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Miscellaneous Taxes

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Miscellaneous Taxes

Wisconsin imposes a number of taxes and fees collectively categorized as miscellaneous taxes. These taxes include the real estate transfer fee, court-related fees and costs, a mining tax, and several occupational taxes.

Prior to 1999-00, miscellaneous taxes also included bingo and pari-mutuel taxes. However, as provided under 1999 Wisconsin Act 5, bingo and pari-mutuel taxes are now credited to program revenue accounts for bingo operations and for racing enforcement and operations. At the end of each fiscal year, any unencumbered balances in these accounts are transferred to the lottery fund. More detailed information regarding these taxes can be found in the Legislative Fiscal Bureau's informational paper entitled "State Lottery, Pari-Mutuel Wagering and Racing, and Charitable Gaming."

Miscellaneous taxes and fees are generally collected at the county or municipal level, with the state receiving a statutorily determined share. However, the grain and crude oil occupational taxes are allocated solely as municipal revenues.

This paper focuses on the miscellaneous taxes that are shared with the state. In addition, those occupational taxes that are entirely retained by the municipality in which they are collected are described.

Miscellaneous Tax Collections

Table 1 shows the state share of miscellaneous tax collections for fiscal years 1999-00 through 2007-08. Certain occupational taxes that provide solely local revenues are not included in this table. As shown in Table 1, the total state share of miscellaneous tax collections for fiscal year 2007-08 was \$70.30 million, which represented 0.54% of total general fund tax collections.

In fiscal year 2007-08, the real estate transfer fee represented 84.6% of miscellaneous tax receipts, court-related fees accounted for 15.3% of total state miscellaneous tax proceeds, and the remaining 0.1% was provided by the occupational tax on coal.

Table 1: General Fund Share of Wisconsin Miscellaneous Tax Collections (\$ in Millions)

Source of Revenue	1999-00	2000-01	2001-02	2002-03	2003-04	2004-05	2005-06	2006-07	2007-08
Real Estate Transfer Fee	\$45.29	\$44.22	\$51.18	\$57.38	\$66.33	\$77.22	\$80.54	\$71.73	\$59.45
% Change	3.01%	-2.36%	15.72%	12.13%	15.58%	16.43%	4.29%	-10.93%	-17.13%
Court-Related Fees	10.14	10.12	10.46	10.57	10.69	10.38	10.17	10.41	10.74
% Change	5.69%	-0.20%	3.27%	1.07%	1.17%	-2.89%	-2.04%	2.33%	3.16%
Occupational Tax--Coal*	0.08	0.00	0.16	0.11	0.10	0.09	0.10	0.10	0.11
% Change	0.00%	-100.00%	NA	-31.25%	-9.09%	-10.00%	11.11%	0.00%	10.00%
TOTAL	\$55.51	\$54.34	\$61.80	\$68.06	\$77.12	\$87.69	\$90.81	\$82.24	\$70.30
% Change	3.47%	-2.11%	13.73%	10.13%	13.31%	13.71%	3.55%	-9.44%	-14.52%
Total as a Percentage of General Fund Taxes	0.51%	0.54%	0.62%	0.67%	0.72%	0.77%	0.75%	0.65%	0.54%

*Two years' collections of this tax were received by the Department of Revenue in 2001-02. Therefore, no revenues are shown for 2000-01.

Summary of Miscellaneous Tax Provisions

A brief summary of each of the miscellaneous taxes levied in Wisconsin is presented below.

Real Estate Transfer Fee

The Wisconsin real estate transfer fee is imposed upon the grantor of real estate at a rate of \$3.00 per \$1,000 of value. The determination of the "value" of real estate for purposes of the fee depends upon the type of transfer being conducted. In the case of a sale of property, value equals the full amount of consideration paid or to be paid, including any liens on the property. If the property is transferred as a gift, value is equal to the prevailing market value.

Certain conveyances of real property are exempt from the real estate transfer fee. For example, transfers from federal, state, or local units of government and transfers by gift to federal, state, or local governments are not subject to the fee. Transfers of property valued at \$100 or less and sales of real estate for delinquent taxes are also exempt, as are transfers between a husband and wife or between a parent and child for little or no consideration. More detailed information about exemptions from the real estate transfer fee is provided in the Appendix.

Prior to enactment of 1999 Wisconsin Act 9, the 1999-01 biennial budget act, transfers of time-share property were subject to the real estate transfer fee if they were on a "fixed-time" basis. (A "fixed-time" time-share transfer is one in which the use of the rooms or lodging is fixed at the time of sale as to the starting day and lodging unit.) If a transfer was on a "flex-time" basis, in which the use of the rooms or lodging was not fixed at the time of the sale as to the starting date or lodging unit, the transfer was generally subject to the state sales tax and not the real estate transfer fee. Under Act 9, effective December 1, 1999, transfers of both fixed-time and flex-time time-share property are subject to the real

estate transfer fee and not the sales tax.

A number of exemptions from the real estate transfer fee relate to transfers involving family members (see the Appendix to this paper). Act 9 provided that these exemptions apply whether the family relationship is by blood or adoption. 2001 Wisconsin Act 44 created two additional exemptions. The first exempts conveyances of real property pursuant to partnerships registering as limited liability partnerships. The second exempts conveyances of real property pursuant to the conversion of a business entity to another form of business entity (for example, a limited liability corporation converting to a business corporation). It applies if, after the conversion, the ownership interests in the new entity are identical to the ownership interests in the original entity immediately preceding the conversion.

2005 Wisconsin Act 206 created two additional exemptions from the real estate transfer fee. Under Act 206, an interest in real property that is solely owned, owned by spouses as survivorship marital property, or owned by two or more persons as joint tenants may be transferred without probate to a designated transfer-on-death (TOD) beneficiary on the death of the sole owner or the last to die of multiple owners. To qualify for a nonprobate transfer, the TOD beneficiary must be designated and recorded on the deed that evidences the ownership of the property. Act 206 provided that the real estate transfer fee does not apply either to a conveyance of real estate solely to designate a TOD beneficiary or to a nonprobate transfer on death to a TOD beneficiary. These provisions took effect April 11, 2006.

To pay the real estate transfer fee, a return is filed and the fee is collected at the county level by the register of deeds when the deed or other instrument of conveyance is submitted for recording. Pursuant to 2007 Wisconsin Act 219, all real estate transfer fee returns filed on or after July 1, 2009, require electronic filing. The Secretary of the Department of Revenue may waive the requirement to file electronically based on a written application

for a waiver explaining undue hardship caused by this provision. Act 219 additionally clarified that all local assessors and government agencies must maintain confidentiality in regards to both social security and telephone numbers supplied on real estate transfer returns. Proceeds from the real estate transfer fee are divided between the state and the county in which it is collected, with the state receiving 80% and the county retaining 20%. Fiscal year 2007-08 collections totaled approximately \$74.3 million, of which \$59.5 million accrued to the state.

Court-Related Fees and Costs

Wisconsin currently receives a percentage of various court costs and fees charged at the municipal and circuit court levels. Prior to 1981, two separate fees were charged in court actions: a clerk's fee, which was retained by the county or municipality in which the proceeding was held, and a state fee or suit tax, retained by the state. However, in an attempt to streamline and simplify Wisconsin's user fee structure and to have fees more accurately reflect the costs of operating the court system, the fee structure was revised under Chapter 317, Laws of 1981. This legislation was in response to a Legislative Council study of court-related fees and costs mandated by the 1977 "Court Reorganization Act" (Chapter 449, Laws of 1977) and took effect on July 1, 1982. Under the fee structure established by this legislation, a single court fee was imposed, with fees split between the municipality or county and the state, as opposed to the imposition of separate fees as under prior law. Additionally, many of the previous fees were raised and some were abolished.

Since the 1977 court reorganization, court fees have increased, in general, and a number of additional fees have been created. Current court-related fees vary widely, depending upon the type of action involved. Additionally, certain fees are retained entirely by the municipality or county in which they are collected. A list of specific court fees is included in the Legislative Fiscal Bureau's informational paper entitled "Wisconsin Court System."

Court-related fees and costs are collected by the municipal judge in a municipal action and by the clerk of courts in a circuit court proceeding. State receipts from these collections are deposited in the general fund; in the 2007-08 fiscal year, the state share of court-related fee collections totaled \$10.7 million. Certain court fees that are deposited as departmental revenues rather than tax receipts are not included in this total.

Occupational Taxes

Wisconsin levies occupational taxes, in lieu of personal property taxes, on various businesses for the privilege of operating in the state. Occupational taxes are intended to result in fairly predictable levies, as opposed to the fluctuating property tax burdens that would otherwise result from changing inventory levels.

Generally, the occupational tax base is the volume of material handled by a specific business in a given year, such as coal or iron ore tonnage handled by a dock operator or bushels of grain stored in an elevator or warehouse. Materials subject to occupational taxes generally are exempted from property taxes. The occupational taxes are assessed and collected on the local level, as are property taxes; proceeds are divided among the state, county, municipality, and special funds according to tax-specific formulas.

The occupational taxes currently levied in Wisconsin are described below and summarized in Table 2. Occupational tax payments are due at the local level on January 31 of each year for activities during the year ending on the December 31 which was two years prior to the payment due date (thus, the January, 2009, payment is for activity occurring during the 2007 calendar year). Revenues generally must be remitted to the state by the February 15 following the payment due date. Persons or organizations subject to an occupational tax must provide annual statements to municipal assessors detailing the amounts and types of material handled during the preceding year as a basis for

Table 2: Wisconsin Occupational Taxes

Tax Base	Tax Rate	Taxpayer	Percent Distribution	
Grain	1/2 Mill per Bushel of Wheat or Flax 1/4 Mill per Bushel of All Other	Elevator/Warehouse Operator, Unless on a Farm	Municipality	100%
Coal	\$.05/Ton on Bituminous and Related \$.07/Ton on Anthracite and Related	Dock Operator, Unless Used by One Company	Municipality County State Total	70% 20 <u>10</u> 100%
Crude Oil Refined in Wisconsin	\$.05/Ton	Refinery Operator	Municipality	100%

determining the tax liability. Any taxpayer knowingly furnishing an incorrect or false statement is subject to a fine not to exceed \$1,000.

Prior to September 1, 2001, owners or operators of domestic mink farms in Wisconsin paid an annual occupational tax of \$25 per farm. Proceeds from the tax were paid to the Department of Agriculture, Trade, and Consumer Protection for mink research. 2001 Wisconsin Act 16 repealed the tax, along with the provision dedicating the resulting funds for mink research.

Coal Tax. The coal occupational tax is imposed upon the operators of coal docks in the state at the rate of 5¢ per ton of bituminous and subbituminous (soft) coal and related products, and 7¢ per ton of anthracite (hard) coal and related products handled by the docks each year. An exemption is provided for docks that handle coal solely in connection with an individual industry. The tax is distributed among the state, county, and municipality, which respectively receive 10%, 20%, and 70% of total annual collections. In fiscal year 2007-08, the state share of coal tax collections was approximately \$112,500.

Grain Storage Tax. The occupational tax on grain storage is imposed upon operators of grain warehouses and elevators other than those on farms that are used to store grain for the owner. Rates are 1/2 mill per bushel of wheat or flax handled or

stored annually and 1/4 mill per bushel of other grain. All proceeds from the grain storage tax accrue to the municipality in which the tax is collected. Grain storage taxes for 2007-08 were \$92,800.

Oil Refinery Tax. Operators of Wisconsin crude oil refineries are charged an occupational tax of 5¢ per ton of all oil handled annually. Oil refinery taxes due January 31, 2008, totaled \$94,000, all of which was retained by the municipalities in which the tax was collected.

Iron Ore Concentrates Tax. The iron ore concentrates tax was levied at the rate of 5¢ per ton of iron ore concentrates handled by or over Wisconsin iron ore docks during each year, and was payable by the dock operator. Prior to 1985, iron ore concentrates mined in Wisconsin and subject to the metalliferous mining tax were exempt from this tax. However, this exemption was found to be in violation of the Interstate Commerce Clause of the U.S. Constitution and was repealed in 1985 Wisconsin Act 29 (the 1985-87 biennial budget act). Also repealed in this act were exemptions for municipally owned or operated docks and docks operated solely by an industry handling only ore concentrates used by that industry. Prior to fiscal year 1987-88, proceeds from the iron ore concentrates tax were distributed as follows: municipality--70%, mining impact fund--20%, state--10%. However, because mining operations had ceased in the state, the allocation of

the tax to the mining impact fund was repealed under 1987 Wisconsin Act 27. Under this legislation, the state share of the tax was increased to 30%; municipalities continued to retain a 70% share.

In 1991, the U.S. 7th Circuit Court of Appeals invalidated the state's iron ore concentrates occupational tax by ruling that the tax was discriminatory under the federal Railroad Revitalization and Regulatory Reform Act of 1976 (the 4-R Act) because the burden of the tax fell on only one railroad--the Burlington Northern. As a result, the tax is no longer imposed.

Metalliferous Mining Tax

Wisconsin imposes a net proceeds occupational tax on state metalliferous mining operations. Because the tax is based on net proceeds rather than on the amount of material handled, it is considered distinct from the other occupational taxes for purposes of this paper. The mining tax is imposed using a progressive, bracket-based rate structure as specified in state statutes. The net proceeds brackets (to which fixed rates apply) are indexed to the annual change in the gross national product deflator, subject to a maximum yearly increase of 10%. Table 3 shows the tax rates and bracket structure for the 2007-08 fiscal year.

The tax base is gross mining proceeds minus allowable deductions. Allowable deductions include

Table 3: Mining Tax Rate Structure

Net Proceeds Brackets for 2007-08	Rate
\$0 to \$480,000	0%
480,001 to 9,600,500	3
9,600,501 to 19,201,000	7
19,201,001 to 28,801,600	10
28,801,601 to 38,402,300	13
38,402,301 to 48,002,400	14
48,002,401 or more	15

actual mining expenses, administrative expenses, depreciation and depletion expenses, amortization and preliminary costs, interest charges, and certain federal and state taxes. Proceeds from the mining tax are deposited to the investment and local impact fund. This fund was established in 1977 to provide financial assistance to local units of government experiencing social, educational, environmental, or economic impacts associated with metalliferous mining.

The most recent mining operation in the state was the Flambeau mine in Rusk County. As a result of this mining activity, the state collected net proceeds taxes of approximately \$500,000 in 1993-94, \$6.4 million in 1994-95, \$1.1 million in 1996-97 and \$700,000 in 1997-98. The mine closed its operations in 1997 and the mine site was reclaimed in 1998. Consequently, no revenues were generated from this mine after 1997-98.

APPENDIX

Exemptions From the Real Estate Transfer Fee

The following conveyances of real property are exempt from the real estate transfer fee:

- Transfers from federal, state, or local units of government
- Transfers by gift to units of federal, state, or local government
- Dedications of land for certain public purposes and transfers to governmental units for the purpose of a road, street, or highway
- Transfers for little or no consideration that correct or reform a previously recorded transfer
- Sales of real estate for delinquent taxes
- Transfers on partition
- Transfers made pursuant to a merger of two or more corporations, nonstock corporations, limited liability companies (LLCs), limited partnerships, or any combination thereof
- Transfers pursuant to a partnership registering as a limited liability partnership
- Transfers pursuant to the conversion of a business entity to another form of business entity if, after the conversion, the ownership interests in the new entity are identical with the ownership interests in the original entity immediately preceding the conversion
- Transfers from a subsidiary corporation to its parent corporation for little or no consideration
- Transfers between husband and wife
- Transfers between a parent and child for little or no consideration
- Transfers between an agent and principal or from a trustee to a beneficiary without actual consideration
- Transfers made in order to provide or release security for a debt
- Transfers made solely to designate a transfer-on-death (TOD) beneficiary
- Transfers by will, descent, or survivorship
- Nonprobate transfers on death to TOD beneficiaries
- Transfers made pursuant to or in lieu of condemnation
- Transfers of property valued at \$100 or less
- Transfers under a foreclosure or a deed in lieu of foreclosure to a mortgage holder or to a seller under a land contract

- Certain transfers between family-owned corporations, partnerships, or LLCs and their respective shareholders, partners, or members; such transfers must be for no consideration except the assumption of debt or stock of the corporation, or the assumption of debt or an interest in the partnership or LLC.
- Transfers to a trust if a transfer from the grantor to the beneficiary of the trust would be exempt
- Transfers of a deed executed in fulfillment of a land contract if the proper fee was paid when the land contract was recorded
- Transfers to a local exposition district
- Transfers from a fiduciary for a nonprofit association to convey the vested estate or interest to the nonprofit association in its own name
- Certain transfers of transmission facilities or land rights to an electric transmission company (as defined in the statutes concerning public utility regulation) in exchange for securities