be expressed as the following formula:

+ "Production gross receipts"

- Minus the cost of goods sold that are allocable to such receipts

- Minus the "direct costs" that are allocable to such receipts

- Minus the "indirect costs" multiplied by the "production gross receipts factor" [that is, indirect costs are apportioned]

= Equals "qualified production activities income"
(subject to limitations (see below))

x Multiplied by the manufacturing/agriculture property factor

---

= Equals "eligible qualified production activities income"
(subject to limitations (see below))

x Multiplied by the phase-in percentage

= Equals manufacturing and agriculture credit

See 2011 Wis. Act 232, §§ 15, 16 (creating Wis. Stat. § 71.28(5n)(d)2., 3.), 13 (repealing and recreating Wis. Stat. § 71.28(5n)(a)8.). Note that *qualified production activities income* does not include income from any of the following: film production; production, transmission, or distribution of electricity, natural gas, or potable water; construction of real property; performance of engineering or architectural services with respect to constructing real property; sale of food and beverages prepared by the claimant at a retail establishment; or the lease, rental, license, sale, exchange, or other disposition of land. *See id.* § 13 (repealing and recreating Wis. Stat. § 71.28(5n)(a)8.).

Note also that "eligible qualified production activities income" is limited to the smaller of (1) income apportioned to Wisconsin under section 71.25 (5), (6), and (6m) *or* (2) income determined to be taxable pursuant to the combined reporting statutes (Wis. Stat. § 71.255(2)), if applicable. *See id.* § 16 (creating Wis. Stat. § 71.28(5n)(d)3.).

Production gross receipts, *qualified production property*, *direct costs*, *indirect costs*, *production gross receipts factor*, *agriculture property factor*, and *manufacturing property factor* are each defined by statute. *See id.* § 13 (repealing and recreating Wis. Stat § 71.28(5n)(a)).

Production gross receipts means gross receipts from the lease, rental, license, sale, exchange, or other disposition of qualified production property. Wis. Stat. § 71.28(5n)(a)6.

Qualified production property means tangible personal property manufactured in whole or in part by the claimant on property that is assessed as manufacturing property under section 70.995, or tangible personal property that is produced, grown, or extracted in whole or in part by the claimant on or from property assessed as agricultural property under section 70.32(2)(a)4. Wis. Stat. § 71.28(5n)(a)9.

Direct costs are all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in the trade or business that are deductible under I.R.C. § 162 and that are identified as direct costs in the managerial or cost accounting records. Wis. Stat. § 71.28(5n)(a)3.

Indirect costs are all of the claimant's ordinary and necessary expenses paid or incurred during the taxable year in the trade or business that are deductible under I.R.C. § 162, other than cost of goods sold and direct costs, and that are identified as indirect costs in the managerial or cost accounting records. Wis. Stat. § 71.28(5n)(a)4.

The production gross receipts factor is a fraction, the numerator of which is the production gross receipts and the denominator of which is all gross income from whatever source, which includes gross sales, gross dividends, gross interest income, gross rents, gross royalties, the gross sales price from the disposition of capital and business assets, gross income from pass-through entities, and all other gross receipts that are included in Wisconsin income before apportionment. Gross income does not include items excluded under the I.R.C. as adopted by Wisconsin and items excluded under Wisconsin law. Wis. Stat. § 71.28(5n)(a)7.

The agriculture property factor is a fraction, the numerator of which is the average value of the claimant's real property and improvements assessed under section 70.32(2)(a)4. that are owned or rented and used in Wisconsin by the claimant to produce, grow, or extract qualified production property, and the denominator of which is the average value of all the claimant's real property and improvements owned or rented during the taxable year and used by the claimant to produce, grow, or extract qualified production property. Wis. Stat. § 71.28(5n)(a)1.

The manufacturing property factor is a fraction, the numerator of which is the average value of the claimant's real and personal property assessed under section 70.995 that is owned or rented and used by the claimant in Wisconsin during the taxable year to manufacture qualified production property, and the denominator of which is the average value of all the real and personal property owned or rented during the taxable year and used to manufacture qualified production property. Manufacturing property owned by the claimant is valued at its original cost, and property rented by the claimant is valued at an amount equal to the annual rent paid less any annual rental received by the claimant from sub-rentals, multiplied by eight. The average value of manufacturing property is determined by averaging the values at the beginning and end of the taxable year; however, the DOR may require the averaging of monthly values if required to properly reflect the average value of the claimant's property. Wis. Stat. § 71.28(5n)(a)5.

The phase-in percentage is equal to the following percentages:

1. For taxable years beginning after December 31, 2012, and before January 1, 2014, 1.875%;
2. For taxable years beginning after December 31, 2013, and before January 1, 2015, 3.75%;
3. For taxable years beginning after December 31, 2014, and before January 1, 2016, 5.526%; and
4. For taxable years beginning after December 31, 2015, 7.5%.

2011 Wis. Act 32, § 2011d (creating Wis. Stat. § 71.28(5n)(b)).

Partnerships, limited liability companies (LLCs), and S corporations cannot claim the credit, but the eligibility for, and the amount of, the credit are based on their share of the income described above. A partnership, LLC, or S corporation computes the amount of credit that each of its partners, members, or shareholders may claim and provides that information to each of them. Partners, LLC members, and S corporation shareholders may claim the credit in proportion to their ownership interests. Wis. Stat. § 71.28(5n)(c).

Only the combined group member that generated a credit may use the credit (i.e., the credit may not be shared with other members of the combined group). Wis. Stat. § 71.255(6).

In addition, the amount of credit is now added to income in the taxable year following the taxable year in which it is earned (instead of being added to income in the taxable year earned). 2011 Wis. Act 232, §§ 9, 11, 19 (creating Wis. Stat. §§ 71.21(4)(b), 71.26(2)(a)11., 71.34(1k)(m)); *see id.* §§ 8, 10, 18, 20 (amending Wis. Stat. §§ 71.21(4)(a), 71.26(2)(a)4., 71.34(1k)(g), 71.45(2)(a)10.)

The other general Wisconsin rules for tax credits apply to the new manufacturing and agricultural credit. That is, the amount of the computed credit is added to state income, no credit may be allowed unless it is claimed within four years of the unextended due date of the tax return, and the credit can be carried forward for 15 taxable years. Partners (including members of LLCs taxed as partnerships) and tax-option (subchapter S) corporation shareholders may claim the credit based on the credits computed at the entity level in proportion to their ownership interest in the entity. 2011 Wis. Act 232, § 14 (renumbering Wis. Stat. § 71.28(5n)(d), *as created by* 2011 Wis. Act 32, § 2011d, as Wis. Stat. § 71.28(5n)(d)1.).

Insurance companies are no longer eligible for the credit. 2011 Wis. Act 232, §§ 21, 22 (repealing Wis. Stat. §§ 71.47(5n), 71.49(1)(dn)).

Veteran Employment Credit Created. The legislature created a new credit for employers that hire disabled veterans. The credit is equal to $4,000 in the taxable year that a disabled veteran is hired for a full-time job and $2,000 in each of the following three taxable years. For disabled veterans hired to part-time status, the credit is prorated. The general Wisconsin rules for tax credits apply to the new veteran-employment credit. That is, the amount of the computed credit is added to state income, no credit may be allowed unless it is claimed within four years of the unextended due date of the tax return, and the credit can be carried forward for 15 taxable years; and in the case of a change in ownership or business of a corporation, I.R.C. § 383 applies to the carryover of unused credits. Partners (including members of LLCs taxed as partnerships) and tax-option (subchapter S) corporation shareholders may claim the credit based on the entity's eligible-qualified-production-activities income in proportion to their ownership interest in the entity. For purposes of the economic development surcharge, the definition of *net business income*, with respect to a partnership, is expanded to include the veteran-employment credit. 2011 Wis. Act 212, §§ 4, 5, 8, 9, 12 (amending Wis. Stat. §§ 71.21(4), 71.26(2)(a)4., 71.34(1k)(g), 71.45(2)(a)10., 77.92(4)); *see id.* §§ 6, 7, 10, 11 (creating Wis. Stat. §§ 71.28(6n), 71.30(3)(dp), 71.47(6n), 71.49(1)(dp)). The veteran-employment credit is effective for taxable years beginning on or after January 1, 2012. No later than June 30, 2013, the Department of Workforce Development, in conjunction with the DOR, must submit to the legislature's Joint Committee on Finance a report describing the tax credit's effect on unemployed veterans in Wisconsin and recommend whether the credit should continue. 2011 Wis. Act 212, § 13 (nonstatutory provision).

Angel Investment Credit and Early-Stage-Seed Investment Credit Revised. The angel investment credit and early-stage-seed investment credit were revised, to soften the impact of the three-year-holding-period requirement. To prevent recapture of the credit, a taxpayer who receives a credit must keep the investment in a certified business, or with a certified fund manager, for no less than three years. The legislature amended the statutes to provide that the three-year-period requirement does not apply if the person's investment becomes worthless, as determined by the Wisconsin Economic Development Corporation (WEDC), during the three-year period, or the taxpayer has kept the investment for no less than 12 months and a bona fide liquidity event, as determined by the WEDC, occurs during the three-year period. 2011 Wis. Act 213, §§ 1j, lm, 3, 4, 5, 6, 8 (amending Wis. Stat. §§ 71.28(5b)(d)3., 71.47(5b)(d)3., 238.15(1)(intro.), (h), (j), (km), (3)(d)(intro.)); *id.* § 7 (creating Wis. Stat. § 238.15(1)(m)) (effective Apr. 20, 2012).

Dairy Cooperatives Credit Modified. The dairy cooperatives credit was modified to delay the year the credit may be claimed. Dairy cooperative members may claim the amount of dairy manufacturing investment credit passed through to them from the dairy cooperative in the year *after the year* in which the dairy manufacturing modernization or expansion occurs. Members must add the amount of the credit to the member's income in the year in which the member is allowed to claim the credit. 2011 Wis. Act 237, §§ 3, 4 (amending Wis. Stat. §§ 71.28(3p)(c)5., 71.47(3p)(c)5.) (effective Apr. 20, 2012).

Property Tax

Board of Review Proceedings. The legislature amended the introduction to section 70.47(8)—relating to hearings before the board of review—to add physician assistants, as defined in section 448.01(6), to the list of persons who may provide a letter to the board confirming the illness or disability of a witness, thereby allowing the witness to present testimony to the board via telephone rather than in person. 2011 Wis. Act 161, § 7.

Exemptions. The legislature amended section 70.11(45m), relating to a property tax exemption for snowmobile and all-terrain vehicle clubs, to add "utility terrain vehicle clubs" to the exemption.

ADMINISTRATIVE DEVELOPMENTS

Sales and Use Tax: Taxable Sales

Manufacturing Exemption. The DOR announced that the purchase or lease of land to acquire sand for use in extraction of oil and gas through "fracking" is not subject to Wisconsin sales and use tax. Further, the process of

extracting such sand will be considered "manufacturing" that is eligible for the manufacturing machinery and equipment exemption. Once extracted from the ground, the sale of such sand in Wisconsin will generally be subject to sales and use tax. Wis. Tax Bull. No. 176 (Aug. 2012).

Taxability: Product Vouchers. The DOR announced that sales of discounted certificates and product vouchers are not subject to sales and use tax at the time of sale. Rather, tax applies at the time the certificate or voucher is redeemed by the merchant providing the goods or services. *Id.*

Taxability: Bundled Goods. In Wisconsin Private Letter Ruling W1249001 (Sept. 18, 2012), the DOR determined the sales-and-use-tax status of two specific products when the products are sold to hospital and surgery centers. The first product is a drug delivery device implanted in the body. Because the drug is used to alleviate a physical deformity, the DOR concluded that the device is exempt under section 77.54(22b). The second product consists of the drug delivery device, a drug, and a plastic mixing apparatus. The drug and the delivery device are exempt. If sold separately, the mixing device would be taxable. The DOR concluded that because the mixing device is sold as part of a kit with the other items and constitutes less than 50% of the value of the kit, it is exempt pursuant to section 77.51(1f)(e). Wis. Tax Bull. No. 178 (Jan. 2013).